

Consistency in Law: Theoretical Model and Practical Significance

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Abstract: The study describes the main features of theoretical model of consistency concept in law as well as reveals the essence of “consistency of law” category. Theoretical model analysis is based on a complete review of fundamentals of law consistency: social relations in their systemic interaction, state-power nature of law, legal policy and principles of law. A special place in studying of its theoretical model occupy initial social relations that have private law character. Analysis of this problem is based on a principle of methodological pluralism; dialectical approach is taken as a basis to study legal reality. The study underlines a theoretical model’s significance for legal science and legal practice.

Key words: Law, consistency, consistency of law, legal systems, theoretical model, comparative studies, social relations, legal policy, power of state, principles of law

INTRODUCTION

Beyond any range of society state and its development level, the mission of law is to be a regulator of internal social relations. Lawmakers and subjects of law expect law to regulate social relations and put them into good order. Thus, the expected result from law is the emergence of certain social relations and interactions their retention and strengthening of already existing cooperation. Law affects the consistency of social relations on the consistency of society itself and on consistency of other certain social norms. Nevertheless, law is not the only factor of social consistency. The most significant fundamentals of social consistency are human needs and human activities aimed at meeting them. The man in his activities is involved in a variety of relations and interconnections where apart from legal norms a huge significance play various social and technical regulations. Here, it is important to keep in mind that law is a category of obligation, the content of law depends on society and ultimately on certain people. This concept reflects the nature of a distinct kind of objective character of law which declares itself through society and man.

Eventually in order to achieve an effective result from its regulatory character law should organically fit into the system of social regulation and at the same time to be appropriate in its content and structure. Social dynamics drag the dynamics of social norms and systems of social relations; a variety of approaches to law complicates heavily the understanding of consistent law system functions. In jurisprudence among primary functions of law the regulatory and protective functions are defined as paramount. Value-indicative, educational and other functions of law can be also marked out

here. However, the consistency function of any social norm is closely related to other law functions, it allows forming various kinds of integrative elements within the legal space.

RESEARCH

In this study, describing proposed theoretical model of law consistency, let us focus on the understanding of this concept through the prism of its fundamentals and occurrence.

One should note that in plenty of scientific studies in natural sciences and social studies which are both related to consistency, the research topic has mainly been set relying on the category of “consistency”, nevertheless, has been disclosed with respect to the category of “system”. It is necessary to underline that these two notions belong to different philosophical categories. Consistency of occurrence sets the possibility of this occurrence to exist as system to integrate elements and to generate their new characteristics and attributes. Consistency of law derives from social consistency.

Consistency of law allows its elements to be combined into certain complexes which are relatively stable in social reality and this lets them legally regulate social relations and to form certain situational legally regulative complexes specifying the legal matter.

In general systems theory the notion “complexity” is defined as “a specific form of system specification. This is the specification of system and of systematic approach towards specific system constitutions” (Afanasiev, 1980). Consistency of law appears in various spheres of legal existence and this is the reason why it can be understood as: characteristics of law as principle of legal regulation as

an indicator of system of law and legal system as a principle of activity reflected in law (for example in law-making).

Among all the above-mentioned meanings the crucial and threading through all the subsequent meanings is the understanding of consistency as law characteristic. This characteristic is generated by society's need for legal regulation of interconnected relations and society's connections eventually are clarified by "material unity of the world" (Afanasiev, 1980).

In legal reality, consistency of law shows itself differently in terms of shape and quality content. Primary, consistency of law integrates and connects rules of law which in their turn are initial elements of law. However consistency of law appears likewise in the external environment which is being formed due to the social consistency, thus, it becomes evident in the society. In this case in society a special reality of law is being shaped the legal system of a particular society which is the set of all legal phenomenon. In this way systemic function of law appears in a society (constituent function), the presence of systemic connections in law and connections of its rules require specific technics to provide stability of legal system. These technics are the elements of legal reality: the law itself law awareness (legal ideology and legal psychology), legal relations, legal practice, legal institutions and others. These elements of legal reality require specifications of integrative connections of two types:) required for their existence (proper functioning and development;) required to interact in legal reality. For instance, legal awareness of citizens should respond to the system of social relations that is set in the particular society. Legal awareness is a part of society's legal system, it embodies not the law but the attitude of people towards law.

