
Analysis of Sociology of Law and its Theoretical and Legal Aspects

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Abstract

The purpose of sociological research in law is, firstly, to analyze the relationship between law as a social phenomenon and the social system; secondly, revealing the social functions of law and the complex processes of implementing legal norms in social behavior. Based on this, the sociology of law and its theoretical aspects are thoroughly analyzed in this article.

Keywords: law, sociology, civilization, scientific, methodology, science, problem.

The category "sociology of law" as an independent scientific direction was introduced into scientific circulation relatively recently - in 1962 r. at the 5th International Sociological Congress. A special group was created at it, bringing together sociologists and lawyers; she proposed to the congress to discuss the problem of "Content and Method of the Sociology of Law". As a result of the discussion, a conclusion was formulated. Its contents boiled down to the fact that the modern intellectual factor of human civilization, the very development of sociological theory, as well as the methodology of the social sciences, determined the need for the institutionalization of the sociology of law as a science. This proposal was approved by Congress. Subsequently, the Research Committee for the Sociology of Law, operating within the framework of the International Sociological Association, was organizationally created. It should be noted that sociological research in law is carried out at the "junction" of sociology and law. That is why, by their nature, they represent an integrated approach to solving urgent problems of state and legal construction. The study of such problems, which combine relations of different orders - political, legal, managerial, organizational, etc. - require, in turn, complex methods. These include abstract logical and empirical. Naturally, a comprehensive study of any social problem presupposes a specially developed methodology and technique for processing empirical material in relation to it. In this regard, the sociology of law includes not only the theoretical part that makes up its content and specifics, but also a complex of problems that are diverse in their direction, which represent the methodology and procedure of research. The objective needs of legal science are associated with the study of law in reality, in its complex and contradictory processes and phenomena. This problem remains quite relevant in modern Russian society. It can be solved thanks to a system of socio-legal research that analyzes social determinism and the social action of legal institutions, organizations, laws in the field of their manifestation in real life.

On this basis, such a scientific direction as the sociology of law gradually formed. She joined in the need to study in the real behavior of subjects of law such social elements of the "informal" order, such as, for example, social and legal value orientations, education, the level of legal awareness and legal culture, professional status, gender and age characteristics, etc.

The sociology of law focuses on the study of the social functions of nature, the consequences

associated with the adoption and introduction of legal acts into public life. The subject of socio-legal research is social relations. And those that are formed both in the formation of legal acts (meaning the translation of social relations into the language of legal norms), and in the transformation of legal prescriptions into the social behavior of an individual and social groups.

Specific sociological research in law is focused, on the one hand, on the analysis of social conditioning, and on the other hand, on social action, the effectiveness of law and its institutions; the impact of character on social relations, on practice, as well as the reverse influence of social factors on law. This circumstance reflects the common thing that especially brings scientists lawyers and sociologists together. At the same time, it must be emphasized that there is a difference between the subject of sociology and the subject of law. Each of them retains its own specifics. Legal science is primarily interested in the legal form of the relevant social relationship, the content of the rights and obligations of its subjects. And sociology at any level finds out the social genesis, social place and social functions of the studied social phenomenon. So, a lawyer, characterizing family and marriage relations, will pay primary attention to the legal status of spouses, consider the rights and obligations of children and parents. In turn, the sociologist examines the actual relationships of family members: on likes and dislikes, mutual feelings of affection and their implementation in people's behavior, the connection of family relations with morality, economics, etc.

Thus, it can be seen that the essence of the difference between the subject of sociology and law boils down to the following: legal science studies (along with the rules of law) legal relations, and sociology studies the actual social relations between people.

Sociological research in law has as its subject social relations in the field of the genesis and functioning of the legal system, including its norms and institutions. It is the nature of such studies that is aimed at analyzing the social conditioning and social effectiveness of law, sees in it the interdependence of legal norms, legal relations and actual relations between people. The subject of the sociology of law explores precisely the social factors associated with legal phenomena, as well as the mechanism and patterns of such a connection. This approach orients concrete research towards the search for new, non-legal factors affecting the law, the discovery of new trends, and then regularities in various spheres of social life.

