

Implementation of law as a factor of ensuring the legal security of modern society

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Abstract. In the introductory part of the article, the interrelationships of various types of security and their mutual influence are indicated. The impact of legal security on all other types of national security is shown. In turn, in the main part of the article, the institution of the implementation of law is considered as one of the important factors in ensuring the legal security of a modern state-organized society. This is done by analyzing the place and role of the implementation of law in the mechanism of legal regulation of social relations, as well as by highlighting and characterizing theoretical and practical problems that impede the implementation of law and pose a threat to the state of legal protection of society. The final part of the article contains author's conclusions and proposals, aimed at ensuring the effective implementation of law and the legal security of society.

1 Introduction

In the literature, along with state, public, informational, environmental, economic, energy and other types of security, legal security is also distinguished [1-4]. Of course, each type of security has its own content, its own distinctive features and characteristics, thanks to which it is distinguished from all other types of security.

At the same time, different types of security, which differ in substance from each other, are quite closely related to each other and affect each other. Therefore, for example, it is obvious that the economic security of society, its proper maintenance have a positive effect on all other types of security, since an economically developed state has financial, logistical and other means that can and should be used to ensure all other types of security. At the same time, each individual type of security affects all other types of security, including economic security.

In this sense, it is difficult to overestimate the legal impact of legal security on all other types of security. As noted by A.S. Shaburov, legal security, representing the protection of the system of law, legislation, the legal system from dangers and threats, ensures the maintenance of all other types of security, occupying a central place in the national security system [5, p. 28]. Agreeing with the position of the author, it should be emphasized that, indeed, it is impossible to assume the proper provision of some kind of national security without formal legal support. That is why the corresponding federal laws have been adopted and are in effect on all the main types of security in which the Russian society is interested.

In turn, one of the important factors in ensuring the legal security of modern society is the implementation of

law, since legal regulation is ultimately oriented and aimed at implementing the prescriptions of legal norms contained in laws and other official sources of law.

2 Results and Discussions

Specifying the aforementioned thesis, we note that in the modern world the most important and socially significant part of the life of a state-organized society and the behaviour of its members, who can and should be subject to external control, are regulated by law and legal norms.

The process of legal regulation begins with the normative regulation of public relations carried out within the framework of law-making activities and includes legal relations arising on the basis of the norms of law contained in regulatory legal acts or other sources of law, and ends with the implementation of the prescriptions of legal norms. In other words, legal regulation, starting with the establishment of legal norms at a general regulatory level (federal, regional, municipal or local), always ends with the implementation of their prescriptions at a specific individual legal level.

As known, the establishment of the norms of law is not an end in itself; they are not created in order to be formally present. Their purpose is in the effective legal regulation of public relations. In turn, such result is precisely the implementation of law, i.e. implementation of the prescriptions of legal norms by their addressees.

The implementation of law is characterized as an extremely positive legal phenomenon [6, 7], expressed in the achievement of the ultimate goal of legal regulation [8, 9]. The essence of security and legal security is revealed through the prism of the state of security (including legal security) from the threat [3]. In this

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regard, it may seem unreasonable or not entirely reasonable to consider the implementation of law as a factor in ensuring the legal security of society.

However, it is important to pay attention to the interconnection of the phenomena under consideration. Legal security is a state of legal protection of an individual, society and the state from internal and external threats. Ensuring legal security is countering threats to the state of legal protection of subjects and meeting their vital needs in the use of sustainable development resources [10, p. 65].

The implementation of law is an institution within which various legal prescriptions are implemented, including those related to the need to ensure the legal protection of subjects of law. This implies the conclusion that only the normal functioning of the institution of the implementation of law can ensure reliable legal security of society.

The understanding of the implementation of the norms of law as the most important factor in ensuring legal security becomes clearer and more precise if instead of the implementation of law the opposite phenomenon is presented – the non-implementation of law. Each individual case of non-implementation of a legal prescription by someone may not be regarded as a phenomenon that threatens legal security.

