

PROCEDURAL AND LEGAL REGIME OF LEGAL ACTIVITY: NATURE, ESSENCE, PURPOSE

RÉGIMEN PROCESAL Y JURÍDICO DE LA ACTIVIDAD JURÍDICA: NATURALEZA, ESENCIA, FINALIDAD

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ABSTRACT

This article attempts to consider a number of controversial issues regarding the definition of the nature, essence (including the concept and signs) and the purpose of the procedural legal regime in the theory of procedural legal regulation. The procedural and legal regime, as an element of the procedural-legal form, unfortunately, has not received sufficient development in legal science; a gap, in particular, remains the issues of establishing the characteristics of the category under consideration, without which it is impossible to establish the nature, essence and purpose of the procedural and legal regime. This remark is also true in relation to the definition of the concept of a procedural and legal regime, since the approaches available in legal science, for the most part, do not reveal the features and unique legal nature of the category under study. The authors of the article, on the basis of establishing the essential features of the procedural and legal regime, proposed its authentic definition, as based on a certain combination of procedural and legal means and principles of a special procedure for procedural and legal regulation of activities of subjects and participants in the legal process, aimed at legal and reasonable consideration and resolution of legal cases.

Keywords: legal activity; procedural form; legal regime; procedural and legal regime; legal process.

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RESUMEN

Este artículo intenta considerar una serie de cuestiones controvertidas en torno a la definición de la naturaleza, la esencia (incluidos el concepto y los signos) y la finalidad del régimen jurídico procesal en la teoría de la regulación jurídica procesal. El régimen procesal y jurídico, como elemento de la forma jurídico-procesal, lamentablemente, no ha recibido suficiente desarrollo en la ciencia jurídica; un vacío, en particular, subsisten las cuestiones de establecimiento de las características de la categoría en consideración, sin las cuales es imposible establecer la naturaleza, esencia y finalidad del régimen procesal y jurídico. Esta observación también es cierta en relación con la definición del concepto de régimen procesal y jurídico, ya que los enfoques disponibles en la ciencia jurídica, en su mayoría, no revelan las características y la naturaleza jurídica única de la categoría en estudio. Los autores del artículo, sobre la base de establecer los rasgos esenciales del régimen procesal y jurídico, propusieron su auténtica definición, como basada en una cierta combinación de medios y principios procesales y jurídicos de un procedimiento especial de regulación procesal y jurídica de las actividades. de sujetos y participantes en el proceso legal, dirigido a la consideración y resolución legal y razonable de los casos legales.

Palabras clave: actividad jurídica; forma procesal; régimen jurídico; régimen procesal y jurídico; proceso jurídico.

INTRODUCTION

The modernization of the Russian legal system, accompanied by the reform of state-power activities, leads to increased attention to its proper, including procedural and legal, support and scientific understanding (Zhukova et al., 2018; Belyaev et al., 2020; Kutko et al., 2018). Undeniable is the fact that the theory of procedural legal regulation should be an independent component of the general theory of law, “mastering at the level of scientific generalization the general laws of the design and functioning of any legal procedure, both in the field of public and private law” (Baranova et al., 2021).

Within the framework of the theory of procedural legal regulation, further, relevant to modern conditions, the development of such scientific categories as the legal process, procedural form, procedural proceedings, procedural stages and procedural legal regime should be developed, on the proper understanding and functioning of which the realization of rights and legitimate interests of subjects of law, prevention of abuse and violation of the rights of citizens by public authorities, depends (Makogon et al., 2019; Belyaeva et al., 2019; Dyachenko et al., 2018).

In this regard, the role and importance of proceduralization in all spheres of social relations is increasing in every possible way (Makogon, 2017; Makogon et al., 2017; Makogon et al., 2019), and the appeal of the authors of this article to understanding and clarifying the essence and content of the procedural legal regime of legal activity, its further scientific development seems reasonable and timely.

METHODOLOGY

The methodological basis of the research includes general scientific techniques and methods of

scientific cognition (analysis, synthesis, deduction, induction, system-structural and formal-logical approaches), as well as special scientific (special-legal) methods - formal legal and interpretational.

RESULTS AND DISCUSSION

Attention should be paid to the fact that the procedural and legal regime, being a variety of the legal regime, in legal science has received the least development, both in the theory of legal regimes in general and in the theory of procedural legal regulation, in particular. This state of affairs, given the importance of the procedural and legal regime in the regulation of the legal activities of subjects of law, is difficult to recognize as satisfactory.

What is the reason for such a gap in the scientific development of this category? Let's try to briefly answer this (by no means rhetorical) question.

