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On the Structure of Specialized Norms of Contemporary Russian Law

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Abstract

This article examines theoretical issues related to specialized norms of modern Russian law. The author determines their status, types, provides a reasoned author's position on the issue of their structure, which is closest to the structure of regulatory norms of law, but has specific features. Among the specialized norms of law, conflict norms, consisting of a hypothesis and a disposition, stand out.

Keywords
specialized norms of law; structure; declarative norms; norms-principles; conflict norms.fdw2323X

I. Introduction

The relevance of this scientific study is due to the fact that in the scientific literature specialized norms of law, which in the process of legal regulation "join" the regulatory and protective norms, are given a different status, their various types are determined, and the question of their internal structure is ambiguously resolved.

II. Research Methods

When preparing a scientific article, the following methods were used:

General Philosophical (Dialectical-Materialistic)

which is used in all social sciences;

1. General scientific (analysis and synthesis, logical and historical, comparisons, abstractions, etc.), which are used not only by the theory of state and law, but also by other social sciences;
2. Special methods (philological, cybernetic, psychological, etc.), developed by special sciences and widely used for the knowledge of state and legal phenomena;
3. Private scientific (formal legal, interpretation of law, etc.), which are developed by the theory of state and law.

III. Results and Discussion

3.1 About the Status of Specialized Norms of Law

As for the specialized norms, attention is drawn to the fact that the positions of the authors are very different and even diametrically opposite. Thus, some theoretical scholars, when classifying legal norms, do not mention specialized legal norms at all. So, Sergei Aleksandrovich Komarov, analyzing only the norms-principles, believes that the latter “do not contain explicit elements of the norms of law, they are the result of normative generalizations, express the social content of all the norms of law of this group [1]. A

number of other scholars also ignore specialized fall into such evils? What are the sedative paths of this negligence? These are the questions that will guide the framework of this study.

The choice and the interest that we are taking in this study were dictated by our great concern to make black African leaders more aware of their political responsibility in the African societies to come. The drama that the African continent is living and that we are witnessing gives us food for thought. We encounter dictatorship, tyranny, nepotism and dehumanization in all their forms. Indeed, we are constantly wondering what must be done to eliminate this state of affairs in Africa in order to enable black Africans to live as dignified and responsible men to achieve this ideal-project, the questioning of the conscience of the leader is necessary, because he is the artisan of the socio-economic development of a continent.

norms of law [2, 3, 4, 5]. Mikhail Mikhailovich Rassolov, mistakenly calling the specialized norms “special, referring to the latter the declarative, operational and conflict norms, believes that they cannot be attributed to legal norms, since they do not directly determine the rights and obligations of subjects. They are defined by the author as cognitive rules of legislation that have an intellectual focus, "... that guideline, which, in the presence of certain life circumstances, should take into account each subject that determines the scope of their powers and responsibilities." Mikhail Mikhailovich Rassolov draws attention to the circumstance according to which "... some of them, with appropriate interpretation, can receive a direct legal meaning" [6]. Frankly speaking, this provision is very abstract, requiring additional clarification.

Apparently, such a negative attitude towards specialized norms of law is largely determined by the position of the Soviet scientist Viktor Mikhailovich Gorshenev, who was the first to define it as some atypical prescriptions included in the content of law as specific provisions of a certain level, which should be delimited from the norms of law. The author believed that “clarification of their nature, content, and also regulatory purpose ... should be carried out while observing their conceptual autonomy in the categorical structure of the theory of socialist law” [28]. From the position of Viktor Mikhailovich Gorshenev, the initial scientific position should be the conclusion that a rule of law is a composition of a classical normative generalization that accumulates all the typical features of a normative index in the form of a clear rule of behavior. Normative prescriptions are “atypical” because they carry unfinished features of the model, although they act as normative prescriptions of the state [7].

In our opinion, Mikhail Nikolaevich Marchenko manifests some inconsistency in the recognition or, on the contrary, in non-recognition of specialized norms of law, who in some of his works, referring to specialized norms of law, classifies them accordingly [8, 9], and in others categorically denies. In the latter case, the author argues that “sometimes from the norms of behavior (norms of direct regulation of human behavior) are distinguished by the original legal norms (norms of the beginning), which are of the most general nature, the highest form of abstraction.” The scientist believes that “for such a division there are no objective grounds if we proceed from the fact that the essence of law is to regulate the behavior of people and their relations. The so-called norms-principles, definitive and other norms are normative prescriptions of a high level of generalization, taken out of the brackets of the norms of behavior, but gaining effectiveness and legal force only as part of each of them ”[10].

