

ІСТОРІЯ ТА ТЕОРІЯ ДЕРЖАВИ ТА ПРАВА, ФІЛОСОФІЯ ПРАВА

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HUMAN LEGAL NEEDS: CONCEPT, LEGAL MECHANISM OF SATISFACTION

The relevance of the topic is due to the fact that the legal needs accompany each person throughout the life, but almost none of the scholars did not conduct a thorough analysis of their essence and the mechanism of satisfaction.

Comparable to other needs, legal needs are historical entities, and some of them were allocated even by Hegel in his classification of needs. He called them the needs of law and statute [1, p. 114-116]. The organization of legal life in many respects depends on them, and they, in turn, are largely conditioned by previous and current legal development.

So, what social phenomena do belong to the legal ones? The answer to such a question, as P. M. Rabinovych notes, will be conditioned by the general understanding of the term «right». However, this term, as the author emphasizes, has never been, and now is not, and it seems that in the future it will not be meaningfully unified, one-semantic, non-pluralistic [2, p. 18].

Therefore, he tried to interpret the phenomenon of legal needs, in relation to each of the two most common types of positivist legal thinking: sociological and legist.

Thus, according to the standpoint of sociological-positivist legal thinking (in particular, so-called social-natural), the legal need has been defined as the necessity of a person (or a group of people) in the presence and use of certain social conditions, opportunities and means to ensure the exercise of the person's rights and freedoms. The satisfaction of such legal needs, in the opinion of the author, serves as a prerequisite for the realization of the corresponding basic needs of their carrier (of material, social, spiritual needs, etc.), since without realizing such a legal need, the corresponding «natural» human rights cannot be realized. Therefore, in light of this, he notes that the legal need in question is instrumental, so to speak, as a «medium» purpose.

The researcher emphasizes that among the identified social opportunities and means, a special role is played by the state-legal phenomena. Therefore, from the standpoint of legist-positivist legal thinking the legal need of a person (or group of people) will consider the need for the availability and use of certain state-legal means to ensure the exercise of its rights and freedoms. First of all, it is about the need to recognize the legal personality of their carrier (including its legal capacity and capacity); in legal norms (contained either in normative legal acts, whether in contracts, or in case-law cases, etc.); in subjective legal rights; in certain legal facts (as the basis for the emergence or change of such rights), in particular, such legal facts as the adoption of law-abiding or legal texts or law enforcement acts.

The satisfaction of such legist-positivist human needs, as the scientist stresses, also serves as one of the prerequisites for the next satisfaction of basic, non-legal content, the needs of their carriers. Therefore, in this sense, legal needs are, in other words, the need for state-legal guarantees (means, levers, «tools») for the implementation of the rights and freedoms of individuals or their groups. And besides, P. M. Rabinovich emphasizes the effective guarantees referred to in the Convention for the Protection of Human Rights and Fundamental Freedoms (Article 13) [2, p. 18-19].

Proceeding from all the foregoing and based on legist-positivist legal thinking, we can propose the following definition of the analyzed concept: legal needs are the needs of people in qualitative and effective legal regulation, as well as in legal assistance.

Legal regulation can be defined as the activity of competent entities, which is carried out with the help of certain legal means. Their set is a mechanism that includes: legal personality (legal ability and capacity); legal norms (contained either in normative legal acts, whether in contracts, or in case-law acts, etc.); legal relationship; subjective legal rights; legal obligations; legal facts as the basis for the emergence, change or termination of such rights), in particular, such legal facts as the adoption of acts of official legal interpretation of law-makers, or law-restorative, or law-abiding or law-abiding individual legal acts; law and order, legality. So, we briefly characterize the role (possibilities) of each of the main elements (means) of the legal regulation mechanism in meeting the legal needs of a person.

The need for legal personality is due to the fact that neither an individual nor a legal entity can exist and act as a recognition of this property of the latter. It alone makes it possible to do certain actions.

The need for subjective legal rights is due to the fact that every person needs legal certainty of his actions, because it ensures their legitimacy and

morality. They serve as a kind of «key» provided by the state for the purpose of carrying out activity on acquisition and consumption, use of certain vital goods: objects of legal relations.

The need for legal norms and legal acts arises from the fact that they legally establish the subjective rights and guarantee their implementation.

The need for legal facts is explained by the fact that they are the basis for the emergence, change or termination of legal relations, for the emergence of subjective rights of citizens in specific legal relationships. In addition, they are a unique means of transferring the person's legal personality into its subjective right, and also constitute the necessary link in the transition from the state normative regulation of social relations to individual legal regulation.

The need for legality is due to the fact that it is a condition for the emergence and functioning of law and order, which is necessary for the ordering of social relations, and thus the prevention of chaos and arbitrariness.

Regarding to such a characteristic of legal regulation as its quality, it is reflected primarily by the following indicators:

- the value of legal regulation. It is characterized by its positive significance to meet the needs of human existence and development, social communities, associations, and society as a whole;

- economy of legal regulation. It is characterized by the amount of social expenditures needed to achieve its goal;

- the effectiveness of legal regulation. It is characterized by the ratio of real results of this regulation to its goal [3, p. 202].

The need for legal assistance is conditioned by the need to ensure lawful, competent, genuine implementation of human rights and freedoms, their protection and restoration in case of violation.

References:

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