The considered understanding of the subject matter of the sociology of law can be specified in relation to the diverse trends that have developed in modern sociology of law. Thus, the subject of research aimed at studying the social conditionality of law is, first of all, social factors of a non-legal nature. They, in turn, influence the formation and development of law to varying degrees. As for the subject of research on the effectiveness of the operation of law, it is revealed through determining the degree and nature of the influence of the legal factor on the development of social relations. The subject of studying the functioning of the operation of law is focused on the mechanism of interdependence of legal and non-legal factors influencing regulated legal social relations.

In the course and as a result of such research, a well-defined structure of social knowledge about law is formed - the sociology of law.

It should be noted that the importance of the sociological theory of law will increase. This becomes possible with the development of the concepts of legal decision-making, the optimality of lawmaking, the prestige of law, and the effectiveness of legal norms. In the foreseeable future, the prospect of the development of legal science is inextricably linked with the deepening of its sociological nature. The process of sociologization of jurisprudence involves the development of new questions that cannot be posed within the boundaries of the legal concept.

The essence of the nature of the question does not come down to breaking or mechanical expansion of

the general theory of law and reorientation of the sociological foundations of legal research, rethinking traditional problems of jurisprudence from the point of view of the sociological approach. Such an approach will contribute to the enrichment of its subject, the identification of new social problems of law. In this aspect, it can be said that, based on the social nature of law, the theory of law cannot but be sociological. The prospect of relative unity, and not the identity of the theory and sociology of law, already at the present time seems to be quite certain.

In the scientific literature, the opinion has been entrenched that there are two groups of social and legal problems that determine two areas of sociological research in law. These are positive and negative (criminological) studies.

Along with such approaches, the point of view is also being replicated that sociological research in law must be sought in the ratio of the categories of what should be and what is (the "norm" and "life"). In this case, it is noted that the functioning of law depends on how clearly the rights and obligations of subjects are regulated in the norms, and that it becomes possible to determine this precisely thanks to sociological research. In both cases, the social problems of the operation of law, which has been formed and is being implemented in the legislative act of state power, are taken into account. There is no doubt that the problems of the social action of law, as well as its optimization, should be considered from the point of view of the dominant trends in the sociology of law. Thus, the subject of the sociology of law is the system of social factors that interact with legal phenomena and processes, as well as the mechanism of such interaction. This position focuses specific research on identifying specific determinants (not legal in nature) that affect the law, as well as being influenced by it, to reveal new trends in various spheres of public life.

It is well known that the object of science is that which is to be studied. Without going into a detailed analysis of the features of representing the object of scientific knowledge in various cognitive paradigms, it should be noted that the object of scientific knowledge has always been a certain reality included in the cognitive process. The fact that the same object can be studied by different sciences, but from their own methodological positions, is currently not in doubt. The structure of the methodology of science also includes the definition of the subject of science, its conceptual and categorical apparatus (the language of science), as well as a description of the methodological procedures used by a particular science to collect and analyze scientific information.

The object of the sociology of law as a branch of general sociology is law as a social institution and all legal phenomena that are a variety of social phenomena and processes.

In the legal varieties of social phenomena and processes studied by sociology, there is a very important, methodologically significant feature that allows them to be distinguished from specific aspects studied by the legal sciences. ***Thus, general sociology does not distinguish between a social fact and a social phenomenon.*** As for the concepts of "legal phenomenon" and "legal fact", the sociology of law uses only the concept of "legal phenomenon", since the concept of "legal fact" has received a completely different, quite clear meaning **in jurisprudence**. Legal fact - these are the circumstances that, within the framework of a particular socio-legal system, entail the emergence, change or termination of legal relations.

In the sociology of law, the concept of "legal phenomenon" acquires a categorical status. ***It fixes the whole set of social phenomena mediated by legal relations, but not always entailing the emergence, change or termination of legal relations. Legal phenomena are part of organized social life, which is formed and functions under the influence of legal norms adopted in society.***

The most striking example in this case is the institution of marriage, which is both a social institution and a legal one, which has a formal legal side associated with marriage registration, regulation of

property relations, responsibilities for raising children, etc. At the same time, as a social institution the family implements such socially important functions as the reproduction of the population; ensuring the psychological and material security of members of society; socialization tasks, etc.

