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DIFFERENT APPROACHES TO THE UNDERSTANDING OF LAW AND THE SIGNIFICANCE OF THESE APPROACHES IN THE FIELD OF LEGAL SCIENCE

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Annotation: This article discusses different approaches to understanding law, their differences and common aspects, and the significance of these approaches in the field of legal science..

Key words: law, understanding of law, libertarian understanding of law, positive understanding of law, legal practice, rule of law, right

Category of form of law and arising from its conceptual series, as it is considered in the legal literature, is quite thoroughly developed by legal science. How Professor M.A. Vasiliev, “theoretical problems of the form of law developed in legal literature is very detailed. Legal categories reflecting external forms of expression and objectification of normative state decrees in a meaningful, positive way received a solid justification in our theory of law. Their main logical connections and subordinations have been established”. [1;3].

The philosophical understanding of form is based on highlighting this category to reflect the attributive side of the phenomenon, in which its expression of the content of the subject, and through him and his essence. The form in the aspect of interconnection with other categories that reflect the attributive aspects of the phenomenon acts as a further concretization of its essence and content. in the process of unfolding the phenomenon into reality. In philosophical literature, the form phenomena are usually characterized in two ways. sense as an internal organization, structure content and as a way of expressing content outside, a way of external being of content.

“Right, from the point of view I develop, - these are the rules of the hostel, supported by the state power. So that subjects can get acquainted, by outward signs, with the content of the rules of law, it is necessary to express the will of those in power in a predetermined form. This form may be one, but it may be different.

In modern philosophical literature it is noted: “The concept of form is ambiguous. Often form is understood as a way of external expression of content; sometimes they indicate that the form is also relatively stable certainty of the connection of elements (more precisely, components), content and their interactions, content type and structure.

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Even then, attention is drawn to the fact that the variety of meanings attached to the expression "sources of law" in the science of law leads to terminological confusion and does not make it possible to adequately determine the ways of external representation of law. This circumstance makes it necessary to move away from the term "source of law" and replace with another, more the correct term "form of law". Under this name should be understood as different types of law, differing in the way they are developed content of norms [2;2].

The form of law in the aspect of reflection in the most itself (Hegel) or the internal organization of the content appears as a consistent deployment of the essence of law - the legal will in naturally interconnected elements of the content of law, namely in the processes of formation of legal norms, their implementation and ensuring the achievement of law and order.

In another systematic work, the corresponding section is already called “Sources of Law”. Here the author, noting the plurality of meanings of both the term "form of law" and the term “source of law”, writes that for the form and source of law, “the most logical and expedient is their use as synonyms, as identical terms and concepts.

According to G.F. Shershenevich, choice forms of external representation of law depends entirely from the government. And further continues:.

“If this is so, then, depending on the discretion of the public authority, the forms of law may be very different depending on time and place. The historical reality is quite confirms this assumption.

The government may allow their judicial authorities to apply those rules hostels, which were developed by life itself in the public environment by the power of domestic relations. The authorities assume that such rules on this issue should have been formed or will be formed. Norms customary law, although they are created in their content apart from state power, but become legally binding the will of the government.

It is unlikely that this approach can be considered innovative for world legal science. What is innovative here, perhaps, is only that in difference, for example, from theory of law here the question of the concept of the form of law turned out to be absolutely divorced from consideration of the concept of the content of law, which is key in this respect. How to approach the concept form (or source) of law in terms of declared in various types of legal understanding approaches to the content of law - and it remains a riddle.

History shows us how the state power provided the content of the norms the rights of scientific jurisprudence. However, scientific jurisprudence was not in itself a form rights, but due to the expressed will of the authorities authorities.

We believe that the last remark quite accurately conveys the state of modern world legal science in development category of form of law. Here and in fact it is rather difficult to detect any theoretical advances over what has been written on this subject

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for many years. back. It is only noticeable that the key analysis of this issue methodological approaches to considering the category of form of law in unity with the categories of essence and content, rights also became a thing of the past.

Then the author considers an interesting question from a historical and theoretical point of view about the mutual relationship of various forms law, especially the most important ones - law and legal customs. Based on historical facts, G.F. Shershenevich believes that initially law is expressed almost exclusively in the form of legal customs; from the general the masses of the rules of the hostel stand out those who rye recognized by the court, and this is the period of domination customary law.