Firstly, we believe that over a significant period of time (approximately from the beginning of the 80s of the last century, when the procedural legal regime was first named among the structural elements of the procedural form), the procedural legal regime was defined as an auxiliary, servicing, providing the activity of law enforcement and judicial authorities, instrument that could not say positively about the degree of its scientific elaboration, because the subject of study was the procedural form, less often the procedural stages and procedural proceedings.

Secondly, the generic, in relation to the specific - procedural, concept of the legal regime has also received scientific development clearly not enough, despite a sufficient number of scientific works that mention this phrase in the title. We have repeatedly in our works (Belyaeva et al., 2020) drew attention to the fact that many researchers mention the concept of "legal regime" rather abstractly, sometimes only in the title of the work, without offering its author's definition, at best in relation to the characteristics of certain objects and types of legal activity, underestimating the true essence and purpose of this category. Such a truncated approach to the perception of the legal nature of the legal regime also affects the degree of study of the procedural and legal regime.

These circumstances, together with the needs of legal practice and the need for further proceduralization of public activities of subjects of law, led the authors to turn to the problem of establishing the nature, essence and purpose of procedural and legal regimes in the regulation of legal activity.

A few words about the history of scientific comprehension of this category. A certain start in the development of the concept of a procedural legal regime was made by Baranova who defined the latter as "a qualitatively homogeneous set of procedural requirements that determine the originality of law enforcement activities for the consideration and resolution of homogeneous legal cases"; including "norms of ethics, aesthetics, customs, i.e. the entire amount of social factors that determine the "atmosphere" of law enforcement proceedings" (Baranova et al., 2021). Such a rather widespread approach to the analyzed category has a right to exist; the main thing for us in this definition is the scientist's indication of the purpose of the procedural regime in the regulation of legal activity - the establishment of procedural requirements for the consideration and resolution of similar legal cases.

The development of the procedural legal regime was continued in the collective monographic study "Theory of Legal Process", published in Kharkov in the mid-80s of the XX century, edited by Professor V.M. Gorshenev. With regard to the subject of our research, it was noted here that the problem of

the procedural regime has come into the field of view of legal science relatively recently, "... as an element of the procedural form, it is not only insufficiently developed, but has not yet acquired its conceptual definition" (Gorsheneva, 1985). The citation confirms our opinion that the procedural and legal regime (even as an element of the procedural form) did not receive proper development at that time, from which it follows that it was not considered at all as an independent subject of research. Nevertheless, it is also important that the procedural and legal regime is separated by its researchers from its material-legal variety, which confirms its authentic legal essence and content.

And further, in the opinion of the specified group of authors, "it is legitimate to consider the procedural regime as a complex synthetic construction, consisting of the principles operating in the procedural sphere; means and methods of their implementation and actually established guarantees, reflecting in their totality the qualitative characteristics of the legal forms of activity of the bodies of the socialist state" (Gorsheneva, 1985). It is difficult to recognize this definition as precisely the definition of the category under consideration, because here there is an indication rather of the elements that make it up than of the very specifics of its essence. Nevertheless, the analyzed definition is extremely useful for determining the content of the procedural and legal regime and deserves attention and all kinds of approval.

Galetta (2010), defines the procedural and legal regime as "a special procedure for regulation using special legal means". This definition contains such (let's make a reservation, already known to legal science) signs such as "the procedure for legal regulation" and legal means of ensuring it. However, it is difficult to recognize this definition as complete and finished, since we do not find here the explanations of the author as to what is the peculiarity of the order and what special legal means are involved in it. Hence, it is difficult to determine the essence and purpose of the procedural and legal regime.

Certain attention is drawn to the attempt to comprehensively determine the procedural and legal regime, undertaken by Belyaeva et al. (2020), according to whose point of view, this is "a normatively formalized environment, a situation (within which the legal process takes place) that provides optimal conditions for the activities of all subjects of the process, as well as the methods of its implementation and the actually established guarantees of ensuring procedural activities".

It should be recognized that the author's reference to such elements of the procedural regime that characterize its nature as "methods of implementation" and "guarantees of ensuring procedural activity" should be recognized. At the same time, it seems unsuccessful to use as a defining word a term that does not have a generally accepted legal content, namely, the words "environment", "situation"; unfortunately, they do not add certainty to the concept being defined and, moreover, complicate the perception of its essence and content.

It is also interesting that the term "procedural regime" can be found in foreign legal studies. So, in one of them, the procedural regime is understood as "a kind of organizational environment of a particular legal case, namely, specific judicial bodies, certain procedural legal relations, forms of participation in the process" (Scheffer, 2007). And with this position, given the originality of foreign legal systems, we can partly also agree, since the content of the procedural and legal regime is procedural and legal relations with a peculiar subjective composition - the subjects and participants of the legal process.

