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## THE PROBLEMS OF SHAPING THE CONCEPT OF LEGAL REGIME IN LAW THEORY

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The challenge of building a unified holistic concept of legal regimes exists today both in theory and in the sectoral legal literature. However, the problem is still not significantly developed in our opinion. At the same time, the authors in one or another way address legal regimes. Most often legal regimes are addressed if a detailed description of legal regulations regarding the object of special significance is necessary.

The legal regime was first mentioned is found in the sectoral science, which deals with the legal regime in its purest form. In many cases, scientists use the term "legal regime" as such that has long been known to science having universally recognized scientific concept. But legal regimes are scarcely explored in the national legal doctrine.

Ukrainian legislation has sufficient thousands of regulations that employ the term of legal regime. The term "legal regime" is also widely used at the executive level. However, today we can mention the fact that the very legal regimes are scarcely explored in the national legal science [1; 25]. For example, today legal science has no unified generally accepted concept of this phenomenon. In addition, the polysemy (multiplicity of concepts) is very common regarding the legislation on regimes, as well as wide synonymy (embodying the same concept into various terms). The above phenomena impede the law enforcement practice, reducing the effectiveness of the relevant rule of law.

There are many discussions arise in science as for the concept, structure and content of the legal regime. Researchers are conducted both at general theoretical level and at the level of sectoral scientific studies.

The concepts of "regime" and "rule" are very close. Even some scientific works refer to regime as state regula-

tive rule. Order (Polish «reglament»; French «reglement», wherein «regle» is a rule): 1) rules that regulate the organization of an activity, for example rules of meetings; 2) name of some international congresses acts [9, p. 432].

In fact etymologically these two terms are similar, but the jurisprudence has filled them with different legal content. Legal rules are mainly used for detailed descriptions of the activity of public bodies that cannot be fixed through administrative procedures (e.g., the Verkhovna Rada of Ukraine, the Constitutional Council Regulations, Regulations of the Constitutional Court, etc.).

Petrov S. in his works expressed an opinion on a comprehensive regime system of state government (which provides opportunities to represent governance as a comprehensive set of relevant modes) [18, p. 27].

Legal regime is definitely an external legal form. Differences between the external and internal legal forms are that internal form is a relationship between the elements of law and external one is a relationship between the law and non-legal facts that require legal regulation. The basis of the legal regime is appropriate social regime actually existing in society.

Note that either explicitly or implicitly the problem of legal form, the form of law, internal and external legal forms was risen in general theoretical and sectoral literature both in pre-revolutionary and Soviet periods; just like it is present now.

Stable and objectively embodied connection between the components of the fact is main and essential for the legal form.

The internal legal forms include, above all, rule of law, legal procedure, legal relations, legal fact, as well

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as the large blocks of system of law such as private and public law, material and procedural law, domestic and international law.

Legal regime is a multisided legal notion that covers various legal levels, which significantly complicate the analysis of that notion.

In addition, there are also outlined other legal forms that mediate the transformation of different legal facts. They are always compound, that is why the later ones transform into particular legal facts and belong to legal forms.

This is especially true in the various structures of the legal system, which reflect the content of the legal form as the organization of something and then move from one to another by means of legal form through the procedure, action or so-called “transformation.”

Some scholars when researching legal regime address it as a law (i.e. legal) form [5, p. 7]. We can agree with the idea that the legal regime is first of all a legal form, but a very peculiar one, because every phenomenon the surrounding world has its form and content.

The form and content as key interrelated philosophical categories almost always explicitly or implicitly are involved into the cognition process. And it is already a traditional understanding that the forms of law are sources of law. In our opinion, using the term “form of law” under such circumstances is not entirely correct.

A brief review of understanding of the legal form by the scholars specializing in specific areas of law and specialists in the theory of law has shown that there is no general understanding of a unified legal form concept among them [6, p. 10 - 81].

In the case with legal regime we can see the movement or transformation of the internal legal form into the external legal form, which in turn leads to understanding the lack of a clear distinction between internal and external legal forms, since there is no law as a “thing in itself”, for the law is always associated with something non-legal.

