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PRACTICAL FOUNDATIONS OF THE INTEGRATIVE THEORY OF LAW

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Abstract: The integrative theory of law, like any social theory, needs constant updating and development in accordance with the dynamics of the development of society and the state. This requirement to a greater extent refers to the practical part of the theory, but the conceptual basis of integrative legal understanding (the fundamental component of the theory) should also be in the focus of research. This article attempts to identify and form some elements of the practical basis of integrative theory. It shows what is law, what elements it consists of and how they are situationally manifested in practice. All these aspects of law are important for the effective work of the legislator, the practicing lawyer, since they form the basis of the methodology used by the effective lawyer. The author discusses what constitutes law, as an element of practice, in different situations from the point of view of the integrative theory: in a situation outside of a specific legal relationship; in a situation of the emergence and functioning of a simple specific legal relationship; in a situation of the emergence and functioning of a complex specific legal relationship; in a situation of a gap in objective law; in the situation of the offense in a specific relationship; in the situation of the offense in a specific destructive relationship.

Keywords: integrative legal understanding, situational complex of science of objective law, situational complex of individually defined norms of cognitive law, legal measure of behavior, "living" law, effective lawyer's methodology.

The concept of law (legal understanding) which is scientifically theoretical and instrumentally suitable for effective activity is possible only on the basis of studying it as an element of practice. Practice and only practice, and not the ideas of the luminaries

of law (even if they are very convincing in the first approximation), contains all the necessary and sufficient data for the integrative theory of law, since practice, primarily positive practice, is a criterion of truth of any social theory. The identification of law as an integral element of practice, the formation of an empirical image of the phenomenon of law, the clarification of its practical specificity is the first and inevitable stage in the process of defining the integrative concept of law.

Law in practice is always specific to the situation. It becomes not only a formal, but also a real regulator if it is needed in a specific situation by specific entities that, in accordance with the conditions of the situation, their interests and capabilities, use the regulatory potential of a set of abstractly general norms of objective law addressed at the participants of the situation.

Let us consider typical situations of the existence of law as an element of practice. The criteria for distinguishing one or another typical situation are related to the features of a) the subject composition of the situation, b) the regulatory action and manifestation of law, c) the legal form (the necessary legal documents). In any practice (the practice of maternity capital, elective practice, the practice of transporting passengers in public transport, etc.), the following typical situations can be distinguished:

- a situation outside of a specific relationship;
- a situation of the emergence and functioning of a simple specific legal relationship;
- a situation of the emergence and functioning of a complex specific legal relationship;
- a situation of a gap in objective law;
- a situation of the offense in a specific relationship;
- a situation of the offense outside of a specific relationship.

What constitutes law, as an element of practice, in these situations from the point of view of the integrative theory?

1. A situation outside of a specific legal relationship. Here the subject of law acts (or refrains from action) unilaterally and does not interact with another subject or entities. For example, a person is in stairs of a residential building, no one and nothing controls that person. In this situation, law is a synthesis of 1) a complex of situationally significant, abstractly general norms of objective law (norms of housing law, civil and administrative law) and 2) a complex of individually defined norms that arise in the legal consciousness of the subject (subjective rights, obligations, prohibitions, etc.).

Objective law establishes statutory (non-personalized) rights and obligations, prohibitions and restrictions, procedures for their implementation, punishment, encouragement and other requirements that are relevant to the situation and are addressed to the subject of law. The situational complex of norms of objective law is a potential (formal) regulator, the situational binding of law exists only on paper (legal requirements are binding everyone and not a specific person); this complex becomes a real regulator, the binding of law really manifests itself if a person concretizes abstract general norms in the mind and psyche, i.e. creates individually defined norms in the form of subjective law, obligations, etc., therefore, a person is ready to fulfill and really

fulfills situationally significant legal requirements, for example, a person does not leave rubbish in the stairs or damage the communal property. Individually defined norms in the analyzed situation are not formalized in a legal document but they exist in the system of cognitive law in the human mind and psyche.

However, a person may not know the situational complex of norms of objective law, not concretize it in accordance with the conditions of the situation, interests, or opportunities. Therefore the situational complex of individually defined norms does not emerge and does not function, and thereby the law does not fulfill the function of a fully functional regulator, it exists by itself, remaining as an element external to the person and practice, being only a formal and not real regulator as it should ideally be. In this case, the function of the regulator is performed by the custom that has developed in practice, and in its absence, situational expediency; they regulate the behavior of the subject of law (can we use the term "subject of law" in this situation?) and drive the law out of practice. At the same time, custom and expediency may correspond or contradict to the situational complex of norms of objective law.

