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Triumph of legal formalism – threat to the security of the legal order

1. Introduction

It is noteworthy that even in Soviet times, during the era of militant atheism, lawyers actively used the concept of "spirit of law" in their activities. This was a necessity that was obvious to all.

Lawyers were not able to resolve disputes about law, guided solely by the letter of the law. There are always situations in life that are not regulated by law, no matter how abundant the legislation is. An appeal to the principles of law and legal values, as well as the process of interpreting law, inevitably presupposes a deviation from the letter of the law in favor of the spirit of law.

The striving of law enforcement officers to cognize the spirit of law has always meant striving for the truth, craving for fair decisions, searching for the truth in the case. At the same time, everyone was visited by the guess that truth, truth and justice are only superficially imprinted by the letter of the law. And if you stake on formal adherence to the letter of the law, it is possible to ignore the most important circumstances of life, which means making an unjust decision. Behind the concept of "spirit of law" all this time there was hidden a very real phenomenon, which in legal reality could not be ignored.

It is also surprising that the concept of "spirit of law", which is in demand in legal practice, has never been the subject of a special monographic study. There are not even a single article on this topic.

Meanwhile, this is a fundamental problem of jurisprudence, which has not only theoretical, but also key practical importance. Without a correct understanding of the role and place of the spirit of law in relation to the letter of the law, we will not be able to ensure legal order, we will not pacify society, and we will not correctly orient the law enforcement agencies.

Since about 2010, the state power of Russia has turned to the rhetoric of the spiritual and moral education of citizens. The Federal Law "On Education" was one of the first to note the importance of studying the foundations of the spiritual and moral culture of the peoples of Russia.[1] The regional authorities, judging by the legislation of the constituent entities of the Federation, have also realized their mission in this area of activity. So, in the Lipetsk region a law appeared, raising the question of "Spiritual, moral and patriotic education of the inhabitants of the region".[2] The Altai Territory adopted a law "On the Protection of Public Morality".[3] The Krasnodar Territory Law mentions "Measures to promote the physical, intellectual, mental, spiritual and moral development of children".[4] At the subordinate level, an order was issued by the governor of the Novosibirsk region, dedicated to the formation of conditions for the development of spirituality, high culture and moral health of the population of the Novosibirsk region.[5] The Government of the Rostov region issued Decree No. 1018 dated November 15, 2012 "On approval of the Concept of spiritual, moral and patriotic education of students in educational institutions of the Rostov region with a cadet and Cossack component" (it reflects "1. Mission, ideology, essence and characteristics of spiritual -moral and patriotic education in the subjects of cadet (Cossack) education on the territory of the Rostov region").[6]

Part of the scientific community in Russia is still skeptical about argumentation that is far from normative, but the circle of scientists is expanding, for whom the spiritual and moral problems of law seem to be the most important.[7] A.I. Kosarev wrote in his monograph: "The

[1] On Education in the Russian Federation: Federal Law of December 29, 2012, No. 273–FZ, Collected Legislation, 2013, No, 1, Art. 1254.
[2] On patriotic education in the Lipetsk region: Law of the Lipetsk region of July 23, 2018, No. 190–OZ, Official Internet portal of legal information www.pravo.gov.ru 25.07.2018 [accesed: 25.07.2022].
[3] On the protection of public morality: Law of the Altai Territory of December 4, 1995, Altai truth, 1995, 6 December.
[4] On the protection of the health of the population of the Krasnodar Territory: The law of the Krasnodar Territory of June 30, 1997, "Kubanskie Novosti" 1997, No. 197.
[5] On Approval of the Concept of Solving the Complex Problem Formation of Conditions for the Development of Spirituality, High Culture and Moral Health of the Population of the Novosibirsk Region: Orders of the Governor of the Novosibirsk Region of June 10, 2009, No. 150-r, Electronic Fund of Legal and Normative and Technical Documentation: docs.cntd.ru/document/5432887 [accesed: 5.05.2022].
[6] On the approval of the Concept of spiritual, moral and patriotic education of students in educational institutions of the Rostov region with a cadet and Cossack component: Decree of the government of the Rostov region of November 15, 2012, No. 1018, Our time, No. 674-677, 2012, 22 November.
[7] V.A. Bachinin, *Encyclopedia of Philosophy and Sociology of Law*, Saint Petersburg 2006; G.V. Maltsev, *Moral foundations of law*, Moscow 2013; N.F. Medushevskaya, *Search for the spiritual foundations of law in*

basis for the rise of the Russian economy also lie in the spiritual and moral sphere".[8] In the works of N.S. Malein we find the following thesis: "A person has the right to demand the satisfaction of those legitimate interests that are not directly secured by legal forms of implementation and protection, but follow from the spirit and principles of the law".[9]