However, only such an approach, i.e. consideration of the category of the form of law in the regular connection of the conceptual series "essence - content - form of law" and allows us to give a scientific understanding of this category; and with the deepening of ideas about the essence and content rights, accordingly, adjust approaches to the category of form. Form is the way external representation of the essential content of the phenomenon and should be considered in aspect of natural connections with the essence and the content of the law.

The form of law that currently prevails time among all civilized nations is a law that completely relegated all other forms to the background. Opportunity for organized society make the rules behaviors that are obligatory for all, expressed specifically in the legislature.

The essence of law expands, concretizes itself in the content of law, content - appears in the form of certain forms. The form of law in this approach is the outer shell, if you like - a receptacle that holistic content of law, in which realized its essence.

“It is important for everyone to determine in advance, with the greatest possible accuracy, under what exactly the rules it can be secured from any claim on the part of others and compliance with what exactly he can require from them themselves. And this is possible only with respect to objectivized norms, and therefore the doctrine of the forms in which this objectification is carried out is very difficult for the lawyer. great importance.

The peculiarity of the legal will is given to its purpose and the means to achieve them. It is the goals of the legal will that determine the order in which it is deployed. into the relevant content, as well as the structure of that content. In other words, goals legal will determine which elements and in what sequences are produced by the entity in the content of the law. Accordingly, law acquires a qualitative certainty, forms a complete social phenomenon, when it the essence, completing the cycle of formation of the content of law, achieves its ultimate goals.

The sources of law in the formal sense are forms in which they find their expression legal rules. These are the laws, by-laws of state authorities and state administration, normative acts of judicial institutions, legal customs, treaties

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(international and others) containing legal rules. WITH this point of view, the source of Soviet law is first of all the law. All other regulations, no matter how they are called, they draw strength from the law".

Objectively real, therefore, and the theoretical basis for scope and structure of the content of the law, is acting, producing and reproducing the right essence, its goals as a legal will. If the main goal of the legal will is not to writing legislative acts, but in some ways larger, then in the above statement from the system of elements of content successively deployed by the legal will right, one element is snatched out - officially established legal norms and it is he who is arbitrarily declared to be the only existing content of law.

Let us ask ourselves a question: if the author understands the differences between these concepts well, then why his monograph is called "Sources of law" and not "Sources of law"? The answer to it, we believe, is quite simple: for the Soviet theory of law, the content rights are legal norms, official general prescriptions established by state power. Therefore, the concept of the form of law for her completely merged with the concept of the form of legal norms:

Theoretical approach to content analysis law in unity with its essence makes it possible to take a different look at the problem of form rights. Understanding the content of law as a process of unfolding the legal will throughout system of legal phenomena, in the integral unity of the formation of legal norms, their implementation, provision and achievement as a result of the rule of law determines the inadmissibility of information forms of law exclusively to the form of one of its elements.

When implementing these methodological In other approaches, the question of the varieties of forms of law is presented differently. It's clear, that they cannot be reduced to sources legal norms in the form of legal custom, judicial precedent, normative act, normative contract and others. The speech must go about relatively special integral cycles the existence of the content of the law, in which the legal will realizes its goals, about the ways external being of independently functioning forms or types of legal reality.

Without claiming to be consistent and completeness of the analysis, let us express only some preliminary judgments. An analysis of real legal practice shows that the legal will realizes itself not only through the content and forms of processes associated with the establishment of legislative law, when the creation of legal norms, their implementation and enforcement is carried out through special state bodies. Along with this widespread has the right, which is formed in the direct interaction of the subjects of social life, when the creation of legal norms, their implementation and provision is carried out within the framework of civil society itself. Can't be ignored and the specifics of the jurisdictional or judicial law, when the creation of legal norms, their

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implementation and enforcement is carried out within the framework of the judicial system in society.

In conclusion, the legal will can reach their goals through activities directly subjects of social life, through activities state apparatus, through the activities judicial authorities. That defines reality the existence of at least three varieties, three basic forms of law. These forms rights exist at all stages of the development of legal reality and are inherent in one or another different proportion to the law of any country. They are autonomous to a certain extent and none of them completely absorbs the other. Each of them represents some specific and independent completeness of the content of law, the connection of the processes of formation, implementation and enforcement of legal norms, and therefore, the achievement of the goals of the essence of law.

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