

Legal Regime and Stages of Procedural Regulation: Essence and Content

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ABSTRACT: This article is devoted to the analysis of issues regarding the main approaches to understanding the legal regime and the stages of procedural regulation and determining their content. It has been established that the dynamics of procedural and legal regulation presupposes the presence of procedural stages having spatio-temporal boundaries that allow solving intermediate problems, but united by a common ultimate goal. These stages are characterized by logical sequence and are filled with a certain functional content. The legal regime at the same time expresses a special procedure for the procedural regulation of the activities of subjects and participants in the legal process, based on a certain combination of legal means and methods of legal regulation, guarantees and principles, aimed at optimal resolution of legal cases.

Keywords. Law, legal regime, procedural regulation, dynamics, stages of the legal process, stages of the law enforcement process, stages of the law-making process, stages of the control process, legal stages.

INTRODUCTION

The development dynamics of modern Russian society and the modernization of the legal system require a new quality of legal (including procedural) regulation, the creation of such an optimal legal regime that would allow the most effective respect for the rights and freedoms of the individual in strict accordance with the law to resolve a particular life situation (legal case), while ensuring law and order. At the same time, despite the obvious need for further processualization of all types of legal activity, strengthening of procedural principles in jurisdictional and other positive processes, scientific developments in the direction of procedural regulation and its main components (elements) are still insufficient. The legal practice of applying the new procedural legislation, which is being updated, indicates the need for further

improvement of existing procedural structures, including the legal regime and stages of procedural regulation. However, there exist only certain works which to one degree or another affect the issues of procedural and legal regulation and its legal regime; the essence and content of the stages of procedural and legal regulation have not been studied at all in direct formulation and from general theoretical points of view (there are only a few fragmentary references to them).

Note that the term “regulation” (from Latin *regulare* – put in order) in the social, political, psychological, and economic domains can have many forms: legal restrictions promulgated by a government authority, contractual obligations (for example, contracts between insurers and their insureds (Mendoza Marcos Antonio)), self-regulation in psychology, social regulation (i.e. norms), co-regulation, third-party regulation, certification, accreditation or market regulation (Levi-Faur, 2010). This approach allows us to talk about legal regulation in general (and procedural regulation, in particular), as a dynamic system, process (Belyayeva, 2013; Belyaeva et al., 2019; Agamirov, 2014; Makogon et al., 2019; Belyaeva et al., 2018; Zhukova et al., 2018), including the passage of certain stages – the formation of legal norms; their effect (as a result of which legal relations arise or change; the implementation of subjective rights and obligations (whereby the goals of legal regulation are achieved). The legal regime at the same time acts as a normatively formalized “shell”, within the framework of which a legal process takes place that provides optimal conditions for the activities of all actors of the process, as well as methods for its implementation and the real guarantees of ensuring procedural activities (Shatilova et al, 2018).

In relation to the procedural aspect of the issue under consideration, the sequence of implementation of any kind of legal process is ensured by the procedural stages, which are a separate in time, a certain segment, a separate temporary part of the legal process as a whole. In these stages, the dynamics of procedural regulation, provided by the legal regime, are manifested. It seems that to establish the conceptual autonomy of the scientific category “procedural stage” and the role of the legal regime in their optimal combination in procedural regulation, it is productive to turn to an analysis of the approaches available in legal science to determine the stages of certain types of legal process, on the basis of which the author's definition of this concept is presented (Lee, 2019).

METHODOLOGY

The methodological basis of the study is based on the application of various general scientific methods and methods of scientific knowledge (analysis, synthesis, deduction, induction, system-structural, formal-logical approaches), as well as particular scientific methods – formal-legal and interpretative.

DISCUSSION AND RESULTS

It should be noted that in practice, modern procedural legislation governing, the progressive movement of the legal process basically establishes a fairly clear legal regime with regard to its individual stages, which is manifested in the following: the subject composition for each stage of any varieties of the legal process; the legal status of subjects and participants in the legal process is fixed; specific tasks and other features of individual stages are reflected. Thus, the norms of criminal procedure legislation give a complete picture of the step-by-step resolution of criminal cases, starting from the stage of their initiation up to the stage of execution of the sentence. Unfortunately, this cannot be said

about the degree of scientific elaboration of the category “procedural and legal stage” at the general theoretical level.