The spirit of law is above the letter of the law. This legal postulate requires clarity of legal consciousness of all generations of lawyers, regardless of their procedural roles and belonging to different schools of legal thinking.

Any legal system in the world has an initial reference point that sets the content of the rule of law, the form of law, types of legal relations and the corresponding features of legal consciousness. The initial reference point is the spirit of law, perceived by specific communities of lawyers, politicians and ordinary people. It is expressed in legal ideals, principles of law, legal style, in many other spiritual and moral manifestations. Therefore, it is completely incorrect to identify legal culture with the spirit of law or to consider the spirit of law as an expression of culture. The spirit is the basis, the basis of the legal culture of any society.

Literally every event that takes place within the legal system (from the adoption of a new legislative act to the election of power) demonstrates the paramount importance of the spirit of law and the impossibility of effectively solving other social problems without overcoming the moral crisis of society.

The methodology for researching the spirit of law presupposes an adequate selection of means of cognition. You cannot study the spirit of law with the tools of materialism or economic determinism. For the study of the spirit of law, the spiritual-moral, axiological, metaphysical, systemic methods and the method of synthesis are preferred.

The closest to the spiritual and moral problems of jurisprudence in the twentieth century in his writings came I.A. Ilyin. The scientific direction outlined by I.A. Ilyin, could not be continued in the Soviet state. By the 21st century, notable scientific works appeared in Russian legal science, in which law was viewed primarily as a spiritual phenomenon. The authors of these works were V.N. Sinyukov, O. I. Tsybulevskaya, V.A. Bachinin, A.M.

Russian legal thought, "History of State and Law" 2007, No. 14, p. 18–22; V.N. Sinyukov, *Russian legal system*, Moscow 2010; A.M. Velichko, *Moral and national foundations of law*, Saint Petersburg 2002.

[8] A.I. Kosarev, *History of state and law of foreign countries*, Moscow 2012.

[9] N.S. Malein, *Legally Protected Interest*, "Soviet state and law" 1980, No. 1, p. 27–34.

Velichko, R.S. Bayniyazov, V.A. Tomsinov, V.P. Malakhov, A.A. Ter-Akopov, I. D. Mishina, V. Ivanov, A. Kupriyanov, A. Borisov, V. Melnik.

Shortly before the death of S.S. Alekseev, who for a long time headed the normative direction of legal thinking in the USSR, published a monograph entitled "The most sacred thing that God has on earth" (Moscow, 1998), which he devoted to the spiritual foundation of law. V.M. Korelskiy noted that this scientific topic is promising. We must pay tribute to N.I. Matuzov, V.V. Lazarev, V.D. Perevalov, T.N. Radko and V.M. Raw, which contributed to the actualization of the spiritual and moral foundations of law. Studying the moral foundations of law, the problem of spirituality of law was posed by G.V. Maltsev and V.G. Grafsky.

Nevertheless, legal scholars state from time to time the undeveloped spiritual and moral foundations of law. As noted by A.A. Ter-Akopov, cause-and-effect relationships of a spiritual and moral nature, acting at the level of specific human behavior, are practically not studied by science, which seems to be a significant omission; ignoring spiritual and moral determinism significantly impoverishes the general understanding of causality and its manifestations, in particular in criminal law, leaves in the shadow a whole block of issues related to combating crime. The question of spirituality as a cause and its role in the mechanism of concrete behavior, including criminal behavior, is not raised.[10]

2. Materials and Methods

Shortly before the death of S.S. Alekseev, who for a long time headed the normative direction of legal thinking in the USSR, published a monograph entitled "The most sacred thing that God has on earth" (Moscow, 1998), which he devoted to the spiritual foundation of law. V.M. Korelskiy noted that this scientific topic is promising. We must pay tribute to N.I. Matuzov, V.V. Lazarev, V.D. Perevalov, T.N. Radko and V.M. Raw, which contributed to the actualization of the spiritual and moral foundations of law. Studying the moral foundations of law, the problem of spirituality of law was posed by G.V. Maltsev and V.G. Grafsky.

