CORRELATION BETWEEN THE SOURCE OF LAW AND THE FORM OF LAW CONCEPTS: THEORETICAL AND CONCEPTUAL ASPECT

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ABSTRACT

The purpose of the research is to view the main approaches to understanding the source of law category. Main content. On the basis of available scientific works by domestic and foreign scientists, the essence and content of the “source of law” was revealed, an analysis of the relationship between “source of law” and “form of law” concepts was carried out, and differences between them were substantiated. Methodology: The methodological basis of the research is presented as comparative-legal and systematic analysis, formal-legal method, interpretation method, hermeneutic method as well as methods of analysis and synthesis. Conclusions. Summarizing what has been said, we can come to the conclusion that such concepts as “source of

law" and "form of law" cannot be considered identical. Form of law is expedient to be defined as the method of law objectification that is, as external design of the content of law, the so-called external manifestation of the legal content. At the same time, source of law is appropriate to be considered as origins of law, that is, those conditions and circumstances in which meanings of law are formed, law as such is created from.

Keywords: source of law, form of law, content, internal and external forms of law, correlation.

CORRELAÇÃO ENTRE OS CONCEITOS DE FONTE DO DIREITO E DE FORMA DO DIREITO: ASPECTO TEÓRICO E CONCEITUAL

RESUMO

O objetivo da pesquisa é visualizar as principais abordagens para a compreensão da categoria fonte do direito. Conteúdo principal: com base nos trabalhos científicos disponíveis de cientistas nacionais e estrangeiros, foi revelada a essência e o conteúdo da "fonte do direito", foi realizada uma análise da relação entre os conceitos de "fonte do direito" e "forma do direito" e diferenças entre eles foram comprovadas. Metodologia: A base metodológica da pesquisa é apresentada como análise jurídica comparativa e sistemática, método jurídico formal, método de interpretação, método hermenêutico, bem como métodos de análise e síntese. Conclusões: resumindo o que foi dito, podemos concluir que conceitos como "fonte do direito" e "forma do direito" não podem ser considerados idênticos. Convém definir a forma do direito como o método de objetivação do direito que é, como desenho externo do conteúdo do direito, a chamada manifestação externa do conteúdo jurídico. Ao mesmo tempo, a fonte do direito é apropriada para ser considerada como origem do direito, ou seja, aquelas condições e circunstâncias nas quais os significados do direito são formados, a partir das quais o direito como tal é criado.

Palavras-chave: fonte do direito, forma do direito, conteúdo, formas internas e externas do direito, correlação.

1 INTRODUCTION

Effective functioning of any legal system is largely related to the law-making process. It is the system of sources of law, as an external form of expression and objectification of law, that ensures proper protection of natural human rights, regulation of various social relations, integrity of the legal system and law as well as order as a necessary prerequisite for further development of the society.

The matter concerning the concept and classification of sources of law, their functional role in the mechanism of regulation of social relations is traditionally considered one of the key ones for such a general theoretical science as the theory of law and the state, and attracts considerable attention of scientists. In particular the matter of sources of law was addressed by such scholars as Buha, Volodymyr, Iakubin Oleksii, Mazur Tamara, Rezvorovich Kristina,

Daraganova (Buha *et al*., 2022) etc. At the same time, despite a significant number of studies dedicated to highlighting various aspects of the sources of law, a unified conceptual framework has not yet been developed. As a result, theoreticians of law have raised debatable and sometimes controversial issues of defining the concept of "source of law", its correlation or even identification with the "form of law" concept(Kyrychenko *et al*., 2022). That is why relevance of the research topic is determined by the need for a more complete study of the meaning of the "source of law" concept and its distinction from other related categories.

The purpose of the article is to study the meaning of the "source of law" concept and to analyze the problem of its relation to the "form of law" concept.

2 METHODOLOGY

The research is based on work of foreign and Ukrainian researcher on methodological approaches to understanding public relations from the point of view of the theory of law, administrative law, civil law, etc.

With the help of the epistemological method, the essence of social relations has been clarified from the point of view of the theory of law, administrative law, civil law, etc., thanks to the logical-semantic method, the conceptual apparatus has been deepened, the essence of the theoretical, administrative, civil law aspects of the regulation of social relations has been determined from the point of view of the theory of law, administrative law, civil law etc. Thanks to the existing methods of law, we have managed to analyze the essence of social relations from the point of view of the theory of law, administrative law, civil law, etc.