Blyahman B. believes that the legal regime as a form of systematization of law is “... a legislation system that is made of not only areas and institutes, but also a set of legal regimes ...” [8, p. 6].

Professor Alekseev S. was one of the first among Soviet scientists who began to study the phenomenon of legal regime in details, drawing attention to the deep legal nature of this phenomenon. In general, under the legal regime he understood the order of regulation expressed in a complex of legal means characterized by a peculiar form of grouping, and also interacting permissions, prohibitions and positive obligations including those that create specific direction line of regulation [2, p. 185]. Matuzov N. and Malko A. consider legal regime as a special order of legal regulation, which is expressed through a combination of legal means creating a desirable social status and specific degree of favourability or unfavourability to meet the interests of the subject of law. So, the regime is a system of conditions and methods of execution of legal regulation, so-called “order” of the law functioning, i.e. its functional characteristic [17].

In his turn Bachrach D. defines legal regime as a system of rules of law that govern human activity and human relations regarding certain objects [7, p. 13].

Rozaev I. links the concept of “legal regime” with settling the problems related to the area of international and domestic security. In this respect under legal regime he understands the set of legal acts and administrative and

technical measures that form within the appropriate sphere of security a kind of comprehensive legal and administrative institute [19].

Isakov V., exploring the essence of the concept of “legal regime”, said that its main basis is a social regime that is enshrined in the rules of law and provided by a set of legal means. In particular Isakov V. understands the social regime as a relatively stable connection of social object (phenomenon, process, institution) with other social objects, and that connection provides achievement of certain goals. It analyzes the correlation of legal and social regimes and states that the legal form of the latter is only one of the means of securing and ensuring social regime [11, p. 258-259]. Considering the structure of the legal regime Isakov V. outlines such elements as legal personality, which is the legal status of the object as mode holder; legal liability and legal guarantees that protect and maintain this regime; benefits and privileges that regime holder has in relations with other participants of social relations [11, p. 261].

Today there is no single universally accepted and monographically grounded, concept of this legal phenomenon that makes scientists of various areas of law seek reasonable concept, and without single unified theoretical framework it all leads to even more confusion as for this matter. The legislator also ambiguously uses the term in various legal acts.

Getting back to the research by Alexeyev S. we can remember his view that the legal regime is a separate aspect of legal impact on social relations, which separates it from the mechanism, methods, techniques and types of legal regulation [2, p. 184-206].

Along with this, a number of prominent scientists in the field of theory of law identify the types of legal regulation and legal regimes as the same. This is also a point of view of a Professor, Doctor of Law Skakun A. [23, p. 538-539].

But we shall support the viewpoint of the scientists support that distinguish legal regimes and types of legal regulation as separate phenomena of law environment. So, according to S. Alekseev, types of legal regulations reflect general principles (general permission or the general prohibition) on which legal regulation is built, and they are embodied in legal regulations, they live therein and perform regulatory impact with their help. On the other hand, legal regimes can combine different types of legal regulation and provide a comprehensive impact on public relations [2, p. 104-105, 189].

Shamsumova E. stresses that social value of types of legal regulation is transformation thereof into legal regimes. Types of regulation are an inevitable part of legal regimes, and due to these regimes precisely because they (types) exercise regulatory impact on social relations; this is the perspective where their essence is revealed, which characterizes their actual social significance [21, p. 88].

Let's emphasize that the types of legal regulation were the prototype of legal regimes and they were the soil on which the primary regimes of public and private law were built, from which regimes of the areas and subareas of law were organized. If you look deeper, we can see that the foundation of the types of legal regulation were general authorizations and prohibitions [2].

Therefore, the legal regime is the based for division of the law into public and private law, moreover authorizing and prohibiting legal regimes are primary ones in relation to other legal regimes.

Each area of law has its peculiar regime (as a set of regulatory forms). It is legal regime and not the subject or

method that indicates the fact that specific relationships are regulated by the rules of law according to their particular area. Even if there are common ones within the area that require a special approach upon their regulation, we can address to the regimes of the subareas or legal institutes.

