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TÍTULO: La institucionalización de los principios de creación de leyes como una forma de transformar las categorías científicas en las soluciones de creación de leyes.

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RESUMEN: La institucionalización de los principios de creación de la ley es la tarea más importante del estado que se otorga a la formación orientada hacia la creación de la ley, para hacer cumplir el propósito social y las formas de desarrollo del estado legalmente. La percepción científica de este principio debe aplicarse en el marco del acto legal, sin el cual el principio en sí no será valioso y estará vivo. La institucionalización de los principios de creación de leyes es la preservación en las normas legales de las ideas básicas, los valores sociales y otros como los hitos principales para regular las relaciones públicas con el fin de formar la estabilidad social y el desarrollo en el estado. La figuración formal de los principios de la creación de la ley no se puede conceptualizar a menos que se resuelva en vista de la extensión de la regulación legal.

PALABRAS CLAVES: Legislación, institucionalización, ciencia jurídica, percepción, figuración formal.

TITLE: Institutionalization of law-making principles as a way to transform scientific categories into the law-making solutions

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ABSTRACT. Institutionalization of law-making principles is the most important state task to give to the law-making the task-oriented formation, to enforce legally state's social purpose and development ways. The scientific perception of this principle should be enforced in legal act framework without which the principle itself shall not be valuable and alive. Institutionalization of law-making principles is preservation in legal norms the basic ideas, social and other values as the leading landmarks to regulate public relationships in order to form the social stability and development in the state. The formal figuration of law-making principles cannot be conceptualized unless solved in view of the legal regulation extent.

KEY WORDS: law-making, institutionalization, legal science, perception, formal figuration.

INTRODUCTION.

The law-making activity to regulate public relationships is firstly associated with relationships ordering via law norms which requires providing certain forms and patterns – it means the

relationships should be formally defined and expressed via language of the terms, categories and institutions which are well-known and familiar to the law sciences.

The formal legal definition together with normalization, compulsoriness and movement is also the specific property of law as whole system; this property makes the law to be social value (Alekseev, 1996). Formalization and providing the legal ordering to the public relationship shall be carried out via their implementation into the regulatory direction framework while relationship nature should be translated into the language of clear legal rules and terms precisely understood by all relationship participants. “Formal ordering means that public relationship range regulated via law, regulation subjects, their rights and obligations, observation and breach limits, penalties are legislatively drawn up (Alekseev, 1971; Olesova & Borisova, 2016).

DEVELOPMENT.

Methods.

When setting the legal regulation limits, the law-making bodies solve the following tasks:

- 1) Determination of legal impact upon people’s behavior in individual range of public relationships to be legally regulated.
- 2) Providing their normative statutory nature compulsory for all.
- 3) Creating a possibility for compulsory observance of body’s demands via state power.
- 4) Forming criteria of legitimacy for actions of the people covered by legal act power.

However, whereas legal providing of different public relationships could be their institutionalization then the same law-making principle processes would have more complex make-up. This results from legal nature and destination of law-making principles. Self-regulation is common, but comparative analysis of self-regulation and government regulation is rare (Craizl & Murell, 2007).

So far as law-making principles predetermine quality of legal act issued in a certain degree then law-making process success depends on correct choice of the values which are backgrounds for relationships regulated and which determine social, economic, political and cultural state in society as they do.

Result and Discussion.

The law books rightly note that main principles of law-making activity are not voluntary demands from different bodies or authorities. The demands should contain and consider many objective factors effecting Russian legal regulation of public relationships as well as other public conscience factors, cultural level, legal sense etc (Zhinkin & Chernyavskaya, 2006).

“The legal system is (or must be) in congruence with value system not only in legal existence as well as in formally regulating system. If an agreement between legal norm and human value is maintained only on institution (legislative) level the law itself could not be discussed therefore, then the law does not (fully or partially) correspond to its term say the least of it (Manturova, 2005).

Hence, it follows that correct choice of the values to be regulation background can be exercised scientifically-based only. Precision and recall of establishment of legal regulation need based on different social values are important because of apparent possibility in certain cases to solve the same tasks legally or via measures other than legal provisions before everything (Alekseev, 1996). The correct choice of need and limits for legal regulation as well as values (or principles) to be grounds thereon is the task to have done by both science theory and subjects of law-making process.

Nevertheless, it does not mean that their institutionalization can be carried out only through the legal provision as law-making principle. Realization of different social values which are law-making principles can be carried out without direct legal providing (as when it currently does take place) (Zhinkin & Chernyavskaya, 2006). These cases deal with the institutionalization of demands pledged therein while principles themselves could be withdrawn only via legal act analyzing. This reduces

quality of law-making to an extent because principles declared serve as guidance not only for law-making bodies but for applicative and law-enforce agencies.

Institutionalization of law-making principles requires body's serious research activities:

1. Drawing up the factual backgrounds inherent to the given relationship group which constitute relationship operation and determine social, economic, political and cultural level of public life as a value (ideas, benefits, and ideals) to provide it legally as the landmark for legal regulation.

If scientifically elaborated definition reflects a result of objective abstraction of social reality facts carried out by people and also of cognition of consisted patterns which had been living until cognition thereon then they express together the content of public relationships which had formed earlier. It allows this definition to serve as a public regulator – it means that the definition can be provided as the law-making principle. Such conclusion shall be drawn up from the facts that: 1) The value found out has already become recognized among people so this indicates its high status of relationship regulator; 2) The laws of public relationships developments as well as value influence on them have been already understood; 3) The social value together with associated laws of public processes express their legal regulation sentence. It says that legal definition item of law-making principle has an objective background therefore; the item can be legally provided.