The legal awareness itself requires presence of law as a minimum for its existence (ideas that the subject of law will perceive) and understanding of subject of law the content of law (the ability to learn and interpret it) at the same time according to specific understanding level one can make judgments about the individual level of legal awareness. Thus, legal awareness finds its basis in existing rules of law, a system of this rules that provide effective implementation of law in general is the effect of consistency of law forming legal awareness.

A for interaction of legal awareness with other elements of legal system, many issues have place here, particularly related to meaningful aspect of any event from legal reality. Depending on its qualitative characteristics may come: acceptance or rejection as elements of this system; constructive or destructive effect from relations that have arisen due to interaction of this element with the

system as whole. Connections of legal awareness with other elements of legal system are indicatively revealed through legal activities, caused by general social factors discussed before.

Through the above example of systemic connections of such element of legal reality as legal awareness, one can see other aspects of the impact of consistency of law on this legal system element. In particular, social legal awareness itself is not homogeneous; therefore, it is possible to discuss separately group and individual legal awareness. It is possible to sort out legal awareness features of groups engaged in different human activities.

For example, legal awareness of entrepreneurs (social concept-business people, self-employed) who carry more legal duties by virtue of their activities differs a lot from legal awareness of not self-employed people, etc. Legal awareness of young people differs from legal awareness of older generation people. All this in one way or another is reflected in law provisions content dealing with matters of subject of law (legal capacity, capacity, misdeeds). Here, there is an extremely important point directly connected with consistency of law which is set to regulate society's life the content of law provisions should comply with those particular relations in society that these rules are aimed to regulate and therefore, this content should take into account the level of legal awareness, preparedness of addressee to specific law provision.

The most vividly the difference in people's attitude towards law and the difference in people's legal awareness is seen in various legal systems, the mostly clear it appears in different legal families (a group of homogeneous legal systems). Even within the same legal family principles of structuring separate legal elements and principles of shaping the same legal activities can differ significantly which in turn causes unequal perception of this activity in society and certain people.

Let us set an example. The system of common law which exists in the United States, differs from English common law: particularly these differences are observed in civil process. These include:

- The most frequent use of trials by jury in civil cases
- A large potential for information usage obtained orally as evidence in certain case
- Inability to get legal costs refund by any side of trial
- Formation of judiciary on the basis of political allegiance

Indeed, the organization of procedural and substantive law may differ in various legal systems their substantive content may be dissimilar. As mentioned

before, we can make a conclusion that integrative legal connections and different fundamentals in the content of law consistency should be specified separately. Such theoretical considerations are closely connected with questions about factors of consistency of law and about fundamentals that allow us understand the process of systems being shaped in legal reality. Above examples described before, many theoretical and practical problems of modern jurisprudence are connected with this problem.

To set a problem like “consistency of law: theoretical model and practical value” requires analyzing law consistency factors, i.e., conditions that give law the characteristic of consistency and let it play systemic function in a society and integrate law provisions and all components of legal system (legal environment). Now let us focus on the question about fundamentals in consistency of law. What does knowledge about essential features of fundamentals in consistency of law give us and what does it give both in theoretical and practical application?

To begin with let us say that among consistency’s fundamentals we assume to define its basis, i.e., fundamental factors affecting legal systems formation in legal reality. These basic reasons are the following:

- Public relations in their systemic interaction
- State-power nature of law and legal policy
- Principles of law

An understanding of these reasons in consistency of law and their conceptual perception allows us to understand principle of arrangement of system shaping in law as well as elaborate the view on the essential features of consistency of law appearance (the analysis of such consistency of law appearance through legal awareness has been provided at the beginning of this article). The ready-made concept gives us an opportunity to explain the mechanism of interaction of systemic elements of law to build up a structure model of law system and relatively independent system of elements in law to identify the levels of legal integration of elements and the degree of consistency in law to determine the form and to trace the genesis of certain systemic connections there.

