Cuestiones Políticas Vol. 41, Nº 76 (2023), 502-511
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Administrative, financial, criminal-legal and theoretical-methodological aspects of regulating social relations in government bodies

DOI: https://doi.org/10.46398/cuestpol.4176.29

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Abstract

The purpose of the research was to define the theoretical, administrative and civil law aspects of the regulation of social relations. Consequently, the article specifies the means of social regulation, which include components of legal, moral, corporate and customary, etc. type. It has been shown that legal regulation of social relations is defined as an intentional action on the behavior of people and social relations with the help of legal (juridical) means. The methodological basis of the research is presented as comparative-legal and systematic analysis, formal-legal method, method of interpretation, hermeneutic method, as well as methods of analysis and synthesis. By way of conclusion it has been proved that since the object of legal regulation is presented as social relations, legal regulation is determined by some objective and subjective factors. As contributions, the following factors of social relations have been determined: level of economic development of society; social structure of society; level of maturity and stability of social relations; level of legal culture of citizens; level of certainty of the subject of social relations, means and methods of legal regulation.

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Recibido el 14/12/22 Aceptado el 26/01/23

Keywords: social relations; legal regulation; state model; legal phenomena; legal norms.

Aspectos administrativos, financieros, penal-jurídicos y teórico-metodológicos de la regulación de las relaciones sociales en los órganos de gobierno

Resumen

El objeto de la investigación fue definir los aspectos teóricos, administrativos y de derecho civil de la regulación de las relaciones sociales. En consecuencia, el artículo precisa los medios de regulación social, que incluyen componentes de tipo: legal, moral, corporativa y de costumbres, etc. Se ha demostrado que la regulación legal de las relaciones sociales es definida como una acción intencional sobre el comportamiento de las personas y las relaciones sociales con la ayuda de medios legales (jurídicos). La base metodológica de la investigación se presenta como análisis comparativo-legal y sistemático, método formal-legal, método de interpretación, método hermenéutico, así como métodos de análisis y síntesis. A modo de conclusión se ha probado que, dado que el objeto de la regulación jurídica se presenta como las relaciones sociales, la regulación jurídica está determinada por algunos factores objetivos y subjetivos. Como aportes, se han determinado los siguientes factores de las relaciones sociales: nivel de desarrollo económico de la sociedad; estructura social de la sociedad; nivel de madurez y estabilidad de las relaciones sociales; nivel de cultura jurídica de los ciudadanos; nivel de certeza del tema de las relaciones sociales, medios y métodos de regulación legal.

Palabras clave: relaciones sociales; regulación jurídica; modelo de Estado; fenómenos jurídicos; normas jurídicas.

Introduction

Society is characterized by a certain degree of organization and regularity. This is caused by the need to reconcile the needs and interests of an individual and a certain community of people (large or small social groups).

To achieve such agreement, social regulation (i.e. purposeful action on people's behavior) is carried out. Regulation can be both external in relation to a person (someone influences him/her in some way) and internal (self-

regulation). In the course of its development the society has developed a diverse system of means and methods of regulating people's behavior. Means answer the question of how people's behavior is regulated, and methods determine how this purposeful action is carried out.

1. Literature review

The means of social regulation include, first of all, social norms: legal, moral, corporate, customs, etc. But the norm is never the only means of influencing people's behavior, since such means also include individual orders, authoritative commands, measures of physical, mental and organizational coercion, etc. (*Kopeichykov, 2002*).

Based on this, legal regulation can be defined as a purposeful effect on people's behavior and social relations with the help of legal (juridical) means (*Petryshyn, 2002*). Based on this definition, it is appropriate to conclude that regulation is only an action in which sufficiently marked goals are set. For example, in order to regulate the use of land, ensure its preservation, and improve efficiency of land use the legislative body adopts a law on land use. And the action of land legislation being the basis for legalization of goals set can be determined as legal regulation.

And if influence of a legislative act or its norms causes consequences that are not provided for by the legislation, and in some situations are contrary to the goals of the legislator, then such an action cannot be considered a legal regulation. So, under influence of land legislation, the price of land plots has grown, the number of speculative land transactions carried out for profit as well as unproductive use of land resources has increased.