3 LITERATURE REVIEW

In legal science, the "source of law" concept is understood in many ways. Insignificant theoretical development of this problem is one of the reasons for the polysemy of understanding of this concept, which was repeatedly pointed out by both practitioners and theorists of law. The term "source of law" belongs to the most incomprehensible ones in the legal science. At the same time, it is not only that a generally accepted definition of "source of law" is absent, but the very meaning in which it is used is quite debatable. (Kyrychenko *et al*., 2022). It is difficult to disagree with such statements, given the lack of a single universally accepted definition of the "source of

law" concept and the number of meanings that this term can denote (Halaburda *et al*., 2021). In legal scientific works and educational literature, the source of law is mostly understood as:

— forces that create law (the will of God, the will of the people, legal consciousness, the idea of justice, state power are considered to be the source of law); they can have material and ideal meaning;

— monuments of history that once had the meaning of valid law ("Ruska Pravda" in Kievan Rus or the Law Code of Hammurabi in Ancient Babylon)(Leheza *et al*., 2022);

— materials that are the basis of this or that legislation (for example, when Roman law served as a source for later normative legal acts);

— means of perception of the applicable law (when the law can be known from the legislation), etc. (Kobrusieva *et al*., 2021).

4. RESULTS AND DISCUSSION

Thus, if we take into account the common meaning of the term "source", then it means the basis, place, soil or conditions something originates from. This is what gives rise to something, where something arises from or is drawn from (Shemshuchenko, 1998). In other words, if taken in the context of law, first of all, it is the origins of law. On the one hand, these are the material conditions the law is born from; on the other hand, these are various conditions that affect its content (Pidopryhora, 1997). Therefore, the source of law is recognized as factors that influence emergence and functioning of law, i.e., it is the so-called power (force) that creates law. Such factors are the law-making activity of the state, the will of God, the will of people, and the material conditions of the society. It is worth noting that among scientists there is a controversial, in our opinion, statement that the power that creates law is, first of all, the will of the state, which responds to needs of the society, development of social relations and makes appropriate legal decisions. The positions of scientists on this matter are different. Law and state theorists A.M.Kolodiy and V.V.Kopeichikov point out that the will of state bodies does not create social relations, but only formulates and reflects them reliably to a certain degree. Therefore, according to the authors, it is more logical to consider the source of law as something that generates them, and not reproduces or formulates them, because the law is established outside the official form - a norm or legislation (Kopeichikov, 1998: 162-163).

In his turn, the scientist R. Kros rightly noted that the source is generally understood not as the cause of origin, (direct or remote one), but as the source the norm receives its legal force from, i.e. becomes a legal norm. That is, the source of law means activity or the result of activity related to creation of legal norms.

Problematics of the essence of the "source of law" category is also caused by the lack of an unambiguous answer to the question of the essence of the law itself. What is understood by law depends on the understanding of all other legal phenomena derived from it, including the "source of law" category, since the latter is also derived from the former. That is, it is advisable to consider the definition of the source of law from the viewpoint of understanding law as such (Matviichuk *et al*., 2022).

Thus, representatives of the legal understanding of law, the so-called jusnaiuralists, consider sources of law as an external manifestation of the legal content, the principle of formal equality. Representatives of legal positivism view sources of law in a formal sense and define them as external forms (acts) the will of the state is fixed in. Representatives of the normative theory of legal understanding of law define the source of law as the primary cause, an abstract primary norm all other norms originate from. In their turn, representatives of the sociological school of law equate the source of law with social relations that condition and determine law (Topol, 2012: 149). As we can see, the multiplicity of approaches to understanding the "source of law" concept depends on understanding of law itself.

So, at the center of the polemic of the problem concerning defining the essence of law among scientists, there are several positions regarding definition of the "source of law" concept, namely, naturalistic, material, ideal (idealistic) and formal approaches.

