

POLYMORPHY OF SCIENTIFIC APPROACHES TO UNDERSTANDING THE ESSENCE OF THE MECHANISM FOR THE IMPLEMENTATION OF NORMS OF LAW

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Abstract. Studying the essence of the mechanism of law implementation, as well as its ratio with the mechanism of legal regulation, are determined by the scientific need to aware the essence of the legal impact of law, as a social regulator, on various spheres of life, as well as to identify the problems of revealing its potential and find ways to solve existing problems in its practical application. The article reveals the problems of the correlation the "mechanism for the implementation of law" and "the mechanism of legal regulation." Also analyzed several basic approaches to determine the essence of the mechanism for implementing the rule of law, namely: normative, instrumental, activity and target (institutional) and the author defines the concept "Mechanism for the implementation of law."

Keywords: mechanism for implementing the rule of law, legal regulation mechanism, value of law.

Formulation of the problem. Studying the essence of the mechanism for implementing the rule of law, as well as its ratio with the mechanism of legal regulation, is determined by the scientific need to aware the essence of the legal impact of law, as a social regulator, of various spheres of life, as well as to identify the problems of revealing its potential and find ways to solve existing problems in its practical application. Since law is "a set of norms that is not built in accordance with certain concepts, it's not a state, but a movement consisting of the legal tools using to solve problems facing people" [7, P.15]. This is because the subjective rights of citizens and legal entities of different forms ownership do not need episodic, but a constant reaction to them from the state.

The state of the study. The theoretical disclosure foundations of the concept "mechanism" in law, certain aspects of determining the essence of the mechanism for implementing the rule of law in various industries, as well as its relationship with related categories, have been the subject of scientific research by many scientists, such as S.S. Alekseev, E.V. Vavilin, S.L. Degtyarev, O.E. Kalpinskaya, Yu.P. Patsurkivsky, A.S. Pleten, D.O. Sytnikov, D.O. Usanov, A.A. Yugov and others. At the same time, analyzing scientific works devoted to this phenomenon of legal reality, it can be noted that a large number of questions still remain open and require further, deeper research.

The purpose of the article is to reveal the essence of the definition "mechanism for the rule of law implementation"

Statement of the main material. Today, the need to create a high-quality regulatory support that is able to regulate as much as possible the law-enforcement process in a particular area is characterized by a high degree of relevance. The current legislation of Ukraine contains a large number of rules governing the rights of citizens. For example, Art. 36, 38, 39, 40, 42 of the Constitution of Ukraine recognize citizens' right of freedom association in political parties and public organizations to exercise and protect their rights and freedoms and to satisfy political, economic, social, cultural and other interests; the right to take part in the management of state affairs, in all-Ukrainian and local referenda, to elect free and be elected to state authorities and local governments; the right to submit individual or collective written appeals or to personally apply to state authorities, local self-government bodies and officials and officials of these bodies, who are obliged to consider the appeal and give a reasoned answer within the time period established by law and others [10]. Another example is article 291.3 of Art. 291 of the Tax Code of Ukraine which regulates the right to independently switch to a simplified taxation system for a legal entity or an individual entrepreneur [11]. Or the provision of Article 1 of the Law of Ukraine "On Citizens' Appeal", which regulates the right to apply to state bodies, local self-government, associations of citizens, enterprises, institutions, organizations regardless of ownership, media, officials. According to their functional duties with remarks, complaints and suggestions due to their statutory activity, claim or request for the exercise of their socio-economic, political and personal rights and legitimate interests, and complaints about their violation [5].

Despite the peculiarities of the principles, goals and regimes of legal regulation in various branches of law, all branches of law are characterized by a single global subject of legal regulation (legally significant social

relations) and generalized methods of legal regulation, the main of which are power coercion and freedom of choice behavior the participants in these public relations [3, P.29].

Every norm should be supported by the reality of its implementation in practice, on the basis of this, substantive points should be outlined as specifically as possible. We are talking about the possibility of restricting rights if necessary, the procedure that precedes the receipt of the necessary legal result, the nomination of certain requirements, etc.

Based on this, we speak about the mechanism (system, algorithm - these terms are often used to consider the same legal phenomenon), which contributes to the implementation of legal norms. In this regard, it is important to achieve a social and managerial consensus, that is, to strike a balance between the interests of each individual and the fulfillment by public authorities of their responsibilities within the framework established by law. But, in any case, the fundamental principle of any democratic state is the determination of the needs and legitimate interests of the law subject as the highest value. It also finds expression in creating conditions for maximum judicial protection of the rights and freedoms of citizens, minimizing the possibility of abuse of law and, in general, the formation of the instrumental and normative component of the state according to international standards.