It is noteworthy that according to the dictionary definition, a stage is “a certain stage, period, stage, phase (having its own qualitative features)” (New Encyclopedic Dictionary, 2000). As a consequence of this, the stage of the process is also called its phase, stage or part of the process; these concepts are used as single-order, interchangeable and equivalent. So, in a generalized form I.V. Panova defines the following stages of all types of legal process: “1) analysis of the situation (which is called differently in different processes: administrative investigation, initiation of proceedings, verification of complaints, etc.), during which information on the actual circumstances of the case is collected, studied. The results obtained are recorded in the procedural documents in the form of protocols, decisions, etc.; 2) making a decision (making a decision, resolve, etc.). The decision is binding, it is a consciously volitional act of choosing one of the existing opportunities; 3) the execution of the decision (the decision is information about what should be); 4) review (cassation, appeal consideration) is a necessary part of the jurisdictional process, but in other non-jurisdictional processes it may be absent and take place on optional (additional) rights” (Panova, 1998; Araújo, et al 2018).

V. M. Gorshenev and I.B. Shakhov distinguished such mandatory elements that are characteristic of the stages of the legal process, i.e. the presence of: “a) a relatively independent task, the solution of which is directed to actions that are combined at one stage or another; b) a specific set of actions, without fail including the establishment or analysis of factual circumstances, the implementation of the relevant legal norm to resolve the issue, case, etc. ; c) legal documents that reflect and consolidate the results of legal actions committed at this stage” (Gorshenev & Shakhov, 1987). For our part, we clarify that the purpose of the stages in the legal process lies in the fact that they reflect the logical sequence of its development. For example, only after a decision has been made to initiate a criminal case, that is, the stage of initiating a criminal case, the official of the investigation body (investigator) has the right to proceed with the investigative actions – the stage of preliminary investigation.

Considering the stages of the control process (as varieties of the legal process – author) in the general theoretical plan, V.P. Belyaev writes: “the characteristic moments of the stage of the legal process are as follows: formulation of a relatively independent task, the solution of which is directed to actions that are combined in one or another stage; a specific set of actions, without fail including the establishment and analysis of factual circumstances, the implementation of the relevant legal norm to resolve the issue, case; a statutory circle of subjects; procedural documents that reflect and consolidate the results of legal actions committed at this stage” (Belyayev, 2015). A similar point of view is expressed by other authors (Kutko et al., 2019; Golkar, et al 2014).

To the above, we add that the procedural stages characterize the dynamics of the process; it is impossible to imagine a legal process without forward progression, without successively successive stages. From here flows the dynamic side of the procedural and legal regulation. Let us pay attention to the fact that the issues of stagedness (gradation) of the legal process have long attracted the attention of scientists in terms of substantiating the concept of stages of application of law, their number, sequence and content. However, there is no unity in the definition of the concept of stage among scientists; there are various approaches (mainly industry - auth.) in this direction.

At the same time, in the theory of law, most scholars share the opinion that the enforcement process is represented by three main stages, including: “1) establishing the

actual circumstances of the case (taking actions aimed at analyzing the facts, proving their completeness and reliability); 2) selection and analysis of the legal norm to be applied in accordance with the established factual circumstances (qualification); 3) the decision of the legal case on the merits, accompanied by the publication of a law enforcement act ” (Aleksandrov, 1966).

Concerning law enforcement, the staging of its certain types is noteworthy. In cases where it consists of cycles following one after another, it requires streamlining through legal process. On this occasion, the legal literature notes that “the sequence of enforcement powers is provided by the procedural stages and these stages are objectively necessary for such enforcement activities” (Yuridicheskaya Protsessual'naya Forma, 1976). In order to develop our own approach to understanding and determining (establishing) the stages of procedural and legal regulation, we will analyze the views expressed in science on the problem of staging in relation to various types of legal process.