The principle "not prohibited by law is permitted" ensures the primacy of the letter of the law over the spirit of law. The implementation of this principle presupposes the rule of law not only over other normative legal acts, but also over the goals and principles of law.

[10] A.A. Ter-Akopov, *Crimes and problems of non-physical causality in criminal law*, Moscow 2003, p. 77–78.

Meanwhile, the formation of legal principles is not only through their written confirmation in the norms of legislative acts. The principles of law are most often discovered by legal scholars on the basis of a deep study of various legal phenomena and processes. At the same time, the principles of law are not invented by the power of scientific intellect, but are discovered by scientists as objective laws of the existence and functioning of the legal system, the codes of its potential development.

When the spirit of law is denied, the legal system of society ceases to meet the elementary requirements of the formation of a person's legal consciousness, his improvement and spiritual health. With the dominance of the dogmatic, positivist approach, it is generally impossible to understand how law functions and achieves a regulatory effect.

The normative type of legal thinking is recognized by the state power as a social force of lawmaking. This attitude to legal education excludes the spirit of law from the field of vision. It is no accident that normativeism has turned into an ideology of authoritarian regimes. The theory of natural law relies on human rights that are inalienable from birth, which are given to him by "nature". The theory of natural law deals with the substantiation of the rights of private owners, and the spirit of law for it remained unattainable. Sociological theory of law is disposed to search for law not in norms, but in relationships. It, in particular, discusses the formation of law from judicial pleadings, but, alas, in a dispute, Truth, Love and Beauty are not always born. For state machines, it makes no difference which norms to implement (legislative or judicial). The identification of law with norms is a common mistake of many types of legal thinking. The psychological school of law seeks to derive law from mutual psychological experiences of people about objective obligations to each other. But outside the spirit of law, psychologists failed to find a common basis for legal experiences. In the historical school of law, they appeal to the spirit of the people, but on the whole, this approach brings the meaning of the spirit down to the level of everyday customs. The essence of the legal discussion is not the confrontation between the schools of natural and positive law, but the struggle between formalists and legal scholars.

What still prevents lawyers from rising above the letter of the law and knowing the spirit of law? Formal approach.

This is largely due to the fact that a purely secular, atheistic tradition has been formed in jurisprudence, burdened by a state-centric legal policy. In such conditions, the state appears

confident in its self-sufficiency, but it cannot cope with the chaos of the moral decay of society. The stake on the letter of the law gives rise to such “law enforcement officers” who are characterized by formalism, lack of principle, cynicism, and careerism. Such an attitude of practitioners to their duties entails a separation of legal practice from the real goals of legal regulation.

Existing law is declared to be a closed system of formal norms that exclude considerations arising directly from the merits of the case in the course of its consideration, and even more so leave the principles and goals of law unclaimed. The action of any norm is limited to the realm of facts and deliberate fragmentation.

The advantage of the Constitutional Court is that, as such, this court was constructed by legal thought to reconcile the letter of the law with the spirit of law. The very structure of this court, its jurisdiction provides for the possibility of repealing illegal laws and bylaws, both normative and individual. The practice of the Constitutional Court has proven its adherence to the spirit of law and general legal principles in particular. The Constitutional Court demonstrates that it is not connected with the prescriptions of written legislation.

3. Results

The letter of the law is not self-sufficient, for it is not valuable in itself. It presupposes conformity with the spirit of law. A rule of law is a rule that, by its nature, form and functional meaning, must correspond to the spirit of law, and only therefore it must be adhered to. If a norm is contrary to the spirit of law, it must be canceled.

The dualism of the spirit of law and the letter of the law lies in the discrepancy between their nature. The spirit of law expresses ideas, principles, symbols and values that can be regulatory. Whereas the letter of the law is a set of documented norms that have a constitutive essence. On the basis and in accordance with the spirit of law, a system of formalized and officially adopted norms is built – legislation.