The negative impact of the land law on social relations cannot be determined as legal regulation, since it was not a part the legislator's goals, but was intended to regulate life of the society, to ensure the fair, reasonable nature of the use of such a value as land.

Therefore, the purpose of the article is to determine theoretical, administrative, and civil law aspects of regulating social relations.

2. Materials and methods

The research is based on the works of foreign and Ukrainian researchers on methodological approaches to understanding the theoretical, administrative, civil law aspects of regulating social relations.

With the help of the epistemological method, the essence of preventing professional deformation among penitentiary personnel was clarified,

thanks to the logical-semantic method, the conceptual apparatus was deepened, the essence of theoretical, administrative and civil law aspects of regulating social relations was determined.

In order to get an idea about the extent of professional deformation among penitentiary personnel during the last five years, we analyzed statistics, which is not, unfortunately, based on all canons of statistical generalization, since we were not able to access all blocks of information. However, thanks to the existing data, we managed to analyze theoretical, administrative and civil law aspects of regulating social relations.

3. Results and discussion

An action carried out by non-legal means cannot be considered a legal regulation. Thus, influencing people's consciousness and behavior through the mass media, through propaganda, agitation, ethical and legal education and training cannot be referred to legal regulation as a special legal organizing activity. Influence over social relations and on people's behavior caused by special legal means and methods, in its turn, affects spiritual, ethical, ideological aspects of a person's life.

Law cannot regulate all social relations, all social connections between members of the society. Therefore, at each concrete historical stage of social development, the sphere of legal regulation must be defined with a sufficient level of precision (*Petryshyn, 2002*).

In conditions of a narrowed sphere of legal regulation in the society, there is a threat of arbitrariness, chaos and unpredictability in those areas of human relations that can and must be regulated with the help of law. And in cases of unjustified expansion of the sphere of legal regulation, especially at the expense of centralized state-authority action, created are conditions for strengthening of totalitarian regimes, regulation of people's behavior, which leads to social passivity, lack of initiative of members of the society.

The sphere of legal regulation should include those relationships that have the following characteristics (*Petryshyn, 2002*): reflection of individual and general social interests of society members; realization of mutual interests of their participants, each of whom narrows his/her own interests in order to satisfy interests of others; agreement-based formation of implementation of certain rules and recognition of their obligatoriness; compliance with rules obligatoriness of which is supported by a sufficiently effective legal force.

The nature and type of social relations, components and subject of legal regulation determine the degree of intensity of legal regulation, that is, the breadth of legal action, the degree of bindingness of legal orders, forms and

methods of legal coercion, the degree of detail of orders as well as intensity of legal action on social relations (*Oliinyk, 2001*).

In spite of different approaches to its definition, a certain understanding of the essence of legal regulation has been formed in literature sources. The term "regulation" comes from the Latin word "regulo" (rule) and means ordering, adjusting, bringing something into line with something else (*Oliinyk, 2001*). That is, legal regulation is an action on social relations with the help of certain legal means, including primarily legal norms. In the conditions of forming the basis of a legal state, the role and importance of legal regulation of social relations acquires special relevance.

It is about those social relations, which cannot function without the use of legal means (economic, political, and socio-cultural). However, not everything in social relations is regulated by law. For example, the following aspects are not regulated by law: in the sphere of economic relations - production processes; in the sphere of political relations - development of party programs and statutes; in the spiritual and cultural sphere - religious relations, etc. (*Oliinyk, 2001*).

Legal regulation presupposes normalization, legal consolidation and protection of social relations through the use of legal means. The regulatory influence of law on social relations consists in the fact that, law in its norms constructs a model of mandatory or permitted behavior of various subjects of these relations.

Most authors understand legal regulation a set of techniques and means of legal influence over behavior of subjects of social relations. According to S.O. Sarnovska, certain legal regulation of social relations is carried out precisely from the moment of publication of the respective normative legal act (Sarnovska, 2003). A somewhat different point of view is held by P.M. Rabynovych, who believes that the rule of law begins to regulate behavior of subjects not from the moment the rule of law is issued, but from the time of occurrence of legal facts provided for by this rule (*Rabinovych, 2001*).

