

**THE PROBLEM OF THE EXERCISE OF LAW IN RUSSIA AND FRANCE: NATIONAL AND INTERNATIONAL ASPECTS**

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**Abstract.**In this article, we give an assessment of the problems of the exercise of law that has developed within the framework of the legal science and practice of Russia and France at the level of comparative analysis. Particular attention is paid to the problem of determining the measure of freedom in the exercise of law by the article authors. At the same time, the empirical foundations of the scientific article were the normative materials of national and international law used in the legal practice of Russia and France.

**Methods:** this article is based on a comparative legal method, which is based on a dialectical approach to social matter. We applied induction, deduction, analysis, synthesis, formalization and other components of the methodical arsenal of article in various combinations.

The research results included the authors' conclusions about the nature and essential assessment of the processes of the exercise of law within the framework of Russian and French legal systems. The Russian and French legal systems have common paradigmatic evolution modules based on the continual-European style of legal thinking. Both legal systems are characterized by a legislative method that is external to the society; the law is the main source of law in both systems. However, the functional aspect of the presentation of these systems has a number of distinctive features in relation to each other.

**Key words:** law, Russian, French, dynamics, exercise, development, measure, national, international.

## 1. INTRODUCTION

The institute for the exercise of law is one of the key to understand the dynamic functions and functional aspects of the evolution of legal systems of the world. Like any social phenomenon, a legal phenomenon, in order to become an element of public order, should be implemented in the social system. In this case, it is the institution of the exercise of law that becomes a key indicator for this kind of implementation.

It is important that it is through understanding the mechanism of the exercise of law that it is possible to see most clearly and objectively the regulatory effect of law in this or that legal order, to understand its effectiveness and to identify some "points of growth". In a broad sense, to understand the "exercise of law" in relation to any legal system means to understand the specific features of legal understanding and the dominant paradigm of jurisprudence in a particular country, to understand the mechanism or process (in case of abandoning the mechanistic design) of the exercise of law, to capture social action and social outlays of law. In the narrow sense, the exercise of law is associated with the implementation of subjective law by the subject of law. In this article, we address a broad understanding of the exercise of law.

## 2. METHODS

This article is based on a comparative legal method, which is based on a dialectical approach to social matter. We applied induction, deduction, analysis, synthesis, formalization and other components of the methodical arsenal of article in various combinations. The authors sought to equally pay attention to every rule of law that is studied in the article - Russian and French. The formulation of the problem of national and international sections forced us to use a systematic approach.

## 3. RESULTS AND DISCUSSION

Thinkers of the past and present have repeatedly turned to the philosophical grounds for the exercise of legal norms. So, the founder of the school of legists Shan Yang noted that the law enforcement activities should be carried out by "competent people" who are able to understand the essence of laws and regulations". (Shan Yang, 1993, P. 235). H. Hegel characterizes the application of law as an objectively complex activity, in which the natural and the accidental are dialectically combined. (Hegel, 2001). Ch. Beccaria in the famous work "On Crimes and Punishments" characterizes law

enforcement activities as a logical syllogism, in which a general law is the big premise, and a small one is a concrete act that contradicts or corresponds to the law; the conclusion is justification or punishment. (BeccariaDes, 2002).

In the Russian legal science, the intensification of works on the problems of the exercise of law falls on the XIX century. At the same time, we can observe a variety of trends and approaches in the work content on this set of problems. The study of N.A. Gredeskula "To the Doctrine of the Exercise of Law. The Intellectual Process Required to the Exercise of Law" is made in the mainstream of the psychological school of law (Gredeskul, 1900).

The sociological trend in jurisprudence is represented by the works of S.A. Muromtsev. Following F. Zheni, he proceeds from the thesis about the need for "free creativity of lawyers" and notes that: "Only a historical and philosophical analysis of the law is capable of putting content in it. The spirit of law is its historical relation to the interests of the past, the present and the future; to understand the law means to understand it as a moment of historical development; to apply it means to know the historical content of the principles that form its content, and to promote the implementation of progressive principles, while retaining an excessive manifestation of the beginnings of the obsolete. So one should understand and apply the law in fact contrary to all dogmatic theories. But in the case interests it is necessary that the events to be concealed and the unconscious things to be made openly and consciously so that science and school do not leave practice in this important matter without help and guidance" (Muromtsev, 1877).