It is a good point to pay attention to an important debatable issue regarding the conceptual-categorical apparatus, namely, the problems of the correlation of the concepts of the mechanism for the implementation of law and related categories any scientific studies, the prevailing point of view is the identification of the mechanism of implementation of the rule of law with the mechanism of legal regulation. This is due to the fact that the stages and components of the mechanism for the implementation of law in the scientific works of scientists correspond to the stages and elements of the mechanism of legal regulation. It is said about norms, legal relations, acts of application of law, acts of the implementation of law. But we support the point of view of K.S. Kaverina, who, analyzing the mechanism for implementing the norms of administrative law, notes that it has independent value and cannot be reduced to a general concept of the mechanism of legal regulation. On the contrary, it is a narrower, specialized unit (subsystem) of the mechanism of legal regulation, responsible for the practical implementation of administrative and legal norms and linking these norms through state and other managerial practices with socially significant needs and legitimate interests of citizens and organizations in the field of executive power [3, P.28].

The lack of identity is also explained by the fact that legal regulation is carried out additionally with the help of informational and value-motivational effects of law. Although, of course, these categories are very closely intertwined by law-making activity, during which normative legal regulation takes place and the rule of law is created for their implementation, since only in it they gain their sense.

The implementation demonstrates the effectiveness and efficiency of lawmaking. In the event of a widespread failure to implement any legal norms, the latter may remain forever only the ideal model, a "dead right" laid out on paper and buried in the depths of bibliographic statistics [6]. The implementation of law is the embodiment, implementation of legal norms in practice through the lawful behavior of legal entities. The realization of the right is the practical implementation of normative prescriptions (prohibitions, permits, duties). Through the implementation of legal rules, the goals are achieved and the results of legal regulation proclaimed by the legislator in the process of lawmaking are obtained. It should be noted that the exercise of the right should not be reduced only to the implementation of legal provisions. The implementation of law is the embodiment of legal norms in the lawful behavior of the subjects of law, in their practical activity, it can be considered as a process and as the final result [8, P.218].

Returning to the definition of the essence of the mechanism for the implementation of law, we note that today there are several basic approaches, namely: normative, instrumental, activity-oriented and target (institutional) [3, P.43]. Consider them more precisely.

The active approach is reflected in the works of scientists who are committed to the sociological view of law as a phenomenon that finds expression in the practical activities of bodies of all branches of government through the interpretation, concretization, development of the law and judicial (enforcement) discretion. However, the value of which is complemented by the autonomous implementation of the requirements of the rule of law in the form of compliance, enforcement and use.

For example, Yu.P. Patsurkivsky believed that the legal meaning of law, which is the mechanism of realizing law - is the whole sub-law, governing party, law-making body, law-enforcement body and the law-enforceable norms. Warehousing part of the mechanism of the realization of the right of law; the mechanism of legal jurisdiction [15, P.62].

From the position of a normative approach, the mechanism for the implementation of law is a regulatory framework that regulates the legal process from the will of the subject, which forms the provisions of the legal norm (usually it is a legislator) to achieve the goal of legal regulation.

The formation of the instrumental approach dates back to the works of S. S. Alekseev, who believed that the essence of legal means is not seen in isolating them into a separate fragment of legal reality, but in their particular

vision - in their functional purpose as tools to achieve specific legal goals, and therefore, as such (legal remedies), any legal phenomena can function, the function of which allows achieving the intended legal goal [1].

D. Kh. Valeev and M. Yu. Chelyshev, during reporting on the mechanisms for the implementation and protection of the rights of citizens and organizations in enforcement proceedings, consider it necessary to highlight the totality of both procedural actions and civil means used in this case (enforcement measures envisaged by the legislation on enforcement proceedings and stages of enforcement proceedings, succession, civil representation, civil transactions, proprietary instruments, including property rights)[12].