Let us characterize the basic reasons of consistency of law. Public relations in their systemic interaction are the primary base of consistency of law.

Studying the knowledge about social systems we note one of the fundamental points here: it is exactly the quality of social relations to determine the quality of social systems. In order to uncover these qualities, it

is necessary to understand the nature of relations arising in society, the reasons of their appearance and their evolution. The key point here is that certain social relations come first concerning law. It is their antecedence; the primacy of these relations allows us to make conclusions about their determining influence on systemic characteristics of law.

Certain social relations are traditionally marked out as follows: economic, political, society and religious social relations interacting within the fields of social life being in systemic interaction. The very presence of interaction of these major fields of public life are easily understandable. It is important to set up clearly in which way these relations are connected to law how social behavioral model penetrates into certain kind of social relation within legal matter and in which way the society defines possibility of putting certain public relation under law impact, making it a subject of legal regulation.

Here is also another important task for the researcher to show how social relations and their development (social dynamics) determine consistency of law in terms of its functionality and institutionalization (how social realities embody dynamic multisystem of legal reality, the ability of law to create legal system entities of a specific level).

Society’s multisystem makes argue about various kinds of social relations system; considering this point, social systems can be separated on the basis of such criterial as:

- Scale, volume, coverage of integration of social component (mankind, period, certain society, classes, etc.)
- Society’s administrative-territorial division, internal structure of state
- Demographic component of a society
- On the basis of sexual and gender-based components
- On the basis of professional activities

The first classification of social systems (by coverage of social component) appears to be the most interesting from our perspective since exactly on the basis of this classification, it is possible to explore the arrangement of systemic work of law at the highest level of legal integration within socio-cultural system at the level of whole civilization. As correctly points out professor E.A. Lukasheva, socio-cultural system “lives in people’s real life within collective and individual behavioral actions that result in material and spiritual outcomes supporting life style of individuals involved in the process of interaction. Therefore in very general terms mechanism of socio-cultural system’s work is being revealed through social norms, awareness, human activities and outcomes

of these activities” (Lukasheva, 2009). It is historically the very process of human evolution to make up a system of social relations, accumulate the most “viable” social “product” which is embodied in strengthening of integrative connections between people. Moreover, it is hard to imagine this process out of system of legal provisions. Certainly in order to study thoroughly the very essence of consistency basis of law considering public relations in their systemic interaction and integration it is crucial to remember aspects and characteristics of horizontal and vertical cuts of social system as they allow to regulate specific issues of social life and will contribute to high-quality system enrichment.

Reviewing social relations in their systemic interaction as a basic factor of law consistency let us discuss the significance of primary social relations. Studying them is important in order to understand comparative analysis structure (comparative-legal analysis) and nature of such processes as reception, adoption, unification, continuity in law and some others. Private-legal orientation of social relations should be considered here at first since it is they to determine these processes in many respects. Public law at this point is always secondary in social system; it can hardly exist and function not being regulated by State. Whereas private law is a megasfera of law directly related to initial social relations. Relations between people lay at the ground of this system and they do exist even out of legal impact. Private law is aimed to ensure interests of specific people while public law affects interests of society as a whole.

Comparing various legal systems even from historical and legal development standpoints it gets clearer that initially law fixes public interests, interests of the whole society which is impossible to ensure without legal social regulations. Formalization of initial private relations took place in the process of their development despite the fact that they needed such formalization less since they are more stable due to their nature. At that, the same process took place in legal systems that do not have a clear separation to private and public law.

In Roman-Germanic legal family (the family of civil law), it is difficult to capture these regularities due to such circumstances as at a certain stage its development is constrained with adoption of private law; here the main source of law is a legal act and the result of it is an initial consolidation and formalization of all rules of law. It is necessary to clarify here that we do not tie together the process of fixing rules of law regulating initial public relations with the degree of their legal assistance; nevertheless, we try to underline a significance and role of initial public relations as a platform for other relations development meaning relations that regulate public interests with social-legal character.