On the contrary, another group of authors shows a completely different, positive attitude to specialized norms of law [11, 12]. In particular, this refers to the position of one of the well-known theoretical scientists - Sergei Sergeevich Alekseev, who, referring to specialized legal norms, wrote that they “... unlike regulatory and protective ones, are

additional in nature, ... are not an independent normative basis for the emergence of legal relations ", and" when regulating public relations, they seem to join the regulatory and law enforcement, forming in combination with them a single regulator [13].

A somewhat different position on the issue of the place of specialized norms in the system of legal norms, about which our position will be expressed later, is adhered to by a team of authors - Valentin Yakovlevich Lyubashits, Andrey Yuryevich Mordovtsev and Alexei Yuryevich Mamychev, who believes that the constituent (initial) norms (as they named specialized norms of law - VK) "occupy a special, leading place in the state legal mechanism for regulating public relations and, accordingly, the highest legal force in comparison with other types of legal norms" [14, 15]. Mikhail Iosifovich Baytin, adhering to this position, believed that specialized norms play a special role in the mechanism for regulating social relations, and their main purpose is that they determine the foundations of the legal regulation of social relations, its goals, objectives, principles, limits, directions , consolidate legal categories and concepts [16].

In our opinion, one should solidarize with a scientist who has argued that it is wrong to reduce the original norms, calling them “non-standard prescriptions”, to norms that have an additional character, because they “occupy the highest level in the hierarchy of generally binding legal prescriptions” [17]. In particular, we are talking about the position of Fidai Nurgalievich Fatkullin, who, while agreeing with Viktor Mikhailovich Gorshenev that “in reality, not all state regulations are a classical model of the rule of law and therefore there is no sufficient reason to identify many of them with the rule of law”, that there are “many atypical” normative prescriptions of a non-standard nature, in which there are no certain properties, signs, moments objectively inherent in the classical model of law ”[7], and at the same time doubting the part where these atypical prescriptions of a general nature are assessed as existing regardless of legal norms included in the content of law along with them, "playing in relation to the rule of law and the content of the entire law of a subsidiary nature and playing the role of circumstances complementing the entire composition of law" [7], believes that it would be correct to treat such "non-standard prescriptions "As a" building "material from which to create norms of law [18].

Yuri Vladimirovich Kudryavtsev is convinced that definitions and similar provisions cannot be considered independent norms of law, although they play a significant, sometimes decisive role in regulating human behavior, although they do not directly affect it. The author believes that law is a system of norms that establish mutual rights and obligations of subjects. The definitions can be viewed as a kind of "auxiliary information", because they clarify, reveal the provisions that are constituent parts of the elements of the norm. From the position of a scientist, according to their "addressee", definitions can always be attached to one or another norm, although they "serve" many norms due to the commonality of concepts in different institutions and branches of law.

Finally, attention is drawn to the position of Yuri Vladimirovich Kudryavtsev that the definitions clarifying a particular normative provision are, so to speak, a decomposed norm, i.e. decomposed into component semantic parts [19]. Developing these provisions, Igor Viktorovich Moskalenko also objects to the identification of legal definitions with the norms of law, because this is not consistent with the etymology of these terms. Nevertheless, he notes the presence of a close connection of legal definitions with the norms of law. Moreover, according to the author, there are cases of using definitions as one of the elements of the norms of civil legislation. In the form of definitions, legal facts are often formulated that constitute the hypothesis of the corresponding civil law norms. The author also argues that, being enshrined in the hypothesis of legal norms, legal definitions are in relation to them the primary element of the mechanism of civil law regulation,

because only when life circumstances occur, enshrined in the definition of the concept that constitutes the content of the hypothesis of a legal norm provided for by this norm legal consequences are transformed into subjective rights and obligations of specific subjects of civil relations [20]. In other words, we are talking about the fact that in this case, such specialized norms as legal definitions manifest themselves as a special legal phenomenon that acts as a legal expression of various elements of the mechanism of legal regulation, while not being a kind of legal norms.