Since the subject of legal regulation consists in social relations, legal regulation is determined by some objective and subjective factors. Such factors may include the following ones:

- level of economic development of the society;
- social structure of the society;
- level of maturity and stability of social relations;
- level of legal culture of citizens;
- level of certainty of the subject, means and methods of legal regulation (*Kravchuk, 2002*).

Most modern scientific works are devoted to legal regulation, and therefore to its spheres and boundaries, as one of the types of legal influence. In this regard O.M. Melnyk notes that some authors equate the concepts of legal influence and legal regulation, although boundaries of these concepts do not coincide. Others do not take into account different forms of legal regulation.

Hence, we have the statement of some scientists that legal regulation begins with adoption of a legal norm and is confined to it, and opinion of others that it starts with the entry into force of the norm or with occurrence of a legal fact provided for by the respective norm of law. At the same time, research of the issue of the sphere of legal influence is not only of theoretical, but also of practical significance, because having defined the sphere of legal influence, we will be able to answer the question about what relations are subjected to such influence and we will establish the limit of legal influence (Villasmil Espinoza *et al.*, 2022).

The sphere of legal influence, as well as the sphere of legal regulation, cannot remain constant. In this aspect, Onishchenko note that changing the scope of legal regulation is a complex process in which opposite trends (expansion and narrowing of legal regulation) coincide (*Onishchenko, 1995*).

The scope of legal regulation can expand due to the emergence of new relationships of social reality (those previously unregulated by law). Narrowing of this sphere occurs due to society's refusal to use the law and due to replacing legal regulation with other means of social regulation. Such a tendency is caused by the social nature of legal norms, their interrelationship with norms of social regulation.

In this regard, Orzikh (2009: n/p) notes that: "the scope of the regulatory influence of law is limited to the normatively established variants of person's behavior in each typical situation" and "the wider the range of these variants is, the more meaningful legal freedom of an individual is, and the wider the framework of the sphere of regulatory influence becomes" (*Orzikh, 2009: n/p*).

According to P.M. Rabinovych, the sphere of legal regulation can be defined as a social space actually regulated by law, or one that can be regulated by law. But such social space is always limited (*Rabinovych, 2001*).

In Ukraine, the sphere of legal influence is in constant and rather contradictory movement in accordance with the pace of legislation formation and improvement However, many legal norms do not find their consistent application and implementation. At the same time, legal awareness of Ukrainian citizens still remains at a low level, and activities of state bodies often do not meet the standards of a law-governed state.

Unfortunately important changes in law, often have a chaotic nature, so they remain disordered and lack a system-defined connections.

Thus, changes in the sphere of legal influence, as well as those in the sphere of legal regulation, depend on a significant number of factors, among which the following ones can be singled out:

- degree and level of public assignment of law;
- changes in the legal system as a whole;
- priority of public and individual interests;
- progressive changes in the society associated with emergence of new social relations;
- increase or decrease in the level of legal awareness and legal culture of the society;
- progressive changes in the current legislation in the country, both in the direction of expansion and reduction of the regulatory framework;
- expanding rights and freedoms of citizens and creating favorable conditions for their implementation (Tylchyk *et al.*, 2022).

Problems in the sphere of legal influence are inextricably linked with the need to study the issue of legal influence limits. Any influence or regulation cannot be performed without boundaries and indefinitely, and therefore such influence must have a certain limit; if this limit is crossed such influence acquires new features and turns into another substance. So, S.V. Bobrovnyk emphasizes that limits of legal regulation constitute an optimal completeness of legal mediation of social relations, due to the need for state influence over spheres of social life, which cannot be regulated otherwise than with the help of law (*Bobrovnyk, 2001*).

When analyzing the above first of all it is necessary to clarify the essence and meaning of the "limit" category for the purpose of researching the notion of "legal influence limits". Given the fact that there are several types of definitions in science, first of all, it is necessary to give a scientific analysis of the concept of legal influence limits and choose the most optimal approach.

In the process of forming a definition due to the closest genus and species difference, it breaks up into two relatively independent cognitions: definition of the meaning of the very concept of "limit"; establishment of the most significant distinguishing features of legal influence limits from all other subtypes of limits (Matviichuk *et al.*, 2022).