The subject of the sociology of law is the study on the basis of sociological methodology (the main thing is the analysis of acting and interacting social subjects) of the emergence, functioning and development of the social institution of law in the system of social relations, as well as the social effect of law at all levels of social organization - society as a whole, social groups, social communities, social organizations and individuals.

The term "*sociology of law*" to denote a special scientific direction was introduced relatively recently, in 1962 г. at the 5th International Sociological Congress. At the same time, at the suggestion of a group of sociologists and jurists, the *Research Committee "Sociology of Law"* was created, which is still active within the **framework** of the International Sociological Association (RC 12).

Based on the analysis of the object and subject of the sociology of law, the following definition can be given: the **sociology of law is a private sociological theory that studies the social factors of the emergence, functioning and development of law as a social institution in the system of social relations, exploring the process of lawmaking and the formation of legal consciousness, the legal culture of society, its constituent social groups and individuals as subjects of legal relations.**

Sociology of law in the system of social sciences.

Important for the completeness of understanding the subject of the sociology of law is its relationship with other sciences, primarily with the theory of law and the philosophy of law. It must be borne in mind that there are a number of points of view in the presentation of this problem. One of them is reduced to the denial of the independent nature of the sociology of law, based on its interdisciplinary nature.

Another statement says that the sociology of law is replacing the theory of law (or at best they are two components of one general science). This point of view is especially actively defended by Polish scientists Podgursky A. and Kwashnevsky Ya.

In research works on the general theory of morality, the position is replicated, according to which, within the boundaries of this unified theory, there are relatively separate groups of problems that can be characterized as questions of "philosophy of law", "sociology of law", "special legal theory" (general positive theory). Meanwhile, the following question arises: what exactly should be understood under each of the noted categories.

It should be emphasized that the current stage of development of scientific knowledge, including legal knowledge, is characterized by an increase in aspects (facets) of the study of the same object. In other words, the object area of the sciences can be one, but the subject area, given the content and specifics of a particular science, is different. The fact is that the subject represents a category denoting a certain integrity, isolated from the world of objects in the process of human activity and cognition. Thus, the same object is studied with greater specialization and in a differentiated approach to it by various sciences. For example, "philosophy of law", "sociology of law", "theory of law".

At the same time, the development of knowledge is accompanied by integration processes. This is observed when new knowledge is born at the intersection of scientific disciplines. At the same time, the integration of knowledge also determines the prospects for the development of science. So, at the intersection of sociology and jurisprudence, a new scientific discipline has developed - the sociology of character, which is an integrative character. And this is quite understandable, because socio-legal research by its nature is complex. This provision also applies to sociological research in legal science.

The sociology of law has its own theoretical part, a number of problems of sociology of the middle level (that is, located between questions of theory and empirical data) and, finally, a set of questions related to the methodology and methodology of research. Speaking about the relationship between the theory of law and the sociology of law, it should be borne in mind that the theory of law, as an independent discipline, has an established subject of study, a system of categories and concepts. The theory of law and the sociology of law are interdependent and interrelated areas of scientific analysis and, at the same time, have their own characteristics.

The philosophy of law occupies a special place in the system of sciences. It is a general scientific phenomenon that integrates the entire set of principles, ways and methods of knowledge developed by all sciences, including legal sciences, used in the process of scientific knowledge of the features of legal activity, its development and practical transformation.

The philosophy of law does not genetically originate from itself, but through a concrete study of the manifestations of law. In the process of such a study, it gradually became clear that all legal phenomena have common characteristic features that can be recognized by certain approaches, principles, and methods. This is how the philosophy of morality was born and evolved. Its meaning lies in the epistemological service of branch legal sciences that study specific legal phenomena.

The purpose of the philosophy of law is to equip not only the general theory of law, but also all branch legal sciences with reliable epistemological tools.

The philosophy of law is the cognitive basis of the entire system of legal sciences. It includes a number of components: a system of methods of cognition; the doctrine of such methods as general scientific and particular scientific means of cognition. All these components are organically interconnected and mutually enrich each other.