Marina Borisovna Kostrova, who considers it more correct to recognize them as one of the types of normative legal prescriptions, also does not classify legal definitions as criminal - legal norms [21]. In our opinion, an intermediate position on the problem under consideration is taken by representatives of the legal and doctrinal interpretation of law, who consider the legal definition not as an independent element of legal regulation, but as a modification of one of the specific manifestations of legal norms [22, 23], as well as authors who recognize the first as “An integral part of a rule of law existing in the form of a normative legal prescription, which is a way of textual expression of parts of the rule of law (hypotheses, dispositions)” [24].

Vladimir Igorevich Borodyansky does not recognize the norms-principles as norms of law, pointing out that "... the actual identification of norms and principles of law cannot be recognized as correct etymologically" [25]. It seems that in connection with the analysis of the issues under consideration, it is impossible not to note the very controversial point of view of Marina Leonidovna Davydova, who, on the one hand, believes that all the formal signs of a legal norm (connection with the state, formal certainty, general nature, provisionally binding nature and etc.) are signs of all types of regulatory and legal prescriptions, and the primary carrier of these features should be considered a prescription [26], and on the other hand, the system of regulatory and legal prescriptions is as follows: 1) a regulatory and auxiliary part, including regulatory legal declarations , normative - legal definitions, normative legal principles, 2) the main part, consisting of normative legal prescriptions expressing legal norms [27].

We believe that, nevertheless, the point of view of scientists who do not doubt the independent nature of specialized norms should be recognized as more justified. So, Mikhail Iosifovich Baytin, without denying the division of the norms of law into rules of conduct and initial (starting, constituent) norms, wrote that the former are directly regulatory norms, norms of direct regulation, which, given the appropriate conditions, establish the type and measure of protected and possible and proper behavior of participants in public relations guaranteed by the state, their mutual subjective rights and legal obligations; the latter are norms of indirect regulation [28], which establish general principles, initial provisions and directions of legal regulation, acting in systemic connection and unity with the norms - rules of behavior, are detailed and implemented through them [28].

The scientist categorically disagreed with the opinions of those authors, according to which one should distinguish between the concept of a rule of law, meaning only the rules of behavior, and the more voluminous concept of a general legal prescription, covering, along with the rules of law, also legally enshrined the so-called non-standard prescriptions: principles, definitions, declarations, because in reality a rule of law is a general legal prescription. Mikhail Iosifovich Baytin came to the conclusion that “... legal regulation is inconceivable without organic combination and complementarity in the legal system, in all branches of the starting (initial, constituent) norms and rules of behavior” [46]. Scientists note that “the main difference between the norms and rules of behavior from the original norms is that the norms and rules of behavior are directly aimed at regulating social relations, people's behavior, and the impact of the original norms on social norms is indirect [29].

A supporter of the recognition of a legal definition as one of the varieties of legal norms is Gennady Vasilyevich Maltsev, who believes that it does not contain any command, it does not require anything, but only tells us something important about the subject. According to the scientist, the definition included in the legislative act becomes institutionalized, clothed in a legal form, common to the norms of behavior, norms-principles, norms-declarations, norms-goals [30]. In other words, it means that a definition, being a descriptive statement, can be transformed into a prescriptive legal norm. The essence of the requirement (an element of imperativeness) lies not in the definition itself, but in the need to take it into account, to reckon with it when performing legal actions. Arguments about the incompatibility of norms and definitions on the basis that supposedly the former express what is due, and the latter - the being, from the point of view of the author, should not be given much importance, since, firstly, there are no impassable boundaries between what is and what is, the ontological status of legal norms, being dual, is located both in the realm of what is proper and in the realm of existence [30]. While agreeing that the definition does not contain the subjective rights and legal obligations of the subject of the legal relationship [31], it nevertheless controls a number of circumstances (legal facts) that make the relationship itself possible, as well as the rights and obligations implemented in it according to the norm behavior rules. Legal concepts can also have a guiding influence on the course of legal relations. Moreover, the legal definitions of some objects or processes contain a minimum set of legal facts necessary for the emergence, change or termination of legal relations associated with this subject. This, emphasizes the scientist, and expresses the regulatory effect of norms-definitions [30]. And, perhaps, the most important thing in the analyzed position: “what makes a legal definition a norm does not depend on its simplicity or complexity, on any formal qualities in general; it is the ability to be a regulator, the presence of a regulatory function in them ”[30].