The structures of the exercise of law carried out by the representatives of legal positivism are also in demand in the specified period of time. So, G.F. Shershenevich in the "General Theory of Law" represents the stages of law enforcement activities.

In general, as Professor S.V. Lipen notes, - the main trends in the development of ideas of the exercise of law in Russia in the pre-revolutionary period are: 1) formation of a system of scientific terminology, systemic relationship of problems of law enforcement (concept, essence, principles, application stages); formation of a system of ideas and categories within which the scientific understanding of the exercise of law, lawful conduct, interpretation activities, establishment and overcoming of gaps in law takes place; 2)

development of understanding of law enforcement activities, their historical development and current status; 3) the ratio of legality and discretion, the features of intellectual-volitional content of law enforcement activities in the competing legal theories. (Lipen, 2013, P. 255-256.).

An important distinctive feature of prerevolutionary views on the problem of the exercise of law is the absence of a special division between **the application of law and the exercise of law**.

It was the Soviet legal doctrine that gave the legal world a methodologically verified design of the exercise of law. The general legal theory of the exercise of law developed in the 1970s and 1980s, with its deep study, was directed in a sociological way. For example, Professor Yu.S.Reshetov highlighted the self-regulation of law in the process of the law enforcement (law enforcement self-regulation), individual and legal regulation and the exercise of individual legal acts (Voronin & Reshetov, 2016). At the same time, the Soviet legal science clearly defined the forms of the exercise of law, namely: the forms of direct exercise of law - observance, execution, use; and a special form of the exercise of law - the application of law (implementation of the prescriptions of law when using powers, active inclusion of state or other law enforcement competence). In this case the examples of law enforcement are the court decisions, publication of the Presidential Decree. At the same time, all these forms of the exercise of law reflected the goal of achieving a single regulatory effect.

The Soviet jurisprudence bound the measure of law only with the state mediation of public relations. In modern Russia, the paradigm of legal measure verification is being changed by science and practice. The Russian jurisprudence is objectively transformed under the influence of global trends in the development of the legal map of the world. Such trends include convergence of legal systems of our time and competition of law and order.

*The French legal theory and practice* does not know the bundle of "the application of law - the exercise of law." The term "application of law" is used in the broad meaning traditional for French legal science, synonymous to the categories of "exercise". (termesjuridiques, 2016, P. 37).

Two main vectors determine the measure of the exercise of French law: temporal and spatial. Thus, the effect of law in time in the French law and order is subordinated to the ancient Roman maxim "lex

posterior derogat priori", that is, the subsequent law abolishes the previous one. At the same time, according to the general rule, the French law does not have retroactive force. In particular, this provision is fixed in Art. 2 of the French Civil Code: "The effect of law extends only to the future; the law does not have the retroactive force". (*Code civil des Français*, 1804). An exception to the general rule is stipulated in Art. 1-6 of the Law on Payment of Compensation to Victims of Road Traffic Accidents dated July 5, 1985, as well as in some decisions of the highest judicial authorities of France (in particular, in the decisions dated January 19-20, 1981, when the Constitutional Council established an appropriate opportunity in respect of the criminal law. (Zakharova, 2012).

According to the general rule, the French law extends to the whole territory of the country. Solution to the problem of the application of foreign law on the territory of the country depends on the set of legal norms. If the principle of territorial validity of legal norms is obvious and unconditional for their public legal set, as well as for the criminal law of France, then the cases of treatment to the foreign legal regulations are possible in case of prolongation of the conflict rules in the private law (*droitprivé*) of France. (Zakharova, 2012).