So, in the article on the supervisory process S.N. Nazarov writes: “The stages reflecting the logical-functional dynamic characteristic are an important structural element of the supervisory process. Their analysis reveals the specifics of supervisory activities, the legal nature and integrity of the content of supervision, the specific functions of its constituent stages and the composition of the constituent elements. The supervisory process includes the following stages: initiating a supervisory audit (preparation and planning of a supervisory action); conducting a supervisory audit (establishing the factual circumstances of the case); making decisions based on the results of the audit (assessment of the actual circumstances of the case, selection and analysis of the rule of law to be applied); monitoring the implementation of the supervisory decision” (Nazarov, 2007). In this case, the author includes the control of execution in the enumeration of the stages, which, we believe, should not be attributed to the main, but to the additional stages.

As D. N. Bahrakh suggests in the administrative process the stage should be understood as “a relatively independent part of the production, which, along with its general tasks, has its own tasks. The stages differ from each other and the circle of participants in the production”. This author identifies four stages of administrative proceedings: “a) administrative investigation; b) consideration of the case; c) review of the decision; d) execution of the decision”, which, in turn, is divided into stages – groups of interrelated actions (Bahrakh, 2000; Novikova et al, 2018). Agreeing with this statement, for our part, we also add phases to the stages, which in some cases allow us to more clearly track the dynamics of the process.

As for the law-making process, the following stages of this process are usually distinguished in the theory of law: legislative (law-making) initiative; preparation of a draft regulatory legal act; discussion of the draft regulatory legal act; adoption of a draft regulatory legal act; signing of a draft regulatory legal act; promulgation (publication) of a draft regulatory legal act (Turinin Vladislav et al., 2019; Rumyantsev Mikhail et al., 2019). From our point of view, these stages should be considered more differentially, namely: the study and analysis of social phenomena and processes, the establishment of the need for legal regulation; determination of the type of bodies, entities authorized to make legal decisions, and the type of legal act; making decisions on the preparation of a legal act; development of an idea, concept of a future legal act; preparation of a draft legal act; preliminary consideration of the draft legal act; public discussion of the draft legal act; official consideration of the draft legal act by the relevant authority in compliance with the necessary procedures; adoption of a legal act, its execution, signing, publication,

entry into legal force. Thus, there are a lot of scientific interpretations of understanding the stages of the law-making process, however, all of them actually go in a single "channel", although with a certain originality.

The analysis of the points of view expressed above and our own view on the research issues allow us to determine the stage of procedural and legal regulation as an autonomous complex of procedural and legal means and organizational and procedural (procedural) actions, united by a common ultimate goal, carried out within specific spatial and temporal boundaries, with the corresponding functional content and in a logical sequence, aimed at achieving a final, materially determined result - is legitimate and reasonable resolution of legal matters within the established legal regime.

CONCLUSION

As a result of the theoretical and legal analysis of approaches to understanding the legal regime and stages of procedural regulation, the following conclusions can be drawn. First, the dynamics of procedural and legal regulation presupposes the existence of procedural stages that have spatio-temporal boundaries that allow solving intermediate problems, but united by a common ultimate goal. These stages are characterized by logical sequence and are filled with a certain functional content.

Secondly, the stages of procedural and legal regulation proceed within the framework of a certain legal regime, thereby including a complex of procedural and legal means and organizational and procedural (procedural) actions of subjects and participants in the legal process. Thirdly, at any stage of the procedural and legal regulation can be found, in addition to the main goals and objectives, optional elements that make it possible to emphasize the autonomy of each of the stages and their specific content in the named process depending on the type of legal process.

Fourthly, each of the stages of legal regulation may include certain stages (phases) that are part of the stage and are included in the general dynamic characteristics of the content of legal regulation. Fifth, the content of the stages of procedural and legal regulation and their functionality is not static; can be changed and supplemented; it is individual, although it includes the general that is inherent in the content of the procedural and legal regulation as a whole.

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