The considered positions regarding the definition of the procedural and legal regime allow us to

briefly (a more complete consideration of this issue is the subject of independent scientific research) to formulate signs that characterize the essence and purpose of this category in the regulation of legal activity.

Firstly, the main purpose of the procedural regime is to regulate the activities of the subjects; under the influence of the procedural and legal regime, the activity takes on a procedural form, and the subjects and participants of the legal process - information about their status in the legal process, the procedural means that they can use in the course of consideration and resolution of legal cases, possible measures of procedural coercion for violation of procedural norms, etc. (for example, the procedural regime of proceedings in the court of appeal in administrative proceedings is determined by the courts considering appeals, submissions; the procedure for filing appeals, submissions; deadline for filing an appeal, presentation; content of an appeal, presentation; actions of the first instance court after receiving an appeal, filings, etc.) (Vladislav et al., 2019).

Secondly, the procedural and legal regime is characterized by a special subjective composition. These are the subjects and participants of the legal process. The subjects of the legal process are state bodies and their officials (interrogator, investigator, prosecutor, court, judge, etc.); the circle of participants in the legal process is made up of persons who, by their actions, contribute to the subjects of the legal process to achieve their goal, namely: witnesses, specialists, etc.

Thirdly, the procedural and legal regime is distinguished by a specific goal - to ensure a special order (regulation, procedure) established by procedural norms, serving the legal and reasonable consideration and resolution of legal cases.

Fourthly, the content of the procedural and legal regime is a special procedure for regulating social relations, which consists in creating specific conditions with the use of procedural means, which are based on special permissions, prohibitions, restrictions, etc., serving a legal and reasonable consideration and resolution of legal cases depending on the current situation. We are talking about special proceedings in certain categories of legal cases, for example, in relation to minors, based on the determination of the age of the minor, the conditions of his life and upbringing, the level of mental development, the influence of older persons on the minor.

A polemical character within the framework of the procedural regime has such a feature as “the creation of favorable (unfavorable) conditions for the satisfaction of the rights and legitimate interests of subjects of law”. The fact is that in the system of features of the substantive legal regime, it is hardly of fundamental importance. From our point of view, the procedural and legal regime aimed at ensuring the legal process, in its essence, cannot create favorable conditions for some subjects and participants of the legal process, and unfavorable for others; it defines precisely a special regulation of the legal behavior of subjects. We can talk about the presence of special procedural regimes, but here we are talking about a special procedure for actions in relation to certain categories of subjects and participants in the legal process, due to their special legal status (for example, age in relation to minors).

Fifthly, the procedural and legal regime is characterized by a special structure. We believe that it should include procedural and legal means (procedural norms, relations, guarantees, procedural responsibility, etc.) that create a specific mood of procedural and legal regulation of certain categories of legal cases and contribute to their legal and reasonable consideration and resolution. Other

elements (principles of procedural law, tasks of jurisdictional activity, methods of procedural and legal regulation, highlighted by various authors) create a special atmosphere of procedural and legal regulation, but the regime does not form, but only complements the main ones. It is more accurate to talk about two levels of elements that make up the structure of the procedural legal regime - the main and the auxiliary.

The revealed signs of the procedural regime allow us to formulate its definition that characterizes the legal nature, essence and purpose in the regulation of legal activity.

The procedural and legal regime of legal activity is based on a certain combination of procedural and legal means and principles, a special procedure for procedural and legal regulation of activities of subjects and participants in the legal process, aimed at the legal and reasonable consideration and resolution of legal cases.

CONCLUSION

As a result of the theoretical and legal analysis of the approaches to understanding the procedural and legal regime, its nature, essence and purpose, the following conclusions can be drawn.

Firstly, the main purpose of the procedural regime is to regulate the activities of the subjects; under its influence, the activity takes on a procedural form, and the subjects and participants of the legal process - information about their status in the legal process, the procedural means that they can use while considering and resolving legal cases, possible measures of procedural coercion for violation of procedural norms, etc.

Secondly, the procedural and legal regime is characterized by a special subjective composition and a specific goal - to ensure a special order (regulations, procedures) established by procedural norms, serving the legal and reasonable consideration and resolution of legal cases.

Thirdly, the procedural and legal regime is distinguished by a special structure, it includes procedural and legal means (procedural norms, relations, guarantees, procedural responsibility, etc.) that create a specific attitude of procedural and legal regulation of certain categories of legal cases and contribute to their legal and reasonable consideration and resolution.

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