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Legal Life of Society as a New Category of Jurisprudence

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The article substantiates the necessity of giving a categorical status to the legal life of society and describes the notion of legal life, its characteristics and importance for theory and practice.

Keywords: legal life of society, legal framework, legal acts, legal policy.

In modern society, due to global processes and challenges of time, there is an increasing demand in creating categories reflecting these processes and challenges which are able to explain the emerging social realia and to offer solutions for new economic, political, moral and other problems. Legal science is no exception: it also suffers from a critical lack of generalizing notions which could be used to study complex and many-sided processes taking place in the development of the legal sphere in different countries.

Among such notions that are still being formed is the category of “legal life” created at the turn of the 21st century – a form of social life existing mainly in legal acts and legal relations and characterizing the specific character and level of legal development in a given society, the attitude of entities to law and the extent to which their interests are served.

The category of “legal life” is becoming more important in terms of its scientific and practical significance. It is this category that

reflects the complex and contradictory legal reality, the unbreakable bond between various legal phenomena and all other spheres of society life – economic, political, moral, religious etc.

Being similar to the notions of social, economic, cultural, spiritual and religious life, the notion of legal life is used for generalized estimation of legal setting in certain historical conditions, legal behavior of social groups, social layers and individuals. Legal life is used for estimation of conditions in which it exists and of its determining factors: type of legal framework, state of legislation, level of legal culture and legal activity, legal mentality of society and its separate communities, state of law and order, legal atmosphere of a society in general, legal expectations and real behavior of people in legal sphere, force of law, attitude of authorities to law etc.

Without thorough investigation of the category of “legal life” it is impossible to fully understand the law itself, its origins, formation

background and development logic. It's the existing heterogeneous legal realia that require corresponding legal orders, rules and norms. A new legal doctrine must be based on the legal life of the whole Russian society, including its regions and localities. In other words, it's time to analyze the specific characteristics of legal realia without which it is impossible to build an efficient legal policy.

The following characteristics of legal life can be singled out:

1. It is a part and a special kind of social life, because law is a social institute adapted to the peculiar properties of life of a certain nation. "Legal life, – emphasized I. V. Mikhailovsky, – is a part of a wider notion, social life". While social life is a continuous process of production and reproduction of social relations between people with all their diversity, legal life includes the total of legal factors leading to legal consequences. Legal acts and legal relations, being one of the most important forms of social acts and connections, form the specific canvas of the legal part of a society's life.

2. Legal life is connected with legal rules of behavior (orders) and relevant legal consequences. It "exceeds" legal norms in one way or another, though, ideally, it should observe them, but in reality, as we know, it is not always the case.

3. Legal life is based on the objectively expressed right with regard to the society, on the "objective meaning of right" for social life. "Rejecting the objective meaning and objective knowledge of right, – writes I. A. Ilyin, – a person deprives himself of the only base that makes legal life possible: he has no motives, no theoretical and practical grounds for arguing about rights and rightlessness, resenting abuse of power, making appeal to the court, insisting on his rights of political freedom, denying his alleged obligations, protesting against the abuse of his property rights etc. For where are the criteria for

my legal right if the content of a legal norm is deprived of objective meaning identical to itself? And what does the knowledge of my right consist in if the meaning of right is the product of my personal imagination?"

4. It is one of the existence conditions of a society organized in the form of a state, as its role consists in forming personal, national and social life in a certain way.

5. Legal life is a part of a nation's spiritual practice demonstrating the characteristic features of the nation, its specific character and mentality.

6. Legal life is closely connected with economic and political life. The former generally acts as a certain form with regard to the latter. At the same time, as we know, it can have an adverse effect on economics and politics by stimulating or restraining them. Taking into account that economic and political factors in this regard correlate with legal ones as content and form, respectively, it would be insufficient to study legal life in its pure form, as H. Kelsen suggested. "If social science wants to reveal the regularities of legal life, – as E. Ehrlich rightly noted, – it should also study social and economic phenomena, because law development can only be understood in connection with social and economic development".

If political life is the aggregate of spiritual, sensual, emotional and practical objective forms of the political being of humans and society, characterizing their attitude to politics and their participation in it then legal life is the aggregate of the different forms of a society's legal being characterizing its specific character and the level of its legal development. If political life is a continuous process of activity performed by many individuals who direct their joint (cooperative) efforts towards solving politically important problems using political means, then legal life is also a continuous process of activity performed by many individuals who direct their efforts, first

of all, towards solving legally important problems using legal means.