3.2 On the Types of Specialized Legal Norms and Their Characteristics

When asked what specialized legal norms are meant, it should be noted right away that we exclude incentive norms from their system [32], which stimulate both ordinary (necessary, desirable) and law-active behavior; constituent [33] and general (restorative) norms [34], calculation norms [34], legal presumptions and fictions [35], prejudices and legal axioms [36].

At the same time, we take into account other opinions on the composition of specialized legal norms. So, some scholars believe that these are general (fixing) norms - "the norms of law that establish, consolidate the general conditions for the action of grant-binding norms." According to the authors, these include, for example, “norms governing the conditions of legal personality, general conditions for the fulfillment of obligations in civil law, norms of the general part of criminal law (or rather, the code- Vladimir Valentinovich Kozhevnikov), indicating some common signs of crimes, punishments, conditions of release from punishment, etc. ”[34]. Often, constituent norms are considered as specialized norms - “regulatory provisions of a status nature (establishing the status of an official, establishing the legal regime of regulation, etc.” It is argued that an example of this kind of norms is Article 80 of the Constitution of the Russian Federation: “The President of the Russian Federation is the head of state "[33].

Andrei Vasilyevich Baranov, unreasonably identifying constituent and declarative legal norms, writes that they "... represent an independent type of system-defining norms, since it is they that give legal regulation an appropriate justification and a certain persuasiveness, serve as the primary, most justification of its concept" [37]. Here, apparently, one should take into account the principled point of view of Sergei Sergeevich

Alekseev. who believed that “specialized prescriptions, in contrast to regulatory and protective ones, have an additional character”; “They are not an independent normative basis for the emergence of legal relations”; “When regulating social relations, they seem to join the regulatory and protective prescriptions, forming in combination with them a single regulator” [11]. In our opinion, the following should be considered as specialized norms of law, while drawing in this or that degree to their features. Declarative - prescriptions that determine the goals, objectives of individual branches of law, legal institutions, subject, forms and means of legal regulation.

Norms-principles-legislative prescriptions that express and consolidate the principles of law. From the position of Vladimir Ivanovich Chervonyuk, “the principles of law are generally binding initial normative legal provisions, distinguished by their universality, general significance, and the highest imperativeness, determining the content of legal regulation and serving as a criterion for the legitimacy of the behavior and activities of participants in relations regulated by law” [38]. Most theoretical scholars consider norms - the principles of one of the types of legal norms. So, Sergei Sergeevich Alekseev at one time argued that the norms-principles have a certain independent regulatory significance, directing legal practice, defining the general lines of solving legal cases [11]. The authors define the norms-principles as “legislative prescriptions expressing and securing the principles of law”, noting that their regulatory impact on social relations is very large, as a result of which they cannot be considered as auxiliary information, and not as independent legal norms [39]. Nikolay Sergeevich Malein drew attention to the fact that “from the sphere of legal consciousness, science, theory, ideas-principles are embodied, move into the sphere of lawmaking, being objectified in the norms of law and legal relations” [40]. Many scholars admit that the fundamental ideas expressed in laws become legal norms, acquire a state-power character. No scientific ideas that have not been enshrined in the law cannot be considered legal principles. They cannot regulate legal actions and legal relations [41, 42]. Speaking about the norms and principles, Roman Zinovievich Livshits believed that “both when applying laws, and when filling gaps in legal regulation, and in judicial practice, they serve as vectors of law enforcement” [43].

Definitive norms that consolidate in a generalized form the signs of a particular legal category (for example, the concept of a crime in criminal law, the concept of a legal entity in civil law, etc.). Definitive norms contain legal (established in the law) definitions (definitions) of terms found in other norms. They prescribe how the terms are to be understood [44]. As Andrei Vasilyevich Baranov reasonably believes, a legal definition, being placed in legal matter, that is, expressed in the text of a normative legal act, having received a strictly defined form of linguistic expression in it, acquires the character of a legal norm. The author emphasizes that it is with the help of definitive norms that internal consistency is given to a normative legal act, and the concepts formulated in it create conditions for the consistency and consistency of legal regulation [37].