The form of law should not absorb its content, destroy the idea of law, and with them the goal of law. The spirit of law and the letter of the law are in reality in a position of strict subordination. The instructions and procedures are intended to facilitate the operation of the spirit of law, not to stifle it. Legal technique should not come into confrontation with the idea of law. When the letter of the law supplants the spirit of law, the letter of the law begins to

stifle legal technique and legal casuistry.

Is it permissible to reduce the higher to the lower? Certainly not acceptable. Therefore, lawyers cannot put up with the fact that the entire substance of law is reduced to its lowest material and technical level? The situation in which legal technique determines law is not normal. The process of replacing law with legal technology must be stopped by turning to the spirit of law.

The letter of the law is necessary if it is given the right place in the hierarchy of law. With its help, society regulates the direction of people's behavior. However, the legal behavior of people is carried out within those boundaries that are set by the system of spiritual values.

Apologists for positive law (that is, the letters of the law) consider any adopted law to be legitimate by virtue of its very existence. So, if the legislator is ready not to consider abortion to be murder, abortion is not so formally and legally. But in this case, the spirit of law is being treated with an unjustified elevation of the letter of the law. And the low and the low are passed off as high.

Apologists for the letter of the law argue that it was legal action to import blacks from Africa to Europe and America. The apologists for the letter of the law claim that the Holocaust of the Jews in Europe was legal based on the racist laws of Germany. The apologists for the letter of the law consider the atomic bombings of Hiroshima and Nagasaki in Japan to be a legitimate matter, since they were carried out in strict accordance with the order of the President of the United States H. Truman. The most heinous crimes against humanity are usually justified by the letter of the law that was in force at the time of the inhuman actions.

Considering the history of Russian law, it can be noted that the periods of strengthening and effectiveness of law fall on the approach to the spirit of law. The ancient "Russkaya Pravda", princely charters and statutes, judicial charters and judicial codes, Stoglav and Sobornoe Ulozhenie of 1649, Peter's articles and decrees, legislative acts of Catherine II and Alexander I, reforms of Alexander II and the Basic State Laws of 1906 are the trajectory of the development of the spirit of law in the legal system of Russia. So, the legal order in Russia over the course of millennia has gradually developed and became more complicated only together with the complication of ideas about the spirit of law and the actualization of the spirit of law.

Any of the most technologically advanced letter of the law cannot serve as an absolute and enduring measure of legitimacy. The archives store many outdated, outdated norms. The letter of the law is always rather vague and conventional, and its meaning is always temporary and relative. The erroneous impression that law is also something relative (both by its content and by its obligation) arises only because of the triumph of the letter of the law over the spirit of law.

There are frequent contradictions between the abstractness of individual prescriptions of the law and the concreteness of the regulated sphere of public life, where the individual uniqueness of life situations prevails. They often try to overcome this contradiction by adopting new laws and / or specifying the general provisions of the law in the subordinate rule-making. As a result, one norm produces dozens of more norms. In addition to normative inflation, the problem is that the legislative norm is too abstract, and the subordinate norm is too casuistic for the normative regulation to be suitable for social relations. The scope of any normative act presupposes schematism, which is not always correlated with reality. Accuracy and unambiguity in the definition of a legislative act always simplifies and schematizes polysyllabic and unique relations, therefore it does not at all guarantee the realization of the truth, but deforms, adjusts public relations to the scheme drawn up by the legislator.

Both casual and abstract forms of normative regulation in modern society have reached such a limit of inefficiency, beyond which there is an objective need for informal self-regulation of people's behavior. The transition to such an effective type of legal impact is possible with the actualization of the spiritual and moral foundations of law.

It is not only the letter of the law (the formal side of law) that is important, but also those fundamental ideas and principles that determine the ideological, axiological, target and other direction of legal regulation.

Regulations are just a tool by themselves. They do not create themselves, they are a derivative of cultural and historical forms. Behind them should be the spiritual and moral values of a particular tradition, otherwise they become instruments of arbitrariness, and not the basis of a just order. Without the highest morality and love, the letter of the law rebelles against its creator – man – and destroys him. Legalism is one of the variants of a technocratic society, when technology acts as a panacea.