From our perspective, the development process of law in the UK for the last two decades seems to be very curious since a kind of legal formalization of public-legal rules of law is taking its shape now. The emphasis is being made exactly on the formalization of such public law values. “If written constitution in the strict sense of this word does not yet exist in England, although, theory of state and law is quite vague at this respect and if problem of constitutional order still finds its solution in conventions and court practice then emergence of number of laws still leads intent observers to the idea to declare “constitutional revolution in the United Kingdom”. Certain laws had been passed defining authority of National assemblies of Scotland (Scotland Act 1998), Northern Ireland (Northern Ireland Act 1998) and new National Assembly of Wales (Wales Management Act 1998). Declaration of human rights contains fundamental rights protected in the same manner as if they had been fixed in written constitution provisions” (Leger, 2009). One can see here that public-legal principles are being fixed initially since they require stabilization at most.

As for private legal relations they can be regulated based on well-established mechanisms that are inherent in this legal system. Therefore, when listing UK present day sources of law in order to underline strengthening role of written law in its legal system, R. Leger mainly sets examples of regulative public-law relations acts (Leger, 2009).

Let us characterize such fundamentals of law consistency as state-power origin of law. Close connection of state and law their review in the context of social systems of the same degree brings us to the fact that studying consistency of law without analyzing state organization and society’s system cannot be possible. One should understand that power of state appears in different ways depending on specific cut of public life. In certain areas of social life, state “strengthens” its regulating impact while in other it “softens” it. All this is necessary in order to achieve a certain result regulating society’s life.

It is crucial to understand that the process of political formation, a stage of which is a formation of state-power influence on social relations took place within overall social dynamics. Concurrently with the formation of state-power structures, development of methods and techniques of social control in a society had been.

Acquiring a relative autonomy towards society, state became able to impact initial social relations using social regulators through certain principles. As a result, law became specific system of such regulations. Therefore, it is necessary to take into account that state power is common to many social regulators such as morals,

traditions, customs, religious principles and others based on their contingency. Law plays a specific role in a mechanism of social control. It acts as an indicator of acceptable rules and sets the range of impacts for other social regulators.

Taking into consideration previously mentioned we do understand that the analysis of such study of contingency fundamentals of law as state-power character, cannot be carried out without taking into account functional characteristics of law.

It is necessary to mention the idea that functional and structural approaches are inseparable from each other they are the elements of a systemic approach. Therefore, from our perspective it is important to show the role of state power in the context of regulation of social relations keeping in mind specifics of functional relations of law and state.

Modern legal science admits the idea that law bears general social or administrative function (Reutov, 2002). It is crucial to understand here that it is possible to distinguish different levels of legal functions. V.P. Reutov says about the connections of these differently ordered links as follows: "functions are closely interrelated within their levels. Each function is a part of more broad existing function" and this statement focuses our attention on the possibility to allocate the most common feature of legal system, namely, "bringing the organizing principle into social relations in order to maintain and stabilize social community" (Reutov, 2002).

It should be specified for the sake of completeness that it became rather traditional in science to allocate such functions of law as common law functions, cross-field functions, sectorial functions and functions of legal institutions and law standards. From our topic under issue position it is possible to speak about general focus of these functions. Nevertheless, it should be noted that undoubtedly there does exist a peculiarity of certain branches, institutions and rules of law.

This peculiarity is being stipulated by essential characteristics of certain systemic part of law. Thus, in every branch of law the general (single, target) function of law and law system emerges in a dynamic cut as well as there do emerge traditionally defined regulatory and protective functions acquiring their specifics and rendering concrete depending on particular cut of system of law being under review (also depending on the subject and method of specific area of law).