However, the totality of such cases at the level of an organization, a municipality, a region or a country, especially if they are widespread, clearly represents a direct threat to legal security at each of these levels of society. If the prevalence and scale of non-implementation of legal prescriptions impede the provision of legal security, then the implementation of law, on the contrary, contributes to ensuring the legal security of society.

Meanwhile, while characterizing the implementation of law as a significant factor influencing the provision of legal security, it should be noted that, unfortunately, both the teaching of the implementation of law itself and the practice of implementing legal norms are not impeccable. Both of these components of the institution under consideration have some problems, without the resolution of which the effective implementation and application of the rule of law and, ultimately, ensuring the legal security of society is extremely difficult. These include, first of all, the problems of understanding the implementation of law, the problems of establishing (determining) the forms of the implementation of law, the problems of implementing the norms of law associated with the state, quality of legislation, problems of the implementation of law practice.

3 Problems of understanding the implementation of law and their impact on ensuring legal security

The study of any state-legal phenomenon always begins with its conceptual aspect, comprehension of its concept. The understanding of its essence, content, as well as the limits and boundaries of effect and functioning depends

on how the concept of the state-legal phenomenon under consideration is defined.

In the legal literature, it is customary to define the concept of any examined state-legal institution by identifying and characterizing its features. This approach makes it possible to distinguish the phenomenon under consideration from others, including related phenomena.

However, usually in scientific and educational publications, it is practically not customary to highlight its characteristic features when characterizing the concept of the implementation of law. This circumstance testifies to the weak development of the very concept of an institution, which, as shown above, is one of the factors in ensuring legal security. In this regard, the question arises, is it possible that the insufficient scientific elaboration of the concept of the implementation of law has influence on the practical processes of implementing law and ensuring legal security?

To answer this question, it is impossible to note a positive impact of such state of affairs on the enforceability of law. It is necessary to indicate its negative impact on the enforceability of law, since it is obvious that the weak development of the concept of the implementation of law does not provide a complete, correct and clear understanding of its essence and content. Consequently, it hinders the effective functioning of the institution of the implementation of law. In turn, the ineffective action of this institution has a negative impact on the provision of legal security, because problems of implementation of legal norms create real threats to the state of legal protection of their addressees – individuals and legal entities, public entities.

Currently, there is only one scientific article by Yu. S. Reshetov devoted to the characteristic features of the implementation of law [11]. It was published in 2013, but the methodological approach proposed by the legal scholar on the need to understand the implementation of law based on the most complete consideration of its characteristic features has not yet found a proper response in the scientific environment.

At the same time, it should be noted that in a number of works of the author of this article, published in the period 2006-2019, the content of the implementation of the right is disclosed by highlighting and characterizing the main features enshrined in the definition of its concept.

Meanwhile, without going over to a detailed analysis of the concept of the implementation of law, it should be emphasized that the methodological approach used by several researchers to cognize this phenomenon on the basis of a detailed description of its features, unfortunately, does not fundamentally change the situation in this area. It is important that others engaged in the study of the implementation of law also adopt the indicated methodology of its cognition. Then the situation will change. The understanding of the essence and content of the institution of the implementation of law will become clearer and clearer, which will ensure the effective use of its functionality by the addressees of legal norms and their strong legal protection.

4 Problems of establishing (determining) the forms of implementation of the rules of law and their impact on ensuring legal security

Since the 60s, the Soviet legal science began to distinguish forms of implementation of three types of legal norms: governing – use, obligatory – execution, forbidding – compliance. Along with them, a special form of implementation was also highlighted – the implementation of the norms of law. It was mainly associated with protective norms [8, 12]. At that time, it was believed that the other types of legal norms did not have their own forms of implementation, since they are not directly implemented.