Note that the activity of the Constitutional Court as the highest court is generated by

contradictions between the spirit of law and the letter of the law.

Even in ancient Rome, lawyers thought about the correspondence of the spirit of the law to its letter. Even then, ideas were expressed that the categories "spirit" and "letter" of the law are similar categories, but not at all identical with the paired categories of form and content, essence and phenomenon. Unfortunately, among modern authors there are many who exhaust the problem of the quality of laws with the technocratic rules of rule-making and legal technique.

Jurisprudence, which adequately perceives the subordination between the spirit of law and the letter of the law, warns against the temptation to consider law as a sphere independent of spiritual absolutes. The current law is not quite what is stated in the texts of normative acts.[11] The distinction between the spirit of law and the letter of the law, therefore, requires special types of interpretation of texts (expansive, restrictive), as well as analogies of law and analogies of law.

It is noteworthy that the Russian word "za-kon" comes from "kon" – "beginning" and "end", initially, probably, a stake, a pillar (serving for various purposes, for example, as a landmark of an earthen plot or for a tethering post). Therefore, the word "law" among Russians was thought primarily as a "limit" beyond which lies another sphere of life or spirit. The law, in the national legal consciousness of our ancestors, is not the highest category, to which everything lying in a given sphere is subordinated, but only a certain border within a wider sphere. A look "from the other side" of this limit, the desire to "look from there" is the main feature of this cultural concept.

In general, a law is a rule or a set of rules that determine the action of any force. For example, the mechanical law of gravity determines the action of the force of gravity. The legal law determines the method of action of the spiritual and moral strength of people. Legal law is only harmonious when it expresses the strength of the spirit of law. This means that it is possible to recognize as legal the law that indicates how a person should live, what he should do in order to achieve his purpose or purpose of existence.

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[11] G. Hart, *Positivism and the differentiation of law and morality*, "Jurisprudence" 2005, No. 3, p. 18–24; J.L. Bergel, *General theory of law*, Moscow 2009, p. 105; Hegel, *The phenomenology of the spirit*, Moscow 1959, p. 304; L. Dyugi, *Constitutional law. General theory of the state*, Moscow 1908, p. 11; S. Montesquieu, *On the spirit of laws*, Moscow 1999, p. 202; G. Radbruch, *Philosophy of Law*, Moscow 2004, p. 112.

The well-known work of the monk Illarion, which is conventionally called by our contemporaries “On Law and Grace”, contains constants that are very indicative of the Russian legal consciousness. Illarion writes about the distinction between the law as an external institution-prescription that regulates the behavior of a person in society by violent measures, and the truth expressed in the high moral state of a person who does not need the regulatory activity of the law due to the strength of spiritual perfection. In addition, the relativity and changeability of the law is obvious.[12] The law determines the external actions of people at the stage when people have not yet grasped the truth; it is given to people only “for preparation for truth and grace, but human nature is in it”, for humanity, like a soiled vessel, must first be washed by water-law, and then it will become able to receive the “milk of grace.” “The law is the forerunner of Be and the servant of grace and truth”, writes the monk Illarion.[13] This is the oldest, consistent with Tradition, the idea of the relationship between the letter of the law and the spirit of law with a convincing argument for the preference of spiritual (that is, religious and moral) criteria for regulating behavior and the inner world of a person.

In any European culture, the concept of “law” is opposed by “lawlessness”. But in the Russian mentality “law” is opposed to something, not bad, but something good, kind, positive.

The judicial reform of the Russian Emperor Alexander II appealed to the meaning of legislation, overcoming the primacy of the letter of the law. Thus, Article 9 of the Code of Civil Procedure and Article 12 of the Code of Criminal Procedure obliged the judicial authorities to base decisions on the exact reason of existing laws, and in the event of their incompleteness, ambiguity or contradiction, the court had to base the decision on the general sense of the laws. Consequently, the court recognized not the right, but the obligation to interpret the letter of the law in favor of the spirit of law. A court that denies a sentence under any pretext is liable for denial of justice.