And finally, when the scope of legal regulation includes the objects requiring specific careful approach upon the regulation process or when we need to highlight features of the regulatory process as for this subject, we should consider special legal regimes of separate objects and activities types. Thus, the object has a special social significance such as the danger of social and specific social interest.

This is the status of the subject, as a new legal phenomenon, though we can describe the contents, rights and duties (material and procedural) without involving thereof, as well as legal liability in connection with specific subjects. The same is applied to the object. All legal phenomena we can associate with a particular object and thus we obtain the regime: authorizing (private law) and prohibiting (public law); sectoral regime is a sectoral object (regime of constitutional, criminal, civil law); regime of the institutes - is a generic object (spouses' property, customs regimes); regime of separate objects is a species object (regime of drugs, weapons), etc.

Thus, the term "legal regime" is a more meaningful legal category than the "type of legal regulation." And due to the regimes, types of legal regulation regimes prove themselves as the source of its principles [18, p. 87-88]. Meanwhile, there are also many researchers who put the equal sign between the regime and regulation mechanism [19, p. 540], but it would be fair to deem this position as incorrect.

The mechanism of legal regulation is a unified system of legal means, methods and forms by which normative character of law is translated into standardizing of social relations meeting interests of the subjects of law and establishing and providing the law and order ("the relevant in the law becomes existent") [23, p. 540].

The relevant legal acts, that are translated in time to the subjects of each particular regime usually include the following information: the type of resolution and the agency that issues this resolution for the implementation of a particular type of regime; actions to be registered; actions that are prohibited without special permission; types of responsibilities and specific sanctions that may follow for infringements of the regime, as well as the procedure of appeals and claims for the actions of the state bodies and officials that have exceeded their authority in the field of administrative and legal regime.

Spassky A. rightly considers the legal regime as the legal form of the dynamics of relationships. However, in our opinion, we should focus on understanding the object of the legal regime through public relations and it is a social situation that creates or alters social relations, and it is the main element that creates the legal regime. The situational approach in law is typical for understanding managerial aspect of law and for the regime regulation as well.

Indeed legal regime combines two closely related elements: social meaning and legal form.

"Social regime can be defined as a relatively stable connection of social object (phenomenon, process, institution) with other social objects, which provides achievement of certain goals" [11, p.259].

«Further improvement of the legal regimes can proceed in two ways: first, by optimizing the social regime content and clarifying its economic, environmental, psychological

and other factors; Second, due to more accurate and grounded choice of legal means that are used to ensure it» [11, p. 262].

Isakov V. distinguishes within the structure of social regime the object-carrier of the regime under which he understands various social units like subjects of law, social institutes, social processes, objects of the environment, territory and legislature [11, p. 259].

The second element of social regime to his opinion is the environment where the object-carrier of the regime lives, meaning the object of establishment of the regime. The third element of social regime determines its contents that include two groups of parameters: first one includes the conditions that make up the environment of the object-carrier of the regime; second one includes the requirements towards the carrier of the regime, limits of its activity and level of responsibility for the performance of its functions, etc. [11, p. 260].

"... The task of social regime and meaning of its existence is to provide the optimal performance of object-carrier of the regime within the system of social relations" [11, p. 261].

Considering the "legal shell" of the regime Isakov V. Emphasizes the fact that if we come to a detailed analysis of legal regulation means that make up the mechanism of legal regulation consisting of the rules of law, legal facts, acts of realization and obligations [11, p. 261].

The legal regime is a model of specific forms of social relations regulation, as well as a settled state of such relations. It is possible to also understand the mode as a type of mass-involving, i.e. something that has happened and has long existed in reality. There are areas of intense and non-intense legal regulation [25, p. 69], wherein the legal regime in addition to the complex (determined array) of regulatory means indicates the intensity of legal regulation [26, p. 68].