Thus, in the aforementioned situation, law consists of two elements: firstly, a complex of situationally significant norms of objective law (the law as a potential regulator), and secondly, a situational complex of individually defined norms of cognitive law (law as a real regulator). Without and outside of cognitive law at the level of person's legal consciousness, law cannot be a fully functioning regulator; it exists as a "thing in itself", as a relatively independent, not integrated into practice, "not working" phenomenon in practice. Should cognitive law be included and taken into account in the process of determining law? The answer is obvious for the integrative legal understanding: since it exists in practice (and the theory is based on practice, it is a model of practice), therefore, it should be present in theory. In this aspect, the integrative theory uses all rational concepts that exist in the *normative and psychological theory of law.*

2. A situation of the emergence and functioning of a simple specific legal relationship. There are situations in each practice where two or more entities interact, simple legal forms can be used (payment receipt, travel ticket, warrant, mark entered into university system, etc.) and there is no need to draw up complex legal documents fixing the subjective rights, obligations, terms, etc. For example, travel in public transport, taking an exam, simple types of interaction between representatives of legal entities both with each other and with representatives of the state.

In such a situation, law, as an element of practice, has a structure consisting of three components. Firstly, the situational complex of abstractly general norms of objective law for participants in a particular situation (for a passenger and a carrier, an examiner and a student, etc.). It includes the norms of various legal institutions of a specialized industry and the norms of other industries, for example, criminal law. Secondly, the situational complex of individually defined norms as a result of concretization of abstractly general norms in a given situation, i.e. situational cognitive law of the subject. Thirdly, along with these components, one should distinguish "*living law*". It arises (or

does not arise and then the legal relationship is deformed giving rise to an offense) in the process of interaction between the subjects, but this is not the behavior of the subjects of a particular legal relationship and not the legal relationship as a whole, but a measure of its (behavior) compliance with the abstract general and individually defined norms. The third component can be identified using the terminological construct "legal measure of behavior" or *"legal normative behavior"*. This terminology shows the real manifestation of law in practice, reflects the real action and power of law as a regulator, its relationship and interaction with regulated practice.

The inclusion of a legal measure of behavior into the structure of law, which is present in the situation being analyzed, is justified not only by the intention to use the conceptual basis of the *sociological theory of law*, but primarily by the needs of practice. In the event of a conflict between participants or between them and third parties, including the representatives of the state and local self-government bodies, a specially authorized entity, for example, a judge determines which situationally important norms of objective law are involved, how the parties to the conflict interpret them and how the behavior complies with the norms. In fact, the judge identifies all three components, especially the legal measure of behavior ("living law") and, on this basis, makes a decision in the form of an enforcement act. Moreover, the decision itself also becomes an integral part (optional element) of law in this situation.

3. A situation of the emergence and functioning of a complex specific legal relationship. Law, as an element of practice, depends on the conditions of a particular situation, the interests and capabilities of subjects of law. This is clearly seen in the situation where it is necessary to formalize individually defined norms of cognitive law and even with the agreement (permission) of the state to create additional individually defined rules that do not have a direct analogue in objective law (legal uncertainty of objective law, discretionary and recommendatory norms, a partial gap in law, discretionary norms). This is a situation of buying and selling real estate, renting a land plot, concession, etc. Here, law is a specific system (microsystem), as situational law at the micro level. Indeed, the structure of law is formed by: 1) a situational complex of norms of objective law (an ideally-required level of law), 2) a situational complex of individually defined norms of cognitive law (a psychological level of law), 3) a situational complex of individually defined norms, enshrined in legal form, for example, an agreement, will, etc. (formal legal level of law), 4) "living law" (practically applicable level of law), 5) optional element in case of conflict, for example, a judicial act (conflict level of law).

The specific nature of the legal system in a particular situation is that it is formed by the elements which seem heterogeneous at first glance. These elements cannot fully exist without each other; they complement each other. New systematic traits arise when elements interact with each other. The inevitable contradictions between heterogeneous elements are resolved to a certain extent within the system, ensuring its stable functioning.

Indeed situational norms of cognitive law can correspond to situational norms of objective law, or contain more or less content, i.e. they can include additional situational

norms. In turn, formalized situational norms do not necessarily repeat the norms of cognitive law and "living" law may not coincide in full with formalized norms. For example, individually defined rules in a rental agreement establish subjective rights, obligations, the procedure for their implementation, or terms for the parties. However, the cognitive law of the lessee and the lessor (legal representatives of the parties) and especially the "living" law do not necessarily correspond to objective law and the contract. In particular, in subjective law only the power in relation to your own actions is realized. Other powers (the requirement of the proper conduct of the obliged, the entitlement to protect, not abuse the subjective right) exist at the formal legal level as a declaration, as unclaimed legal means.

Under certain conditions, "living" law may be characterized by relative independence in the system of situational law and may perform the function of a quasi-regulator. It happens when specific actors create a "living" law and then the majority of participants in the practice recognize the "living" law as the most effective regulator in this situation, as a particular legal custom. It should be borne in mind that the regulator may not fully comply with the situational complex of objective law norms and even the formalized situational complex of cognitive legal norms. However, in this case, "living" law is characterized by the ability to meet the interests of a functionally stronger side. One can use the Constitutional Court of the Russian Federation as an example. The Constitutional Court recognizes a provision of law that does not contradict to the Constitution of the Russian Federation or legal principles in some cases. However, the Court requires adjusting the "living" law, changing the algorithm of legal realization, if the norm does not correspond to law in essence and fact.