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[12] Yu.A. Tikhomirov, *Law: forecasts and risks*, Moscow 2018, p. 108; A.I. Kosarev, *Historiosophy of state and law*, Moscow 2019, p. 120; V.M. Baranov, P.V. Remizov, *Legislative critic: doctrine, practice, technique*, Moscow 2018, p. 92; N.S. Bondar, *The letter and spirit of the Russian Constitution*, “Journal of Russian Law” 2013, No. 11, p. 36–39; V.D. Zorkin, *Right against chaos*, Moscow 2018, p. 18–19; R.S. Bainiyazov, *Legal awareness and legal mentality in Russia*, Saratov 2001, p. 38.

[13] A.A. Bazhenov, *“Words of Law and Grace” by Hilarion; Ideological and philosophical heritage of Hilarion* (Vols. 1–2), Kiev 1984, p. 250.

During the formation of Russian statehood, the antithesis "the letter of the law – the spirit of law" was the property of the public sense of justice. In such monuments of Russian thought as "A Word about Law and Grace", "Praise to Leonty", "Life of Simeon", "Reading about Boris and Gleb" contains the idea of the predominance of the spirit over the letter.

The scales of the spirit of law and the letter of the law are incommensurable. No matter how numerous the legislation is, it does not cover all life incidents, and the spirit of law allows you to resolve any dispute about law. Laws that do not have an objective basis (spirit of law) are subject to cancellation, and their legal force up to cancellation is contested.

4. Discussion

E.N. Dubinina, expressing a negative attitude towards the complete legalization of public relations, noted that directly in the power of the state law is only in one of its form – normative acts.[14] But the law surpasses the normative material in its volume. It can be said that even an excessive number of normative acts can be reviewed, but no one has been given the right to review the right as a whole. It is no coincidence that, therefore, without even pronouncing the concept of the spirit of law, lawyers constantly appeal to it through a broad interpretation of norms, the analogy of law, the use of legal principles and much more.

By virtue of its rational and state nature, the regulation of the law has limited capabilities, while the regulation of the spirit of law is much richer in content and value of social energy. There are a number of relations that do not lend themselves to regulation by means of the letter of the law, but at the same time are regulated by the spirit of law, have legal expression and dimension. Thus, the letter of the law is only one of the moments of the implementation of the spirit of law.

B.P. Vysheslavtsev noticed that the law, trying to overcome the resistance of the individual, proceeds from the presumption that all evil is in a person, and all good is in the law.[15] This assumption characterizes the tragedy of the law, which wants and cannot, demands and does not fulfill, promises and does not give.

The domestic mentality puts man, humanity and soul above the law. Not a man for the law, but a law for a man. And when the law comes into conflict with humanity, the Russian legal

[14] E.N. Dubinina, *The essence of the process of legalization of relations of modern society*, "History of State and Law" 2008, No. 10, p. 9–11.
[15] B.P. Vysheslavtsev, *Ethics of the transformed eros*, Moscow 1994, p. 54.

consciousness refuses to obey it. The Russians called their first legal monuments “Russian Truths”, for truth is the other side of love, there is its protective power.

The law is a template, and the essence of law is in a living spirit. Modern inhabitants live by patterns. For many, they mean more than common sense and personal excellence.

The level of development of the spiritual life of people determines what is the nature of the legal reality in a given society. All the written laws of the past are slices of the peculiarities of the legal psychology of former societies, the “archaeological layers” of spirituality. Legal reality allows the spirit of law to be a creative principle for subjects of law, to influence the quality of the legal culture of society.

5. Conclusion

The development of visible legal reality can be in sharp contradiction with the simultaneous development of evil in society. Traditions of law are created not by a normative legal act, but by the spirit of law, which expresses the reality of law in human life. The spirit of law dwells precisely in the phenomena of a super-positive nature, and this spirit is inclined every time to leave its even technically perfect “body” at the slightest inattention and misunderstanding of the spiritual nature of law.

The laws of the state can be contradictory, whitespace, inaccessible to understanding, and in all these cases, the spirit of law comes to the rescue of the subjects of law. The spirit of law appeals to reasonable and expedient actions, and not to indiscriminate throwing. He does not accept anything that introduces legal consciousness into a twilight state of incomprehension of the meanings of existence and ought.

The spirit of law is the fundamental basis of the legal consciousness of society. In law, as in art, which affects the consciousness and behavior of a person, the main thing is its spirit, meaning and image: only then the form of law acquires the fullness and integrity of its functional characteristics.