Thus, state-power being the basis of consistency of law permits to harmonize rules of law with other social norms, lets create a strong and sustainable system of social regulation. State objectively predetermines heterogeneity and non-equivalence of

functional capabilities of system of law to convert and provide its work in different directions and predetermines the unevenness of its elements and connections as well.

One of the most important aspects of the interaction of political and legal activities of State is state legal policy. Legal policy specifies state power; its effect is reflected in structure of legal system and in the quality content of its elements.

State legal policy as a rule has unified objectives and functions within existing conditions which in our opinion is predetermined by functional relations of state and law which we have highlighted above. Yet, it is worth mentioning that necessary specifics of legal policy methods its principles and other components at each level of system of law have to be discussed more in detail: at the level of entire system of law; within fairly large megasferas law-public and private law; within branches of law; sub-branches; institutions of law; sub-institutions and rules of law. This allows seeing not only links of integration but also links of differentiation between systemic components which is important for understanding the nature of influence of state- power in system formation.

Important fundamentals of consistency of law are principles of law that permeate the entire legal reality, organically interlace into legal policy and act as relatively independent system within the legal space.

From our perspective, principles of law are the particular bases of law system. They are closely connected with the realities of social life, legal policy, the power of state. The most important feature of principles of law it is their legal nature. Principles of law are special and solely legal basis for the consistency of law thus, their system is of higher integrative level of social fundamentals of law consistency. Principles of law have the following characteristics, essential for its understanding as special fundamental of consistency of law:

- Principles of law their system are being in continuous development
- Principles of law is a system of social ought
- Qualitative content of law principles influence the consistency of law this content largely determine connections between the components of law system
- The system of law principles can be considered as an independent system within the legal system'

Considering level-based orgniztional structure of law it is appropriate to put the following questions: about the place of such constituent basis of law as principles of law about the structure of law itself and about power

and importance of law principles. From our approach's viewpoint and those basic postulates described above, it is appropriate to speak about the equality of all kinds of law principles. This equality becomes evident in the knowledge of law principles in determining their system-shaping role and legal power. Let us underline that every single principle of law has its certain functional duty.

CONCLUSION

The practical side of this issue is related to formalization of these specific principles within legislation. It is especially seen in legal systems belonging to Roman-Germanic legal family where the general rule plays an important role which in some cases appears to be principle norm. Case law of the Anglo-Saxon legal family creates large potential for the emergence of unwritten principles of law.

In science, among the binding sources of Roman-Germanic legal family there are some common principles of law (General-Klauseln; principes généraux) its indicative list is contained in the Civil Code of Germany (§§ 138, 157, 226, 242, 826) and the Civil Code of France (Article 565, 1382-1386). At that it requires an understanding that noted principles of law are similar to equity (Garner, 2001) (equity) in Anglo-American Common law system. Variations in formalization of fundamental principles of legal systems do not change the very nature of system-shaping principles of law.

Nevertheless, a system-shaping mechanism in law and its role acquire its specifics in every legal family. It can be clearly seen comprising the Anglo-Saxon System (common law) and the Roman-Germanic (civil law). For example in the common law system, the judge dealing with the case of course, relies on previously elaborated principles which however were not fixed in the statutory instruments or other written sources. As for the

Roman-Germanic legal family in the first place here comes fixedness of principles in legislation. Hence, this similarity based on contingency including also legal order (principles of law) is determined by nature of primary social relations and the very essence based on contingency of law.

In order to summarize overall characteristics of theoretical model of contingency of law let us emphasize the main aspects related to practical significance of structures described above. Contingency of law permits to go deeper in detail into the systemic, both genetic (between branches of law) and genealogical links in law (to study the origin of separate legal clusters: human rights, principles of law, contractual norms, etc.). Theoretical model's clarification of law contingency contributes to adequate legal regulation to interpretation of legal norms and elaboration of an effective mechanism for law implementation. One of the important but very complicated issue is the clarification of legal relations system and the elaboration of "particular law" The specification of legal regulation itself is an occurrence of contingency of law as it is firstly aimed at changing the content of law and only then on the structural side.

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