The source of law in the material sense consists in social relations that develop and determine emergence, development and content of law. That is, it is the source where content of the norm or law-making power originates from, including for example, state power, legislative or judicial bodies, etc. (Kotiuk, 1996: 35). In the ideological sense, it is a set of legal ideas, views, theories, expressed in an official form, under the influence of which law is formed and functions; in the formal (legal) sense, it is a way of expressing contents of the rules of conduct or something what makes the rules universally binding in nature. That is, these are official forms of external expression and consolidation of legal norms operating in a state (Kotiuk, 1996: 35). From the viewpoint of legal understanding, this is the principle of formal equality, that is, the same measure

of justice, goodness, freedom, and truth, which can exist as an abstract legal form of social relations.

It should be noted that the majority of scientists are inclined to the fact that the term "source of law" should be understood as a form of external expression and consolidation of legal norms, which proves their generally binding nature, but in our opinion this approach is somewhat controversial. Source of law cannot be defined as a way of external expression of legal norms, which are objectified in a certain form, because the "source of law" is understood as the very origins of law. A source of law may not have a form (such as common sense or theoretical thinking) which can be considered full-fledged sources of law that shape meanings of law, although they are not forms of the existence of law (Matviichuk *et al*., 2022).

Due to the ambiguity of the term "source of law" the theory of law has got an idea to bypass it and replace it with another term - "form of law". However, the new concept not only failed to solve the problem of ambiguity of the "source of law" concept, but also gave rise to even greater discussions about the mentioned topic. To denote this phenomenon in legal literature, the concepts "form of law" and "sources of law" are used as identical. Thus, the legal encyclopedia presents these two concepts in the same sense - as "a way of external expression of legal norms as universally binding rules for regulating social relations." That is, we are talking about the complete identification of the terms with the position of replacing the first term with the second one due to ambiguity of the first term. However, the conceptual category "form of law" does not coincide with the "source of law" concept. In this regard, in addition to the position of complete identification, two more approaches are distinguished in the theory of law: 1) partial separation of the terms "source of law" and "form of law", where one term coincides with one of the meanings of the second term; 2) complete separation of the terms "source of law" and "form of law" with the simultaneous provision of each of them with an independent specific meaning (Villasmil Espinoza *et al*., 2022).

The "Academic Explanatory Dictionary" represents the concept of form as "outlines, contours, external boundaries of an object that determine its appearance." This again indicates that the terms "source" and "form" are not identical. So, the meaning of these concepts will be different depending on the context they are used in - whether in relation to the law as a whole or in relation to a separate norm or group of norms (Kolinko *et al*., 2019).

Accordingly, it is worth distinguishing between the internal form of law (traditionally understood as the structure, division into branches and institutions) and the external form of law

as a method of objectifying the norm, that is, a set of legal sources that formally establish legal phenomena and make it possible to get acquainted with their real content, to use them and protect oneself and one's natural rights (Bezpalova *et al*., 2021).

As V.O. Kotyuk rightly pointed out, the "form of law" is different types of law that the state chooses and which differ in the way the content of the law norms is formulated. This is the external form of existence of the contents of legal norms (Kotiuk, 1996: 35). Content does not exist separately from form, and form does not exist separately from content: "content is formable", and "form is meaningful" (Tylchyk *et al*., 2022). It follows from the above that content is included in a norm as its objective basis, and form expresses the content as its organization.

5 CONCLUSIONS

Therefore, the form of law is an external design of legal meanings that are officially established or sanctioned by the state authorities or generally recognized by the society. The "form of law" concept can be equated with "source of law" only in the aspect of legal formalized manifestation as a documentary carrier of legal norms.

Summarizing what has been said, we can come to the conclusion that such concepts as "source of law" and "form of law" cannot be considered identical. Form of law is expedient to be defined as the method of law objectification that is, as external design of the content of law, the so-called external manifestation of the legal content. At the same time, source of law is appropriate to be considered as origins of law, that is, those conditions and circumstances in which meanings of law are formed, law as such is created from.

In order for the law to acquire its external expression, it acquires content, which reflects economic, political, moral and other social relations or legal meanings. Content and form of the law are not the result of arbitrary construction of the legislator. Their primary causes are laid in the system of social relations, which exclude unambiguity of the source and determine the variety of forms of law external expression. They clearly show historical features of certain social systems, the history of a particular people, the variety of forms of state intervention in the public life, as well as the popularity of scientific schools that justify the specifics of this intervention. We are talking about the philosophical categories of dialectics - "content" and "form", which are inextricably linked, and therefore do not exist separately.

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