Conflict rules designed to eliminate conflicts that arise between legal requirements. Conflict norms indicate the legal norms that must be applied in the event of a conflict of norms, i.e., a clash of norms of law that regulate the same social relations in different ways. In the literature, conflict norms are understood as norms adopted to eliminate conflicts or determine the procedure for resolving conflicts between prescriptions (regulatory legal acts) issued on the same issue [33]. Nikolai Aleksandrovich Vlasenko, referring to the characteristics of conflict rules, reasonably believes that “the requirements, prescriptions of conflict of laws, like any legal norm, are mandatory for the subject applying specific material norms, that is, the fulfillment of the prescriptions of these norms is one of the requirements ... legality to the application of law ”[45].

Operational norms that regulate the abolition of legal norms extend their effect to new areas, extend their effect. They provide legal regulation in an operational way - not by issuing new regulatory norms, but by changing the scope and duration of already functioning legal norms or by terminating them altogether.

3.3 About the Structure of Specialized Legal Norms

A few scientists, recognizing specialized norms as precisely the norms of law, one way or another, in one form or another, speak out about their structure. Vladimir Konstantinovich Babaev in a collective monograph devoted to the theoretical problems of legal norms, in connection with the development in it of the concept of dividing the norms of law into initial (initial, constituent) norms and rules-rules of behavior, expressed the idea that, accordingly, the structure of the named legal norms. In his opinion, "there is no point in looking for a hypothesis, disposition or sanction in the starting (constituent) norms. They have other structural elements "[46]. Making an attempt to substantiate this conclusion, Vladimir Konstantinovich Babaev noted that with all the differences in the starting norms from each other in the degree of generality, functional purpose, range of action, general legal or industry affiliation, "they all have a common property - they legislate (establish) any legal material or procedural situation. This is done either by its verbal designation, or by indicating one or more essential features, or by a complete definition (definition). These signs of a legal concept, phenomenon, principle, socio-political situation act as structural elements of the starting (constituent) legal norm "[46].

The possibility of identifying the features and structural elements of a particular phenomenon is immediately questioned, given that a feature is understood as "a property by which an object is known or recognized," and by elements, an "initial substance" [47]. In another philosophical dictionary, that an element is "the concept of an object that is part of a certain system and is considered within its limits as indivisible" [48]. From the position of Sergei Ivanovich Ozhegov, a sign is "an indicator, an omen, a sign by which one can recognize, define something," and an element is "a component of something" [49].

Evaluating the considerations expressed by Vladimir Konstantinovich Babaev about the structure of the starting norms of law (norms-principles, norms-definitions, etc.), which are of certain scientific and practical interest, especially in connection with the emerging specialization of legal norms in the regulation of social relations, Mikhail Iosifovich Baytin believed that the former only outline one of the possible approaches to the study of the question posed, they need further in-depth theoretical development and testing by practice [17]. We draw your attention to the fact that, despite his position expressed by him earlier, Nikolai Aleksandrovich Vlasenko believes that "the norms that ensure functional specialization do not and cannot have a clearly expressed (regular) structure due to their nature. For example, one can hardly speak of a hypothesis or disposition of a definitive, conflictual, operational, etc. "[50] norms of law.

A similar point of view is expressed by Ivan Andreevich Ivannikov, who asserts that the structure of legal norms is completely different, which are not rules of conduct (initial, definitive, constituent). The author believes that they do not have a hypothesis, disposition, sanction, they have other structural elements. From the standpoint of the author, the constituent norms establish a legal status; definitive norms can fix one feature of an object or several. Generally speaking, it is argued that "in the structure of legal norms that are not rules of behavior, there are often descriptive terms (single and general), predicate expressions (characterizing the properties of objects or relationships between them), subject-functional expressions" [51]. At the same time, the stated position seems to be very abstract, it is not accompanied by specific examples. Nikolay Andreevich Pyanov

believed that in constitutive, definitive and operational norms, there is practically no hypothesis, no disposition, or sanction. The author made an exception regarding conflict of laws rules. Claiming that it consists of two elements: the volume, which indicates the conflicting norms, and the binding, which determines the law, subject to the presence of a collision, indicated in the volume [52].