7. Legal life characterizes the specific character and level of legal development of a given country, attitude of legal entities to law and extent to which their interests are served. In fact, the legal life of a certain society is largely based on the legal experience that is being formed in it. And vice versa, the latter acts as a result of a certain legal life. Thus, studying legal experience in details, we grasp the nuances of legal life.

8. Legal life is the aggregate of all the forms of a society's legal existence, and not a system, as it includes both unordered processes (not dominating legal ideology, violations of law etc.) and certain random factors etc. This notion covers all the nuances and manifestations of law, its structure and dynamics, having become and becoming. In this connection G. D. Gurevich noted that "abstract legal notions turn out to be totally unable to cover the full turbulent motion of real legal life with its spontaneously emerging and unpredictable institutions". Moreover, in his opinion, "the majority of the most topical problems of the theory of law (the problem of law's positivity, law sources, role of organization and compulsion, opposition of social and individual law, reality of legal entities, as well as the problems of the legal structure of democratic organization, sovereignty and legal pluralism) can only be solved by addressing... unorganized and spontaneous normative facts", which, in their turn, "are elements of legal life..."

9. Legal life is both the sphere where the energy of law, its potential and creative role are expressed and the aggregate of diverse forms of legal and illegal activity carried out by participants of legal relations. The subjects of law can have different roles: plaintiffs and defendants, attorneys for the defense and prosecution, judges and experts, legators and legatees, complainants and prisoners on trial, interrogation officers

and suspected persons, witnesses and accused persons, deputies and voters, law-abiding citizens and recidivists.

10. Legal life contains a complex of all legal phenomena including both positive and negative components. While **the former** include the law itself (reflecting human rights, ideas of justice, humanism, freedom etc.); legal framework on the whole; legal regulation mechanism; lawful legal acts (lawful actions, their results, legal documents); legal acts (as forms of lawful action-legal fact) and events as legal facts; legal regimes and constituent primary legal means (benefits, incentives, allowances, prohibitions, penalties, obligations etc.); legal relations and legal practice; legal consciousness and legal culture; legal order; legal science and education (and their structures) etc.; **the latter** mainly refer to negative, illegal phenomena (crimes and other violations of law; their subjects and criminal structures; corruption, abuse, deformations of legal consciousness expressed, in particular, in legal nihilism, idealism, populism; mistakes in law and other factors preventing positive legal activity).

Strange as it may seem, there hasn't been a category capturing the whole sphere of legal existence with all its positive and negative manifestations. They differ by nature and orientation, like, for example, lawful and unlawful behavior. However, they have the same character – legal – and they act as components of legal environment, segments of legal field. "The main difference existing in the sphere of legal behavior is the difference between lawful and unlawful behavior," – as V. N. Kudryavtsev rightly noted.

In our opinion, in the above statement unlawful behavior is reasonably called legal (but not lawful), in the same way as illegal acts are reasonably called legal. The question is not about lawfulness or unlawfulness, but about referring

them to legal phenomena, not about law itself, but about legal existence, a specific form of life, which inevitably includes a “shadow” sector. Like economic life that has both positive and negative sides (criminal, “shadow” – “black”, “grey” economy), legal life includes the opposite poles of life processes, and different, often opposite, legal reality.

It appears that no life, regardless of its form, can contain only constructive and positive elements, because it includes all possible manifestations, real existence of different trends and types of behavior with all their advantages and disadvantages.

In this connection, the notion of “legal life” gives a broad perspective on legal reality both from the positive and negative angles. Such a perspective is necessary, as it gives certain integrality to legal realia. It is important to see both benefits and drawbacks in legal life. The latter is what the law and legal system are fighting with. This category makes it possible to see the existing legal reality not through rose-colored glasses, but vice versa, with all its advances and losses, successful and failed attempts, achievements and mistakes, strengths and weaknesses.

“People with well-developed and delicate legal consciousness often consider unlawfulness of an act as a special stain that it really has; for them it is not only ‘the result of an ideal evaluation from the perspective of a legal norm’: they really feel that such an act is a “dark business”... In the consciousness of a person who consistently thought over this objectivity of meaningful law, a plausible image can appear, according to which on every anticipated action or state of a person there is a certain “tongue of flame” showing their legal meaning by color: a blue flame means lawful acts or states, and a red one – its unlawful character”. If we accept this image, **legal life will look like a myriad of blue and red flames – flickering, changing**

their color, dying down and flaring up again (emphasis added by me – A. M.)”.

Hence, it’s not for nothing that two opposite directions exist in the development of legal life: one is connected with organization of social bonds, with the help of legal policy, among other things; another – with their disorganization. In legal life there is certain harmony between the elements, but there is also certain discord, disagreement, disturbance of balance.