It should be noted that the word "limit" is used for such entities (phenomena) that can be imagined in clear or unclear, but always specific units, parameters or characteristics. Thus, in the process of researching the issue of legal influence limits, we consider limiting characteristics of the action of law, real and potential possibilities of its influence over social relations and interests (Leheza *et al.*, 2022).

Considering the above, in our opinion, it is possible to distinguish two main approaches to understanding legal influence limits: an objective approach related to objectively existing conditions that do not depend on the will of social subjects or the state, cannot be changed at their will and are capable of limiting legal influence in a certain way.

Such conditions may include certain regularities of social development (for example, cultural ones, economic ones, etc.), laws of development of nature; a subjective approach, which consists in one's own worldview, self-assessment by social subjects of their capabilities and legal capabilities. Thus, it is in the process of own perception, assessment and representation that the subjective approach to understanding legal influence limits is revealed.

It should be noted that this approach to characterizing the marginal indicators of legal influence depends on the level of legal awareness and legal culture of a particular society at a certain stage of its development. Therefore, the mechanism of legal influence as a whole will depend on how adequately law in its essence will be perceived.

Like any theoretical category, "legal influence limits" do not receive a full-fledged theoretical study without characterizing their main features. As noted by O.M. Melnyk legal regulation limits are determined by non-legal factors. They come from the very nature of human activities, they are determined by culture and civilization as well as by the existing system of relations, economic, historic, religious, national and other circumstances (Melnyk, 2000).

A peculiar place among subjective factors influencing determination of legal influence limits is taken by the dominating in the society and the state legal consciousness which is tightly related to certain common philosophic and world outlook views of the society and can determine limits of influence over legal awareness of a definite social subject. It is law that acts as a certain level of personality's freedom in the society, determines limits of such freedom and sets responsibility for violating the respective limit.

Factors of subjective nature determining legal influence limits may also include propaganda of law, legislator's intentions, motivation of law and legal innovations as far as they do not perform direct regulation and never initiate definite legal relations, but they have an influence over subconsciousness of subjects of law and so determine possible limits of their behavior (Halaburda *et al.*, 2021).

Similarly to objective factors, subjective factors are not exhaustive and may change under influence of objective reasons. Such changes are presented as narrowing or vice versa expanding possible legal influence limits (Kobrusieva *et al.*, 2022).

Conclusions

So, legal regulation demonstrates interference of the state into vital activity of the society in general as well as that of each separate personality. This interference in the modern democratic society must have its limits, i.e. limits of dictatorial interference of the state and its bodies to the system of social relations. And violation of these limits by the state, application of prohibited methods of influence over social relations should be viewed as interference of the state to insubordinate spheres of social regulation.

In a modern democratic state, the nature and types of these means are determined by a complex of factors; among these factors we can first of all highlight patterns of development and principles of the legal system, as well as the level of declared and actually effective rights and freedoms of human and citizen established both in national legislation acts and international acts ratified by the legislative body of that state.

In addition to that, legal, democratic and social state should recognize priority of rights, freedoms and legally protected interests of a separate person over its own interests. Despite declarativity of this statement it has a significant importance for choice of priority guidelines and means for legal regulation of social relations.

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ppi 201502ZU4645
Esta publicación científica en formato digital es continuidad de la revista impresa
ISSN-Versión Impresa 0798-1406 / ISSN-Versión on line 2542-3185Depósito legal pp 197402ZU34

CUESTIONES POLÍTICAS

Instituto de Estudios Políticos y Derecho Público "Dr. Humberto J. La Roche"
de la Facultad de Ciencias Jurídicas y Políticas de la Universidad del Zulia
Maracaibo, Venezuela

Vol.41 N° 76
Enero
Marzo
2023

UNIVERSIDAD DEL ZULIA

CUESTIONES POLÍTICAS

Vol.41 Nº 76

Esta revista fue editada en formato digital y publicada en enero de 2023, por el ***Fondo Editorial Serbiluz, Universidad del Zulia. Maracaibo-Venezuela***

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