At the same time, it was argued that if they are implemented, then it is possible only through their connections with regulatory (governing, binding, prohibiting) and protective norms. Despite the fact that since then the legal science in general, the science of the theory of state and law in particular, in its development has made significant strides forward, however, until now there have been no significant changes in the doctrine of the implementation of law. Scientists and researchers, as before, distinguish and characterize the forms of implementation of practically only the above types of legal norms [6, 9, 13, 14]. As a result, the forms of implementation of many types of legal norms have not yet been established: norms-origins, norms-principles, norms-warranties, attributional, definitive, collisional and operational norms. Meanwhile, this circumstance raises a natural question: how does such state of uncertainty in the forms of implementation of many types of legal norms affect the processes of the implementation of law, the exercise of law and legal security?

Seemingly, not only does it not promote, but also interferes with the normal implementation and effective application of legal norms, and, as a result, negatively affects the provision of legal security. On the one hand, it is indisputable that the norms of law are the primary element of both the system of law and the mechanism of legal regulation; they are the main normative regulator of social relations. On the other hand, most types of legal norms (main regulators) still lack defined forms of implementation, which surely poses a certain threat to the state of legal protection of their addressees.

Establishing the forms of implementation of the norms of law is not an end in itself. It has both scientific, theoretical and practical significance. Determining the form of implementation of each type of legal norms makes it possible to identify the features of the implementation of their prescriptions, admissibility or inadmissibility of behaviour and activities of subjects during their implementation, as well as the legal consequences for their implementation and non-implementation.

The indicated theses are confirmed by the fact that the author of this article back in 1996, within the framework of the dissertation research, established and substantiated the form of implementation of

recommendatory norms of law, which he called «legal recommendation following». Recommended standards contain prescriptions of an active or passive nature, which is defined by the terms used in them: “recommend”, “recommended”, “not recommended”, “should”, “should not”. Due to this, both active and passive behaviour is inherent in following a legal recommendation.

A recommendation norm is implemented when its addressee performs the recommended actions, i.e. shows the recommended activity or refrains from committing non-recommended actions, i.e. shows the recommended passivity. In addition, the addressee of the recommendation norm has the ability to choose a behaviour option: he may or may not follow a legal recommendation. These are the features of this form of implementation.

Limiting ourselves to the above theoretical description of following the legal recommendation (a more detailed description of the following is contained in the dissertation and other publications of the author), we note that as a result of determining the form of implementation of the recommendatory norms, the following conceptual provisions of practical content were formulated:

1) following the recommendation in some cases can lead to encouragement (as practice has shown and shows, the incentive sanction, albeit not often, is used in order to stimulate the recommended behaviour);

2) failure to follow the recommendation cannot and should not entail recovery, punishment, since the grounds for bringing to legal responsibility and imposing a punitive sanction are only non-fulfilment of a legal obligation, non-compliance with a legal prohibition, violation of other legal regulations that form the corresponding corpus delicti [15].

The introduction of these provisions into the legal implementation activities of various bodies and organizations has changed the diverging practice of the authorities' response to the facts of non-implementation of legal recommendations. If earlier for such behaviour somewhere the addressees of recommendatory norms were punished, and somewhere penalties, punishments were not applied, limiting themselves to preventive conversations, then since the late 90s of the last century for not following legal recommendations almost everywhere they have ceased to be prosecuted and punished. Obviously, with such instability of legislation, it is extremely difficult to ensure the unhindered implementation of law and the legal security of society.

The foregoing really shows that the establishment of forms of implementation of legal norms contributes to the optimal implementation of their prescriptions. This, in turn, has a positive impact on the legal security of society, ensuring its proper legal protection.

Consequently, in order to ensure the normal functioning of the institutions of the implementation of law and legal security, it is necessary to determine the forms of implementation and such varieties of legal norms as norms-origins, norms-principles, norms-warranties, attributional, definitive, collisional and operational norms. Because the forms of implementation

of these types of norms have not yet been established, the specifics of their implementation are not clear, the legal consequences for their implementation and non-implementation have not been determined. This state of affairs hinders the provision of an adequate level of legal security for society.