The borderline between the “shadow” and “light” (legal, official) sides of legal life is flexible and has its specific features in different countries. The problems of lobbyism, prostitution, polygamy, same-sex marriages etc. are solved differently in different countries. For example, lobbyism has been legalized in many countries, i.e. it has been transferred from the “shadow” part of legal life to the “light” one, so to say, to the light of legal regulation.

There is an incessant fight, a certain kind of competition, between the “shadow” and official parts of legal life. It is important to understand that the “shadow” segment of legal life can’t be totally eradicated. No legal framework has been able to defeat crime and other manifestations of “shadow” legal reality. It is only possible to minimize them, not to score a 100% success. At least, no one has managed to so far.

Incredible as it may seem, the “light” and “shadow” sides of legal existence complement each other in a certain way (as day and night, summer and winter).

Moreover, “shadow” legal life has a certain positive meaning for society. The proverb “Every cloud has a silver lining” reflects this quite well. What is meant is explained below.

1) Almost all revolutionary ideas that led to a breakthrough in relationships had appeared as part of the “shadow” (informal) side of legal life. The ideas of freedom, justice and equality for all citizens were not present in the slave-owning

and feudal official legislation. Those progressive moral values that had been considered heresy burst into the bourgeois law from the unofficial sphere.

2) The “shadow” side of legal life gives new impulses for development and improvement of official legal life. Gaps, new crimes, mistakes and other elements of the “shadow” segment of legal life inspire a search for antidotes, invention of new legal constructions, rules and means. It is true that one learns from mistakes. For example, criminals who organize their activity on the base of innovative methods and state-of-the-art technical aids sometimes “mobilize” the relevant law enforcement authorities to carry out reforms.

3) The “shadow” side of legal reality is the same reference point for legal policy as the official one. For example, if there are too many prisoners in a country, a high rate of serious crimes etc., the state must take relevant action – in the first case, it can declare amnesty, soften penal policy, more flexibly react to crimes using the system of repressions; in the second case, it can improve the efficiency of law enforcement bodies, make certain types of punishment more rigorous etc.

It is possible to fight the “shadow” side of legal life, and it must be done. But it must be done delicately, flexibly and diplomatically. Such problems can’t be solved immediately. It is necessary to understand how such “shadow” legal reality functions.

To participate in legal life actively and efficiently, relevant knowledge, skills, competence and professionalism of legal activity subjects are necessary, because legal sphere is a whole universe with its language, system of notions, traditions, history and culture. That’s why legal life also depends on the extent to which the society is familiar with the laws and subordinate acts, on the level of its legal consciousness development, and on the legal activity of individuals. Only if the

society realizes the necessity of proactive behavior in the legal sphere and of the improvement of legal and political culture, the priority of human rights as the supreme value over the state rights can be guaranteed. Like every self-respecting sportsman must keep fit daily and continuously demonstrate good results, a society and each individual must maintain their good “legal form” of existence, continuously fight for their rights and stand for justice, because a legal state is a process rather than a result. It can’t be reached automatically, once and for all. Such level of legal life should be systematically maintained, defended from lawlessness.

The category of “legal life” has a general character, it covers all jurisprudence. In political science, along with the “political system” notion there is the notion of “political life”, so in jurisprudence, along with the category of “legal framework” it is necessary to add the category of “legal life”. In legal science the notion of “legal life” and “legal framework” should correlate just like the “political life” and “political system” notions correlate in political science (and the “economic life” and “economic system” notions in economics).

Legal framework creates conditions for normal legal life, provides for its stability, neutralization and freeing it from negative legal events (violations of law, abusive practices and other “malignant legal tumors”). In other words, like legal politics, it plays an organizing role with regard to legal life, makes it whole to a certain extent, gives it legal grounds. Thus, it is important to perfect and consolidate the elements of Russian legal system, which will lead to enrichment and optimization of the society’s legal life.

At the same time, legal system is only a standardizing and regulatory part of legal life, because the latter is a more general notion. The elements of legal system are those that are necessary for the process of legal regulation, for

targeted action on the conscience and behavior of subjects. Not dominating legal ideology and negative legal phenomena – crime, violations of law, deformations etc. – that pertain to legal existence and have a certain legal coloring are not among the elements of legal system.

That's why the category of "legal life" makes it possible to estimate both positive and negative legal reality on a larger scale. At present, such a category is much-in-demand, as it makes the legal realia whole to a certain extent. In any life, including legal one, there are oppositely directed phenomena and processes, both positive and negative. It is the latter that are to be prevented by law and the whole legal framework. The notion of "legal life" enables a more objective view of the real legal existence, with all its progressive and regressive development trends, favorable and unfavorable consequences for organization of social bonds.