In addition, by combining the cognitive capabilities of all legal sciences, the philosophy of law enriches the research potential of each of them. The synthesizing qualities of the philosophy of law are based on the fact that the core of philosophy as a methodological science is the unity of dialectics, logic and theory of knowledge. This means in a generalized form that the same system of laws and categories in dialectics acts as principles of knowledge of the objective world, in the theory of knowledge - as a means of solving specific cognitive problems, and in logic - as a form of scientific thinking.

The unity of dialectics, logic and theory of knowledge as a methodological basis in the cognitive process acts as an important means of translating objective development into its subjective comprehension.

Along with this, it should be noted that the philosophy of law in terms of structure has several levels. The dominant ones are: dialectics, which determines the main directions and general principles of cognition in general (the highest level), general scientific (middle), used in the cognition of a special group of the same type of subjects; private scientific, used in the process of studying the characteristics of an individual object (lower level), transitional - from cognitive-theoretical activity to practical-transformative activity, revealing common ways and forms of implementing the results of scientific research into life.

Consequently, the philosophy of law acts as a systemic basis for any legal research. This circumstance is due to the following. **First**, the promotion of philosophy as a theoretical basis and initial system of methods in legal research. **Secondly**, the application of general scientific provisions and conclusions formed by interdisciplinary research and used in the knowledge of legal reality. **Thirdly**, a guideline for the widespread use in the process of legal research of purely scientific methods, both

independently obtained by science, and those developed by other special sciences. **Fourthly**, focusing on the transition from scientific and cognitive to directly practical activities. This brings the methodological problem to its logical end - the transformation of the subjective into the objective, the abstract into the concrete, legal theory into legal practice. It is important to keep in mind that without such an aspect, the philosophy of law is closed in itself. Meanwhile, its meaning and purpose is to serve the cognitive activity of each and every legal science, to improve legal practice.

Unlike the study of law in a philosophical aspect, the sociology of law examines the functioning of law in society from the point of view of the social aspect. The problem of social determinism of law, the various social functions of law, as well as the conditions for its social action - is the subject of the sociology of law. It should be noted that this is the study of the impact of law on people's behavior, which is an indirect impact on the interests and needs of social communities, as well as combined with the goals of legal regulation.

As a science, the sociology of law is a structured system of social knowledge about law as a specific socio-legal phenomenon in its genesis, as well as in dynamics (action), that is, as a socially determined and socially acting (functioning) phenomenon and process.

It has an increasing influence on the complex of legal sciences. As part of general sociology, it relies on all its technical tools and widely uses an interdisciplinary approach to the study of law, adopting achievements in such fields of knowledge as social philosophy, statistics, social psychology, mathematics, etc. At the same time, in its essence and content the sociological approach is opposed to the dogmatic and purely normative approaches in the study of nature and legal phenomena'. The fact is that it relies on systemic and functional methods and is aimed at a wide-ranging study of such generally significant issues as: the effectiveness of legislation, the essence of rule-making, the mechanism of justice, the opinion of the population about law and legislation, the problems of forming legal awareness in society, legal socialization, etc. d.

The sociological approach means the rejection of the dominant in the XIX century. legal positivism. It closes on the study of legislation and by-laws in their original form, i.e. in the way in which they were sanctioned by the legislative and executive branches. In contrast, the sociology of law, in its broadest sense, studies the actual operation of legal acts and individual norms against the background and taking into account all social regulation, including moral values, customs, public opinion, etc.

At the same time, it studies in a complex form all social and legal phenomena that have a legal content and where law appears as a cause, effect, or determining factor (property, business contracts, the family, the planned and regulating activities of the state, etc.). At the same time, the sociology of law pays considerable attention to the study of the effectiveness of laws and individual norms, the main social functions of law, the analysis of public opinion about it and justice in society, the place and role of legal institutions in it, the prestige of the legal profession, etc.

Thus, the sociology of law, firstly, is a part of jurisprudence that studies the social conditions of the genesis, development and operation of law in society; secondly, it is a scientific direction that studies the foundations of the rule of law, the causes and conditions of social changes occurring under the influence of law, in order to improve the legal regulation of social relations. The considered structure of the sociology of law in relation to the philosophy of law and the theory of law makes it possible to speak of its use as the construction of a specific educational discipline of a legal nature. In the conditions of the modern development of Russian society, this science acquires a special social character, participating in the scientific resolution of topical issues in the theory and practice of state-legal development.

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