5 Problems of the implementation of legal norms related to the state of legislation, and their impact on ensuring legal security

The state of federal and regional legislation in the country is difficult to call it stable. It is characterized not only by the adoption of more and more new laws and by-laws, but also by the overabundant and endless changes and additions to the existing regulatory legal acts.

The adoption of new laws in itself, especially if they are conditioned by the need to regulate a certain group of social relations that objectively require legal regulation, can only be welcomed. However, if laws or by-laws are adopted in the absence of this condition, this is already a direct threat to the mechanisms of action of law, legal regulation, implementation of law and, ultimately, the state of legal protection of participants in legal relations, since such regulations only destabilize the state of public relations.

Now it is difficult to find even regulatory laws in Russia, not to mention protective laws (the Code of the Russian Federation on Administrative Offenses, the Criminal Code of the Russian Federation), which are in effect for a long time without any changes or additions made to them. It is one thing when they are introduced into regulations in a timely and comprehensive manner due to the dramatic changes that have taken place in the regulated public relations themselves. It is natural, therefore, explainable and understandable. However, it is a whole another thing when a legislator or another law-making entity introduces them into normative acts in the absence of significant changes in regulated relations. Such activity is evidence of the low quality of the laws and by-laws they have adopted earlier, a real indicator of the low level of their competence.

In order to check the reliability and validity of the indicated judgments, taking as a basis the well-known provision, that practice is a criterion of truth, let us turn to modern Russian legislative practice. For example, the Federal Law "On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation" was adopted on June 12 and entered into force on June 25, 2002. In 19 years of operation, amendments and additions have been made to it 115 times. Of these, one time – after three and a half months from the date of adoption, six times – this year. The Federal Law "On the Police" (it should be noted that this is a regulatory law regulating the activities of a law enforcement agency, and not a protective law) was adopted on February 7, entered into force on March 1, 2011. In 10 years of operation, amendments and additions have been made to it 53 times. However, the changes were made 8 times in the first year of its

operation, which directly indicates the alarmingly hasty adoption of the low-quality law. The Code of Administrative Procedure of the Russian Federation was adopted on March 8, entered into force on September 15, 2015. In less than 6 years of operation, amendments and additions have been made to it 28 times. At the same time, the first time the changes were made even before its entry into force – on June 29, 2015.

Legislative practice in the regions of Russia does not differ from the federal one. It is characterized by the same instability, often made changes and additions. For example, the Law of the Tyumen Region "On Transport Tax" was adopted on November 19, 2002, entered into force on January 1, 2003. In 18 and half years of operation, amendments and additions have been made to it 38 times. Of these, four times – in the first year of operation, two times – this year. The Electoral Code (Law) of the Tyumen Region was adopted on June 3, entered into force on June 20, 2003. In 18 years of operation, amendments and additions have been made to it 53 times. Of these, one time – six months after the adoption, two times – this year. The law of the Tyumen region "On local self-government in the Tyumen region" was adopted on December 22, 2005, entered into force on January 1, 2006. In 15 and half years of operation, amendments and additions have been made to it 34 times.

Obviously, with such instability of legislation, it is extremely difficult to ensure the unhindered implementation of law and the legal security of society. In this regard, federal and regional legislators, as well as other law-making entities, need to take measures aimed at improving legislative and law-making activities.

6 Problems of the implementation of law practice and their impact on ensuring legal security

Significant problems hindering the implementation of law are ignorance or poor knowledge of federal and regional legislation among citizens, the lack of understanding of their rights and obligations, mechanisms for their implementation, as well as the high cost and not always appropriate quality of legal services provided to citizens. As a result, as practice shows, many legal opportunities of citizens and organizations, for example, regarding additional benefits, payments, remain unfulfilled.