E.V. Vavilin analyzes the mechanism for the exercise of inheritance rights and believes that it is characterized by a multi-stage, multi-stage procedure for exercising the right to accept the inheritance and fulfillment of obligations corresponding to this right, in order to guarantee their implementation in accordance with the exact legislative model: legal status, formation of law, the establishment of law, the actual and legal exercise of the right or refusal of such, protection of right [14]. And he also owns a controversial, but proved in a defended doctoral dissertation, provision that the civil legal relationship itself are not only a legal form (general legal structure), but also a special legal mechanism within which subjective civil rights are implemented and subjective civil rights are enforced [13]. The instrumental approach has a very problematic flaw associated with a broad understanding of legal means, under the guise of which any legal phenomenon can be interpreted.

Kaverina K.S. the target (institutional) approach to understanding the mechanism of the implementation of law through the prism of administrative law is determined as follows. The mechanism for implementing the norms of administrative law is a system that ensures the achievement of the managerial goals of certain administrative and legal institutions.

Here, the emphasis is not so much on tools and technologies, as on other components: 1) institutions and organizations called upon to fulfill the requirements of administrative law in the practice of public administration (army, navy, internal troops, customs), police, notaries, etc.); 2) complexes of legal norms or even entire legal arrays aimed at regulating and servicing narrower areas of public administration (military affairs, public service, administrative justice, administrative coercion, etc.) [3, P.48].

Also in this aspect, we consider it necessary to give the point of view of D.O. Sytnikov regarding clarifications regarding the subject composition. The very essence of the existence of local self-government in our country is due to the need to address issues of local importance regarding the life support of the population of the municipality, so their role is obvious and of a paramount importance. Moreover, municipal authorities are almost the main subject in the mechanism of ensuring the rights and freedoms of the individual. In the author's view, the comprehension of the mechanism for the realization of the rights and freedoms of man and citizen requires the mandatory inclusion of local authorities as an integral independent structural element of the legal enforcement mechanism [9].

Of course, that there are approaches that are characterized by the merger of these points of view. For example, the dualism of instrumental and activity approaches is most often found in the framework of criminal, criminal procedure and criminal executive law. A. S. Litvinov gives a definition of the mechanism for the implementation of criminal law as a combination of means and methods directly aimed at the exercise by subjects of their rights and obligations. The implementation mechanism includes: a criminal law norm, criminal law remedies, actions of officials and citizens in the field of criminal law regulation [4, P.11]. According to E. Yu. Evstegneeva, the mechanism for implementing the norms of criminal executive law in the execution of deprivation of liberty consists of the focused activity the subjects of criminal executive legal relations based on criminal executive legal means to implement the legal norms governing deprivation of liberty, as part of the procedures for their observance, execution, using and application [2].

Conclusions. We consider that in order to formulate the most objective view, it is important to determine the role of each of the components (normative, institutional, activity, instrumental) in the mechanism of implementation of norms. However, it is not possible to determine which one is leading. Since, based on various conditions for the implementation of the law and the tasks set, each component can at any time become leading in relation to other elements of this mechanism. Therefore, only organic unity, the integration of each of these components in the law-enforcement process at a high level will allow to take into account the features of such a process as much as possible and minimize critical remarks towards one or another approach. It is the totality and systematic approach to the consideration of our subject of study that will allow us to determine its essence as fully as possible.

Based on the foregoing, we consider it possible to propose the following definition: "The mechanism for the implementation of norms of law is a combination of regulatory, legal, instrumental, procedural, procedural and institutional components that ensure the management of bodies and officials of the state, including municipal, public authorities, with the help of the functions assigned to them and the powers granted to them rights and obligations, on the one hand, and the realization of the rights and legitimate interests of citizens (here as a collective concept, we can also talk about legal entities x forms of ownership, organizations, etc. - ed.) on the other, for solving the tasks of the state. "

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Полиморфия научных подходов к пониманию сущности механизма осуществления норм права

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Аннотация. Изучение сущности механизма реализации норм права, а также его соотношение с механизмом правового регулирования обусловлены научной необходимостью определить суть правового воздействия права, как социального регулятора, на различные сферы жизнедеятельности, а также определить проблематику раскрытия его потенциала и найти пути решения проблем, существующих при практическом его применении. В статье раскрыто проблематику соотношения «механизма реализации права» и «механизма правового регулирования», а также были проанализированы несколько основных подходов к определению сущности механизма реализации норм права, а именно: нормативный, инструментальный, деятельностный и целевой (институциональный) и дано авторское определение понятия «механизм реализации права».

Ключевые слова: механизм реализации норм права, механизм правового регулирования, ценность права.