The views of the professor of administrative law, Doctor of Law Bahrah D. had a significant influence on the theory of legal regime. In his works he focuses on the fact that legal regime is a system of rules of law governing the activities and relationships between people on certain objects. Bachrach D. considers legal regime as a set of specific type of public relations that is fixed by legal regulations and provided by a set of legal and institutional means [5, p. 201].

Thus, the relevant legal regime concepts like instrumental and managerial ones significantly influenced the legislator and adopted in Ukraine regulations include understanding of the regime in one or another aspect.

Most scientists who have studied theoretical principles of the legal regime phenomenon emphasize the parity of the categories of "legal status" and "legal regime" [26; 27; 28] and other.

In first case all legal facts of reality are associated with the subject, and in the second case are associated with the object of regulation. If a status is a comprehensive statistic legal phenomenon, the regime is a dynamic one associated with the constant changes in the object.

We should emphasize that legal science recognizes the object of law, object of legal regulation and object of legal relation. An issue about objects in the law is one of those that still cause the polemics. It is the object of legal regulation that is the basis of division of the regimes into the levels. The first level (global) includes regimes of public and private law (prohibiting and authorizing). The second level includes regimes of the institutes, sub-institutes and separate objects.

The basis for legal regime is a social regime.

The object of legal regime is localized in space and

time fragment of public relations concerning the particular subject of the surrounding world, this fragment is characterized by high-quality content and stable organization of the subjects.

According to the philosophical understanding of the object it is the focus of the subject's activity or in our case it is legal effect. Behaviour (activity) of the subjects is determined by the object of legal relationship in administrative law, while the weal and goods (things, values) towards which the relations appear, are determined by the subject of legal relations [7, p. 47; 14, p. 55; 26, p. 408].

Blyahman B. stipulates that the object of legal regime as a system of regulative legal means is different variations of objects and subjects of law and their common legal status [8, p. 21].

It seems that the object of the legal regime as a system of regulatory legal means is not legal relations but objects of the material world towards which such relationships emerge. But this is not true. The object of legal regulation is not the subjects the material world but human activity (subjects of law). The legal regime as a legal phenomenon is a certain organized procedure (regulation order) of regulation, that can have and its object only what may be subjected to legal impact, and not physical like in case with things. These are certain types of legal relations and not things of the material world towards which these relationships emerge.

Spaskiy A. In his thesis paper fairly outlines two main approaches as for understanding the legal regime: contextual and managerial. The former is typical for the scientists in the field of theory of state and law and it is based on the views of the professor Alekseev S., the later is typical for scientists in the field of administrative law and is based on the views of the professor Bakhrakh D. as a representative of the science of theory of state and law Spaskiy A. also stands upon the grounds of the contextual approach determining the legal regime as a legal form of legal relations [25].

We agree that the legal regime is a legal form and moreover, it is a form of legal relations, since its object plays a leading position in the content of the legal regime. The object of the legal regime, based on the nature of this legal phenomenon, is relations or law mediated activity of the subjects concerning the specific things [25, p. 87-89].

This way we can represent the legal regime of any object (legal relations) but not always such relations, especially in private law, require strict legal regulation and mandatory regulation of public relations. The legislator by introducing legal regimes reflects its own attitude putting emphasis on the specific legal relations.

Legal relations is a legal form, while at the same time the regime is also a legal form, but the form of the forms is a metaforma.

Each legal regime has a distinct structure with several levels.

The first level is legal abstraction, which includes the so-called atypical legal resolutions (axioms, presumption, functions, rules-principles).

The second level includes material legal means: rules of law, legal relations, and legal facts.

The third level is based on a procedural legal means like acts of realization and implementing acts.

The fourth level includes ethic and psychological legal means like legal awareness, legal culture, legal creeds [8, p. 21].

Therefore, it is reasonable to outline actual and legal content of legal regime.

The actual content is a set of legal facts (conditions) under which the regime becomes effective, legal content is material

and procedural rules of law, atypical legal orders, etc.