Moreover, it characterizes not only the whole organized and non-organized legal reality, but also the process of historical development of law in general and the main stages of its evolution. This is the difference between the categories of "legal life" and "legal reality".

Legal acts can be considered the leading elements of legal life, because they reflect legal existence; legal acts are where the law lives. In everyday reality citizens encounter not law in general, but many different legal acts. The latter are the main part of legal life, because they serve as the most important means of satisfying the subjects' interests; they are the most widely spread and tangible forms of legal life.

Accordingly, the essence of legal life can be revealed by studying the nature of legal documents, with the help of which certain individuals reach their goals and satisfy their interests.

For example, studying the texts of such acts as "Russkaia Pravda" (different versions),

"Sudebnik" and other important records of Old Russian law, we learn about major historical events of the past, because legal life is a certain mirror of a society's life on the whole. Legal acts in the form of documents contain precious and concentrated (generalized) information about the culture of a certain nation, its pattern of life, and reflect the specific character of the social and political regime.

The historian V. O. Klyuchevsky, who considered acts to be records of government activity and private juridical acts, believed for a good reason that "while reading chronicles, we must, so to say, grope for knowledge about the everyday life and everyday relationships during a certain period, in acts we encounter ready characteristics of everyday life that help us to build a complete picture of people's relationships dominant at a certain period of time; there is no need to select and filter small detached features, all we have to do is take the whole content of acts".

At the same time, V. O. Klyuchevsky made some important remarks on the methods to be used to study Old Russian acts. He recommended to take into account the "author's angle of view", i.e. to reveal the goals that the author of a given document set. Studying not only the legal form of acts (which the historians of the 19th century usually did), V. O. Klyuchevsky stated that it is necessary to uncover their specific historical content and showed that legal form not always reflects the reality because of its archaism.

Representatives of the sociological school of law also believed it necessary to analyze legal life through the prism of the relevant legal acts. "A lawyer, – noted B. A. Kistyakovsky, – should first of all study the current law as a system of norms. In other words, a lawyer should first of all know laws and know how to treat them. But in order to keep pace with the present-day level

of knowledge, a lawyer must not only remember about life, as they said in the old days, but also study the “legal life” scientifically... A practicing lawyer needs this to apply the current law more fairly.

The best way to study the real law, according to E. Ehrlich, is to turn to the modern research of legal documents. “By legal ‘documents’ he means a total of quite different things. First of all, the most important document that can give a general explanation is a court judgment. He also attaches great importance to the documents of business life: ‘...even one look at the present-day legal life shows that it is dominated not by law, but by legal documents to the great extent’. In Ehrlich’s opinion, law should be looked for in marriage contracts, in agreements of purchase and sale, in loan agreements, in mortgage contracts, in testaments and contracts of inheritance, in statutes of associations and trade companies, not in the paragraphs of law codes, because, apart from their private, individual and business-like efficiency, all these contracts have many things in common. Such typical content is extremely important”.

Besides, a certain pyramid of legal acts is necessary that can act as a specific and more perfect form of legal life. V. D. Zorkin rightly noted that it is this pyramid that is the symbol of legal life. On top of it are the principles and superior laws that are recorded in Constitution and that translate to the legal language the most general contours and the basic parameters... that directly or indirectly fix this or that development vector, this or that common goal, as well as the image of future and common ideal. Below the top layer of the pyramid, there are endless, consecutive and hierarchically subdominant layers – laws, subordinate acts of different kinds and levels (orders, directives etc.), legal precedents and other enabling legal acts in the center and at the local level. All these layers are

transferred to the plane of specific legal relations, countless numbers of which go to infinity (but always within the framework and symbol of a pyramid). **This is what the legal life of a society, state and individual consists of** (underlined and emphasized by me – A. M.). Such a pyramid can exist only if the strict hierarchy of all these acts is observed and if they are present in this pyramid at all... Otherwise, life becomes lawless, in other words, the pyramid becomes “shadow” or even “black”... there is arbitrary rule and, eventually, chaos”.

Thus, the category of “legal life” makes it possible: 1) to look from a specific angle at law, legal development and construction, system and systematization of legal acts and the process of their influence on social relations; 2) to consider legal phenomena as a complex of different aspects of their existence – institutional (static) and behavioral (dynamic); 3) to study legal reality more deeply, fully and integrally, as it consists not only of positive legal phenomena, but also negative ones: violations of law, lawlessness, abuse of power and deformations; 4) to see the level of real legal culture and the degree of the existing legal consciousness of a society, social groups and individuals, with the typical extent of nihilism and idealism; 5) to determine the basic principles of legal relationships between the personality and authorities; 6) to estimate law as one of the most important civilized social regulators which should be used for elimination of conflicts, because it is reasonable and beneficial.