The value should appear from objective society need to provide the value in legal norms effecting whole group of public relationships regulated. It shall be expressed as clear scientifically-based category containing its definition.

Incorrect establishment of underlying idea serving legal regulation guidance for law-making subject during law-making process can lead to the situation when legal act issued would be based on the values of the level lower than that of one from objective needs; it could result in reduction of effectiveness and even as much as act failure, moreover “statutes raise complex questions and therefore may sometimes be constitutional” (Rappaport, 2001). And if the values exceeded their

implementation possibilities then legal act would be dismissed either because there would not be any objective (material, social, political etc.) conditions to observe its provisions.

It is necessary to take into account that state and society are continuously developing. This allows new underlying ideas and social values to appear; they should be provided in law-making solutions and played the role of new law-making principles. “Every state structure is complex but in order to make a contribution to policymaking as well as influence decisions, it is necessary to have an insight into the political system” (The law-making process in Ghana: Structures and Procedures, 2019).

However, not all of law-making principles should be legally provided. “This must not be done not only to avoid cumbersomeness of Russian law-making legal act (f.e. a code) but also due to the fact that principles list is opened so that would have been replenished with new ideas until human’s life and legal sense ended (Rappaport, 2001).

2. Providing the formal definition of legal science value term to be further used as law-making principle. “Regarding to the society and its social norms, legal norms as said before everything, it means use of type designs as well as determination of behavioral templates” (Alekseev, 1971). In this case, it is necessary to express social value definition elaborated through the language of legal terms which can be achieved using legal provisions.

The legal provision includes: authorized dictates, direct expression in legal act, general normative nature, formal certainty, logical completeness, wholeness, atomicity [Op.cit.]. Therefore, the law-making subject should express the scientific definition scope using common legal categories and terms, it means the definition should be laid out by the letter of the law.

3. Transforming the scientific categories into legal ones via legislative procedures. Only the provisions inherent to the legal regulation subject which cover the steadiest and most necessary subject’s traits as well as generally effect the whole law-making process can be then institutionalized. Science reflects an object theoretically, abstractedly using terms and category system. Then scientific

terms and categories are theoretic experience tools as long as means and results of law-making process. An assessment of law-making theory categories is inherent in studying of law-making provisions explaining the scientific terms and associated cognitive activities. “The high degree of law theory development and wealth of knowledge and experience expressed in terms thereof means simultaneously that conceptual framework and categorical system allowing the legal form of public life to be further studied are rich and heavily developed (Vasilyev, 1991).

The legal categories elaborated by law science and provided in legal norms constitute the ground based on which all of the law branches are being developed (It regards both individual law branch and their assemblage being a part of state legal system), as well as law-making theory is being as particularly said. However, we need to discourage from inappropriate institutionalization which can be performed as an appropriate socialization.

Inappropriate socialization, based on a frame of international law rather than international technocracy, leads in turn to a concomitant lack of influence within the organization. Indeed, it is difficult to imagine that foreign minister would have the requisite competence to negotiate appropriate agreements. It remains to be seen whether the admission of new countries to the institutions of global financial market regulation that have authoritarian political systems and therefore stronger centralized control will change this culture...(Pauwelyn et al, 2012).

An assessment of scientifically-based definition text of legal norm to come which provides law-making principle(s) is carried out accordingly to its form and content. The latter should fully contribute public relationships regulation need taking into account the social values inherent therein and expressed in the norm.

4. Monitoring of law-making principle institutionalization effectiveness via the control over quality of solutions which the principle had been come across.

The institutionalization is carried out based on the following traits of social values. The first case includes:

- 1) The public relationships regulated are called for.
- 2) The relationships are in competence of law-making subjects because each of them has only jurisdiction in relation to an issuing of the acts of his/her own ranking.
- 3) The social values have obligatory scientific backgrounds indicating their reasonability and capability to be legally provided.
- 4) The social values make a supportive environment for the legal acts to be implemented.

The second case, based upon legal regulation objectives, law-making principles are included in legal act text to solve certain tasks:

- 1) To encourage the persons covered to obey act provisions in active good manner (for example, using providing of vested interest).
- 2) To form negative attitudes towards the illegal activities (for example, noting principle of legality).
- 3) To create a mechanism for realization of legal provisions (for example, democratism and publicity principles provide procedures for legal acts production and adoption) etc.

For example, regarding to the US women discrimination problem “the task forces undertaking these independent investigations typically consisted of a mix of judges, practitioners and academics; their methods of research included surveys, public hearings and round-tables (Bowman & Schneider, 1998).

From a perception of objective criteria for law-making principles to have been called for, an effectiveness of principles can be established and then a decision either about need for each of individual principle institutionalization or lack of such need can be adopted.

CONCLUSIONS.

Having regard to the above, we can draw the following conclusions.

1. Institutionalization of law-making principles is legal providing of underlying ideas, social or other values as the leading landmarks to regulate public relationships in order to form the social stability and development in the state.
2. The transformation of scientifically grounded definitions determining law-making content and form into legal provisions is carried out via their legal implementation in accordance to the procedures established by law.
3. The criteria for assessment of different values to operate as law-making principles can serve: 1) objective need of public relationships regulation notably due to these values; this need is established based on irreplaceable demand for them and individualizes the principles for each relationship group; 2) legal act target direction which determines the principles capable to provide this direction. Taking it into account, the law-making subject should form a group of guiding principles prior to begin working on legal act.

Conflict of interest.

The authors confirm that the information provided in the article does not contain a conflict of interest.

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