Turning to the problem of the exercise of law that has been developed in the French legal practice, one cannot help but dwell on the issues of law interpretation. Three main characteristics distinguish the French approach to the interpretation of law from the Russian doctrine on this issue: 1) definition of the interpretation of law only as "written scientific opinion, having a decisive influence in making a decision on a particular issue" (BelletRapport, 1980, P. 11) ; 2) interpretation through the prism of two law schools: the exegetical school of interpretation and the school of "Free Scientific Search", the first of which is based on the maxims of legal positivism, and the second one is an integral part of sociological jurisprudence. It was the representatives of the school of "Free Scientific Search" (F. Zheni and his followers) who proceeded from the thesis that the interpretation of law cannot be exhausted only by the textual forms, the interpreter should use the whole array of social relations while carrying out the interpretation activity.

It is equally important to exercise the right to resort to the international empirical grounds of law for a comprehensive assessment of the problem. In modern conditions, the inclusion of the international component in the framework of the Russian legal

system, on the one hand, implements a transparent model of interaction between the legal systems of the world, and on the other hand, raises question of the legal sovereignty of legal systems in part (Zakharova & Przhilenskiy, 2016).

The trend of the legal system sovereignization has most clearly manifested itself in the Russian Federation. For example, this has been clearly manifested in the decision of the Constitutional Court of the Russian Federation dated April 19, 2016 No. 12-P "On the Case on Resolving the Issue of the Possibility of Executing the Judgment of the European Court of Human Rights dated July 4, 2013 in the Case "Anchugov and Gladkov v. Russia" in Connection with the Request of the Ministry of Justice of the Russian Federation in accordance with the Constitution of the Russian Federation". As rightly noted by Professor N.L. Lyutov, one of the key problems of the exercise of law (both in Russia and abroad) lies in the achievement of the goal of implementing an effective model of legal regulation by the legislator and the law enforcer (Lutov, 2014).

In France, the international component of the exercise of law is set at the constitutional level. Thus, the constitutional bases for the extension of European law are defined in Art. 88-1 of the Constitution: "The Republic participates in the European Communities and in the European Union, formed by the states that have entered into them freely for joint implementation of certain competences on the basis of international treaties that have been developed by these states. The Republic can participate in the European Union in compliance with the conditions stipulated in the Lisbon Treaty signed on December 13, 2007, amending the Treaty on the European Union and the Treaty establishing the European Community".

However, according to the French doctrine, the priority of norms of national and international law is taken by the constitutional set in the hierarchy (Pactet & Mélen, 2007, p. 535.). At the same time, the European integration law not always correlates with the national law of France. It is, in particular, a landmark case concerning the legalization of legal status of persons who have changed their gender in the European Court of Human Rights (*LegeaisGrandssystèmes de droitcontemporainsApproche comparative*, 2016).

#### 4. SUMMARY

1. The scientific doctrine considers the process of exercising the law to be equivalent to the process of the "application of law" in France. The Russian legal doctrine includes more structural elements in the process of exercising the law, to each of which it attaches its functional significance.

2. Cognition of the category of the "exercise of law" in relation to any legal system is an explanation of the specific features of legal understanding and the dominant paradigm of jurisprudence in a particular country, associated with the perception of the mechanism or process (in the case of abandoning the mechanistic design) of the exercise of law and the results of social action of law, taking into account social outlays of law.

3. It is natural that each of the above-mentioned legal systems has specific features in the practice of implementing legal norms connected, in our opinion, with three key factors: 1) the system of building jurisdictional bodies, 2) the selected legal doctrine of interpretation of legal norms, and 3) the selected legal doctrine of the hierarchy of legal norms.

#### 5. CONCLUSIONS

The Russian and French legal systems have common paradigmatic evolution modules based on the continual-European style of legal thinking. Both legal systems are characterized by a legislative method that is external to the society; the law is the main source of law in both systems. However, the functional aspect of the presentation of these systems has a number of distinctive features in relation to each other.

In the future, both legal systems seem to have every chance of internationalization and mutual convergence.

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