Formal responses of officials and law enforcement officers to citizens' appeals that do not affect the essence of the questions and requests set out in them are threateningly widespread and ubiquitous. Problems of a private law and public law indicated both in individual and collective appeals of citizens, objectively requiring an immediate response from the authorities, sometimes remain unresolved for years. Federal Law No. 59-FZ of May 2, 2006 "On the Procedure for Considering Appeals from Citizens of the Russian Federation" requires an objective, comprehensive and timely consideration of incoming appeals. However, instead of strictly fulfilling the specified set of requirements, when considering

proposals, applications and complaints, the authorities are often mainly guided by the fact that, within the time prescribed by law, they send any, even a formal response to the initiator of the appeal. Such approach, clearly contrary to the requirements of the law, is firmly rooted in the Russian bureaucratic environment. This, unfortunately, is facilitated by supervisory and judicial practice. Prosecutors and courts are following the path of recognizing as violation of the procedure for considering citizens' appeals, as a rule, those cases when the authorities do not respond in a timely manner to such appeals. The facts of lack of objectivity and comprehensiveness of consideration of proposals, applications and complaints of citizens, associations of citizens do not receive due prosecutorial and judicial legal assessment.

The practice of the implementation of law aimed at defending at any cost misunderstood interests of the state, state structures and officials, is becoming very alarming, if not threatening. Often even the courts, believing that the state interests are more important than the interests of individuals, make decisions in favour of state-power subjects when their deviations from the requirements of the law are obvious. Meanwhile a civilized state is interested in the triumph of legal laws, legal justice, legality and law and order, ensured by the unhindered implementation and effective application of legal norms.

It should also be emphasized that many problems of the implementation of law and the exercise of law practice, including poor legal knowledge of citizens, mediocre quality of legal services, unjustified law enforcement decisions, are directly related to the instability of legislation and its poor quality.

The foregoing shows that the discussed problems of practice of the implementation of law pose a real threat to the state of legal protection of citizens, society and the state. In this regard, a complex of measures is required to ensure effective counteraction to the indicated threats. Speaking about such measures, let us pay attention to the following. First, it is necessary to adopt laws that contain not only the norms of substantive law, but also norms that detailed procedures for their implementation. The weak side of Russian laws is still their lack of procedural norms.

Because of this, citizens and other addressees of substantive rules lose interest in them. For everyone's experience suggests: in the absence of clear procedures, it is difficult, if not impossible, to implement the prescriptions of substantive law. In addition, the absence of procedural norms in laws formally makes it possible for law enforcers not to take actions that ensure the implementation of substantive norms. Secondly, Russian protective laws provide for administrative and criminal liability of officials, including for illegal actions (inactions) and illegal decisions.

However, given the general nature of formal replies to citizens' appeals, it is extremely rare that the officials guilty of this are brought to justice. This circumstance requires a radical change in the prevailing negative practice. The responsibility of the guilty person must be inevitable. Thirdly, all senior officials of the guilty party,

officials of control and supervisory bodies, judges who did not give a proper legal assessment of the arbitrariness of officials should be brought to justice and punished. Otherwise, the problems of the practice of implementation and application of the law will not be resolved, the legal security of the society will not be ensured.

7 Conclusion

To summarize the results of the study, it is necessary to emphasize that, indeed, the institution of the implementation of law, being an effective part of the mechanism of legal regulation of public relations, serves as the most important factor in ensuring the legal security of a modern state-organized society. At the same time, in order to further develop the doctrine of the implementation of law, improve the law implementation processes, the following is required:

1) development of the concept of the implementation of law, which will allow one to identify its distinct features, the characteristics of which will ensure the disclosure of its essence and content, and will highlight its difference from others, including related phenomena;

2) establishment of forms for the implementation of those types of legal norms for which they have not yet been established, which will allow the identification of the features of their implementation, the definition of legal consequences for their implementation and non-implementation;

3) adoption of high-quality laws and by-laws, which will improve the state of legislation;

4) carrying out special measures aimed at increasing the level of legal awareness and legal culture of citizens and officials, legal awareness and legal activity of citizens, the quality of legal services provided to citizens and organizations, which will ensure the improvement of the implementation of law and the law implementation practice.

In turn, the fulfilment of the specified set of requirements will increase the effectiveness of the positive impact of the institution of the implementation of law, ensuring the legal security of society.

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