As you know, in law, the form cannot be separated from the content and essence. One and the same spirit must personify material and procedural laws. The significance of a legal law depends on how much the universal spirit of law is expressed in it. The spirit of law is a priori higher than the “letter”.

It is impossible to feel the right at the substantive-material level, it is possible only at the

spiritual-psychological level. Outside the spiritual, law is no longer a phenomenon of being.

The service of a lawyer is primarily an activity in the field of the spirit. As far as the lawyer has spirituality in him and what is the character of this spirituality, he can also excite it in others. Not that good lawyer who perfectly studied the theoretical models of legal relations, but the one who in his soul found in advance the possibility of a psychological application of his knowledge to the work of service, that is, he carried out the struggle between evil and good in his own spirit.

Only through the spirit does law form its own content, which cannot be reduced to economic, political, cultural, etc. Thanks to the spirit of law, law as such is produced. With a simple legal formulation of political and economic phenomena, only an external semblance or "semblance" of law arises.

The spirit of law is invisible. It can be comprehended by the mind and perceived by the feelings of subjects of law. It is a force that calls on the legal system of society to conform to God's commandments. This is the divine energy that attracts people to justice, goodness and mercy, from the temporary to the eternal, from love for creatures to love for the Creator. The spirit of law, as a force emanating from God, according to the law of similarity, is found where everything is divinely obtained and in God it receives peace. Capturing someone else's is satanic, defending one's own is human, sacrificing one's own is divine. The spirit of law receives its absolute authority only through union with the infinite, uncreated and unlimited God.

A lawyer who knows the letter of the law may be an erudite, but superficial, and also cynical. A lawyer who comprehends the spirit of law has exalted qualities and knows law deeply. The thirst for justice and mercy expresses the demand for the spirit of law. This universal thirst confirms that there is a force in people that requires its spiritual satisfaction. Spirit is called the highest, immaterial principle, through which people know God. People can feel the spirit of law through the desire for the highest and perfect, with which nothing material can be compared, through conscience. It is in the spirit that a person receives the highest ability through which he can enter into communion with God. Violence has never expressed a spirit of law. The spirit of law in its absolutes is love, goodness and beauty. Where violence is manifested, there is no spirit of law.

Until then, law can act as a fundamental way of being a person, as long as it remains a

phenomenon of the spirit within the framework of legal practice.

The concept of “spirit of law” is the most important and important legal category, with the help of which lawyers get the opportunity to learn and build a regulatory hierarchy. The actualization of the spirit of law contributes to the effectiveness of legislation and the reduction of its volume. The regulatory capabilities of the spirit of law are associated with the mechanism of self-regulation by the subjects of the law of their behavior. The more productive self-regulation is, the less need for external coercive power of the state. The spirit of law opens up for modern states the resource of managing society without overproduction of laws and law enforcement structures.

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Key words: law; spirit of law; letter of the law; formalism; apologetics of law; dualism; constitutional justice

Summary

The article deals with the relationship between the spirit of law and the letter of the law. The dualism of the spirit of law and the letter of the law lies in the discrepancy between their nature. The spirit of law expresses ideas, principles, symbols and values that can be regulative. Whereas the letter of the law is a set of documented norms that have a constitutive essence. The spirit of law is the fundamental basis of the legal consciousness of society. In law, as in art, which affects the consciousness and behavior of a person, the main thing is its spirit, meaning and image: only then the form of law acquires the fullness and integrity of its functional characteristics. The subject of the research is the categories “spirit of law” and “letter of law” in their regulatory sense. The purpose of this study is to substantiate the fundamental nature of the concept of “spirit of law” for the methodology of legal research, legal consciousness and the mechanism of legal regulation. The methodology for researching the spirit of law presupposes an adequate selection of means of knowledge. You cannot study the spirit of law with the tools of materialism or economic determinism. For the study of the spirit of law, the spiritual-moral, axiological, metaphysical, systemic methods and the method of synthesis are preferred. When the spirit of law is denied, the legal system of society ceases to meet the elementary requirements of the formation of a person’s legal consciousness, his improvement and spiritual health. With the dominance of a dogmatic, positivist approach to law, it is generally impossible to understand how law functions and achieves a regulatory effect.