All of the above indicates that it is time to carry out the fundamental – first of all, general-theoretical – research of the phenomenon of legal life, so that, after studying this extremely vast and large-scale notion unifying the heterogeneous legal reality, it would be possible to give it the status of an independent legal category with all that it implies.

References

1. Borisenkov, A. A. *Political Life of Society* [Politicheskaya zhizn' obshchestva. Sotsial'no-politicheskie nauki] Social-Political Sciences (1991), No 7. Pp. 41–42.
2. Chudinova, I. M. *Political Life* [Politicheskaya zhizn'. Sotsial'no-politicheskiy zhurnal] Social-Political Journal (1994), No 11–12. P. 67
3. Goyman-Kalinsky, I. V., Ivanets, G. I., Chervonyuk, V. I. *Elementarnye nachala obshchey teorii prava* (Fundamentals of General Theory of Law). M., 2003. P. 396
4. Gurvich, G. D. *Filosofiya i sotsiologiya prava* (Philosophy and Sociology of Law). Saint-Petersburg, 2004. Pp. 575, 269, 147
5. Ilyin, I. A. *O sushchnosti pravosoznaniya* (On the Essence of Legal Awareness). M., 1993. Pp. 37-39
6. Kireyeva, R. A. *Posleslovie k knige: Klyuchevskiy V.O. Sochineniya v 9 tomakh. T. 8* (Afterword to the book: Klyuchevsky V. O. Works in 9 volumes. V. 8). M., 1989. P. 435
7. Kistyakovskiy, B. A. *Filosofiya i sotsiologiya prava* (Philosophy and Sociology of Law). Saint-Petersburg, 1998. P. 210
8. Klyuchevskiy, V. O. *Sochineniya v 9 tomakh. T. 8. Spetsial'nye kursy* (Works in 9 volumes. V. 8. Special Courses). M., 1989. P. 16
9. Krasnov, B. I. *Political Life of Society and Its Democratic Parameters* [Politicheskaya zhizn' obshchestva i ee demokraticheskie parametry. Sotsial'no-politicheskiy zhurnal] (1995) Social-Political Journal. No 4. P. 91
10. Kudryavtsev, V. N. *Pravovoe povedenie: norma i patologiya* (Legal Behavior: Norm and Pathology). M., 1982. P. 3
11. Kulchar, K. *Osnovy sotsiologii prava* (Fundamentals of Sociology of Law). M., 1981. Pp. 82-83
12. Luzan, A. A. *Politicheskaya zhizn' obshchestva: voprosy teorii: Monografiya* (Political Life of Society: Theoretical Questions: Monograph). Kyiv, 1989
13. Malko, A. V. *“Legal Life” as the Most Important Category of Jurisprudence* [“Pravovaya zhizn'” kak vazhneyshaya kategoriya yurisprudentsii. Zhurnal rossiyskogo prava] (2000) Journal of Russian Law, No 2
14. Malko, A. V. *Politicheskaya i pravovaya zhizn' Rossii: aktual'nye problemy* (Political and Legal Life of Russia: Current Issues). M., 2000. P. 35
15. Malko, A. V. *Teoriya pravovoy politiki* (Theory of Legal Policy). M., 2012. Chapter 3.
16. Malko, A. V. *The Category of “Legal Life”: Formation Issues* [Kategoriya “pravovaya zhizn'”: problemy stanovleniya. Gosudarstvo i pravo] State and Law (2001). No 5
17. Mikhailovsky, I. V. *Ocherki filosofii prava. T. 1* (Essays on Law Philosophy. V. 1). Tomsk, 1914. P. 38.
18. Politologiya. *Entsiklopedicheskiy slovar'. Pod red. Yu.I. Averb'yanova* (Political Science. Encyclopedia. Editor Yu. I. Averb'yanov). M., 1993. P. 260
19. Zorkin, V. D. *Speech at the panel discussion dedicated to the 10th anniversary of perestroika* [Vystuplenie na “kruglom stole”, posvyashchennom desyatiletiyu perestroyki. Pravovoe gosudarstvo v Rossii: zamysel i real'nost'] Legal State in Russia: Intentions and Reality (1995), P. 28.

Правовая жизнь общества как новая категория юриспруденции

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В статье обосновывается необходимость придания правовой жизни общества категориального статуса, рассматривается ее понятие и признаки, а также значение для теории и практики.

Ключевые слова: правовая жизнь общества, правовая система, правовые акты, правовая политика.