Being multilevel and overall systematic in the situation in question allows law to be a flexible and effective regulator, the element of practice. The form and content of situational law are determined in turn by the dynamics of the development of regulated practice, its diversity and complexity.

4. A situation of a gap in objective law. Constant updating of the system of practices of modern society and the state, the emergence of each new practice, for example the practice of organ transplantation, causes the presence of legal defects. We are talking about a gap in the situational complex of norms of objective law (partial gap) or about the absence of this complex (complete gap). In case of a partial or complete gap, subjects of law face a dilemma. One can 1) enter into a non-legal social relationship, and therefore expose yourself to the risk of inability to provide and protect your own interests by legal means; 2) wait until the state (or another specially authorized entity) develops a legal basis for the new situation in the form of a situational complex of abstractly general norms. Alternatively one can carry out individual normative legal regulation and create a situational complex of individually defined norms formalized in the contract in accordance with the principle of "everything that is not prohibited by law and morality" is permitted. Of course this is permissible only in a private legal situation, where as a rule private entities operate and mainly private interests are affected.

If participants in a private legal situation decide to overcome a gap in objective law and in the process of individual normative-legal regulation create a situational complex of individually defined norms in the process of individual legal regulation based on the principles of law, taking into account the conditions of the situation, their interests and capabilities, in this case law includes the following elements: 1) a situational complex of individually defined norms of cognitive law, 2) a situational complex of individually defined norms in the form of an agreement, 3) "living" law, 4) an additional element in case of conflict, for example a court decision, when the judge uses the provisions of the contract as a source.

In such situations, the role of a practicing lawyer is extremely important. A lawyer in their mind and psyche forms situationally defined norms, then explains them to the principal and coordinates with the legal representative or directly with the other participant (participants) of the private law situation. An integrative legal understanding of a lawyer is the methodological basis of their effective work in the situation being analyzed.

5. The situation of the offense in a specific relationship. The situational complex of objective law norms may contain norms that determine the inadmissibility of behavior in a particular situation or particular legal relationship. These norms constitute, for example, a specific crime. If both parties or one of the parties of the legal relationship, for example a seller of real estate is a fraudster who acts or refrains from action illegally, then in a particular legal relationship there occurs an offense which deforms the relationship, destroying it like a cancer cell. What is law in this situation? As in the above mentioned situations, there is a situational complex of norms of objective law which includes the offense and appropriate penalties, as well as a situational complex of cognitive law norms. If the legal relationship is complicated, a situational legal document might be used: for example, a sales contract for real estate and in general or a set of documents based on formalized individually defined standards. However, there is no legal way of behaviour and this destroys the situational system of law because law does not fulfill the function of a real regulator. The injured party or other authorized legal entities may initiate legal proceedings against the perpetrator. Then an additional element appears in the form of an enforcement act, for example a court decision.

6. The situation of the offense in a specific destructive relationship. Subjects commit offenses outside of a specific legal relationship in various practices. That is the offense exists in its "pure" form and becomes an independent so called destructive relationship. Let us address a crime. A specific crime is committed not only within a specific relationship, but also exists by itself. Theft, robbery, etc., are not only a deviant social attitude due to the fact that law enforces a ban, restriction, or punishment. This is also a negative type of legal relationship – a destructive legal relationship. It destroys the legal system of society and the state. It is a factor of destabilization. What is law in this situation?

Firstly, law is a situational complex of objective law norms that defines a crime and punishment for committing it. Secondly, law is a situational set of norms that is formed (or is absent for some reason, for example ignorance, temporary insanity), in the mind

and psyche of the criminal. Thirdly, law is a situational complex of individually defined norms of cognitive right of a judge or a number of judges. Fourthly, if the offender is identified, if the offender's guilt is proven in court then formalized individually defined rules are created in the form of a sentence. These rules result from narrowing down the criminal law rules taking into account the conditions of the situation, the personality of the offender and the victim, and the public danger of the crime.

Main conclusions:

1. Law is an integral regulating element of any socially significant practice. Law is always situational and specific as an element of practice. There is a number of typical situations where the situational nature of law is clearly manifested.

2. Law is a multilevel and systemically organized regulator in a specific situation. The integrative theory contains a comprehensive understanding of law, taking into account all aspects of its manifestation in practice.

3. Integrative legal understanding, namely its conceptual component, which integrates everything valuable and rational in the normative, sociological and psychological theories of law – this is the methodological basis of the work of an effective lawyer.

4. It is necessary to take into account the situational nature of law in the process of studying and defining law. Is it possible to develop a universal definition (universal theoretical model) of law? From a practical point of view, all the nuances are important for the effective work of a practicing lawyer. Therefore there can be as many definitions as there are typical situations. Moreover, we need a general definition within the framework of the integrative legal understanding which covers all the features of the manifestation of law in practice.

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