We should make a special emphasis on the aspect that legal regulation is a regulation of social relations, wherein the result of legal regulation should be law and order, which can also be considered as a regime. Etymologically the regime - is the order [4, p. 220].

Most scientists emphasize that regime is not just an order of legal regulation, but a comprehensive formation that includes all means and methods of legal regulation in a particular ratio [25, p. 149-179; 7; 8; 10; 11; 12; 13; 15; 16; 20; 21; 22; 24; 27; 28], with the changes in surrounding conditions the ratio changes as well, permissions substitute prohibitions, etc.

«Means answer the question what regulates the human behaviour, while method answer s question how this directed impact is exercised» [4, p. 220].

Means are considered at several levels: the first level is legal abstraction, which includes the so-called atypical legal orders (axioms, definitions, presumptions, fictions, principles, etc.); second level includes material legal means (rules of law, legal relations, legal facts, etc.); third level includes organizational procedural legal means (acts of realization, acts of implementation, etc.); fourth level includes moral and psychological legal means (legal awareness, legal culture, legal prescriptions, etc.) [8, p. 20-21].

Under the method of regulation we understand permission, positive obligation (passive liabilities) and prohibition [23, p. 537]. Due to the methods and means the normative character of law is transferred into the regulation of social relations. Means and methods are tightly connected. Each method corresponds to specific means.

The structure of legal regime all items are strictly adapted one to another and included depending on the dynamics of social situation. The choice of legal regime depends on many factors: peculiarities of negative factor influence on the society, the genesis of this factor, temporal characteristics of influence and social aim of settlement. «Every particular case will not just have a chaotic set of legal means and methods, but relevant structured system of "enlarged bloc" among the overall arsenal of legal tools; that system integrates a defined set of legal means into a single structure» [3, p. 171].

Summarising it should be noted that legal science lacks a unified generally accepted concept of legal regime. The phenomenon of legal regime is associated with the systematization of law, distribution system of law into the areas and subareas of law, institutes and sub-institutes. Each level of division has its relevant regimes. Thus, upon the division of law into public and private law we use relevant the following regimes: generally permissive and generally prohibitive.

Legal regime is a multisided legal phenomenon that covers different legal segments, which significantly burden the analysis of the phenomenon. In addition the legislator (lawmaker) uses the polysemy (various meanings of the concept) and wide synonymy (referring to a concept using different terms) referring to the concept of regimes. The legal regime is directly related to the legal regulation; it shows a high level of settlement of legal relations and their detailed regulation.

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## ПРО МОЖЛИВОСТІ ПОСИЛЕННЯ ПОКАРАННЯ ЗА ПОРУШЕННЯ ПРАВИЛ ДОРОЖНЬОГО РУХУ АБО ЕКСПЛУАТАЦІЇ ТРАНСПОРТУ ОСОБАМИ, ЯКІ КЕРУЮТЬ ТРАНСПОРТНИМИ ЗАСОБАМИ

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*У статті сформульовано пропозиції за результатами розробки нормативних інструментів для посилення кримінальної відповідальності за порушення правил дорожнього руху або експлуатації транспорту особами, які керують транспортними засобами в стані алкогольного сп'яніння або у стані, викликаному вживанням наркотичних або інших одурманюючих засобів.*

*Ключові слова: злочини у сфері безпеки руху та експлуатації транспорту, порушення правил дорожнього руху, обставини, які обтяжують покарання, стан сп'яніння, стан, викликаний вживанням наркотичних або інших одурманюючих засобів, довічне позбавлення волі, позбавлення певного права.*

*В статье сформулированы предложения по результатам разработки нормативных инструментов с целью усиления уголовной ответственности за нарушение правил дорожного движения или эксплуатации транспорта лицами, которые управляют транспортными средствами в состоянии алкогольного опьянения или в состоянии, обусловленном употреблением наркотических или других одурманивающих средств.*

*Ключевые слова: преступления в сфере безопасности движения и эксплуатации транспорта, нарушение правил дорожного движения, обстоятельства, обтягивающие наказание, состояние опьянения, состояние, вызванное употреблением наркотических или*

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