Timofei Nikolayevich Radko, discussing the constituent norms of law contained in constitutional law, the norms-principles and norms-declarations, emphasizing that they often lack a sanction or hypothesis, the emphasis is on such a structural part as a disposition. At the same time, the norm enshrined in Part 1 of Art. 1 of the Constitution of the Russian Federation: "The Russian Federation-Russia is a democratic federal law-based state with a republican form of government" and it is stated that "... this establishment is mandatory for all subjects of legislative, executive and judicial power ..." [53]. This position is also close to such a position in relation to the structure of specialized legal norms, which define as starting points, according to which they have a special structure (absence of sanctions, hypotheses); their specificity is actually expressed in the disposition: "The President of the Russian Federation is the head of state" (Article 80 of the Constitution of the Russian Federation) [33].

As for our position, it is expressed in the fact that, given that any norm of law is logical, norms-prescriptions (regulatory and protective) and specialized ones are formulated by logical reasoning, taking into account that specialized norms of law are in accordance with their social purpose, function and structure are closest to the regulatory norms, most of the specialized norms have an assumed hypothesis and a real disposition. For example, if a sensitive individual is brought to criminal liability (alleged disposition), then its basis is a crime, that is, "... a guilty socially dangerous act prohibited by this Code (Criminal Code-Vladimir Valentinovich Kozhevnikov) under the threat of punishment" (part . 1 article 14 of the Criminal Code of the Russian Federation) (real disposition). When bringing an individual to criminal responsibility and determining his punishment for a committed crime (alleged hypothesis), the relevant officials must comply with the principle of legality, which, according to Part 1 of Art. 3 of the Criminal Code of the Russian Federation, assumes that "the criminality of the act, as well as its punishability and other criminal consequences are determined only by this Code" (real disposition).

3.4 The Structure of Conflict of Laws Rules of Law

We believe that when solving the problem of the structure of specialized legal norms, conflict norms of law, which have real hypotheses and dispositions, stand apart. Incidentally, some scholars have expressed a similar position. So, having in mind the conflict of laws norms of law, Nikolai Aleksandrovich Vlasenko argues as follows: “Considering the issue of the legal content of this type of specialized norms, we noted that the latter, as a rule, begins with a listing of those relations to which the corresponding law is“ tied ” ... Therefore, that part of the norm that outlines the circle of necessary relations ("volume") is traditionally called a hypothesis. The second part of the norm, containing an indication of which law (legal system) is to be applied (“binding”), was called the disposition ”. The scientists summed up that "... the content of conflict norms objectively predetermines their organization from two parts - hypotheses and dispositions, which constitute the specifics of this group of norms in terms of their structure" [45].

From the point of view of Marina Leonidovna Davydova, the internal structure of the system-preserving legal dictates as a whole corresponds to the classical two-term structure of regulatory normative prescriptions (hypothesis-disposition). The author believes that, unlike other system-preserving normative prescriptions, the structural elements of

collisional ones have traditional specific names: volume and binding, meaning by the first hypothesis, which describes the range of regulated relations or the nature of the problem arising in connection with the choice of a legal norm, and under the second, a disposition, which indicates the norms that are to be applied in this case. This theoretical position is supported by examples. So, "in the event of a contradiction of the decree of the President of the Russian Federation or the decree of the Government of the Russian Federation with this Code or another law (hypothesis-volume), this Code or the corresponding law (disposition-binding) is applied" (part 5 of article 3 of the Civil Code of the Russian Federation) [54].

For the sake of fairness, we note that not all scientists agree with the allocation of hypotheses and dispositions in conflict norms, "since the anchor (disposition-Vladimir Valentinovich Kozhevnikov) does not indicate the legal rights and obligations of participants in public relations" [52], without paying attention to to that feature of specialized legal norms, including conflict of laws, according to which they "... do not have a provisional and binding character and participate in the legal regulation of behavior through systemic links with other norms of law" [34].

IV. Conclusion

In conclusion, we emphasize that, while recognizing specialized norms of law, highlighting only such types of them as declarative norms-principles, definitive, operational and collisional, we believe that most of them have an assumed hypothesis and a real disposition. As for the conflict of laws norms of law, their internal structure consists of real hypotheses and dispositions.

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