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Systematicity of Law: Some Problems of Theory and Practice

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"Systematicity" is the most capacious concept applicable to any object of research, which represents all the possible manifestations of systems.
Law is a systemic phenomenon, characterized by an organized structure, which is characteristic of a great number of constituent elements and presence of different levels of functional connections between them.
Emphasizing the initial element of law as a system depends on the definition of the fundamental function of law, which it is advisable to understand as its regulatory influence on social relations. In this connection, legal standards and regulatory generalizations (the primary regulatory means of law) could be separated as the basic elements of law as a system.
The aforementioned primary regulatory means of law are single-level phenomena; connection between them, as a rule, is of coordinating nature.
As subsystems of law of the next level it is offered to emphasize forms (sources) of law that formally express and consolidate the norms of law, including in relation to the domestic legal system: subsystems of regulatory legal acts, law treaties and legal practices.
These subsystems can be linked both by coordinating and hierarchical connections, due to the status of a particular source (form) of law.
Furthermore, the special role of such legal phenomenon as legal practice is justified, which, from the point of view of systematicity of law acts as a mean that ensures the stability of functional connections between the elements of law, as well as its subsystems.

Keywords: systematicity, system, systematicity of law, elements of law, subsystem of law, functional connections between the elements of law, legal practice, legal provisions.

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Research area: law.

The concept of system and systematicity has a long history. Already in the ancient times the idea that the whole is bigger than the sum of its parts was formulated. Plato and Aristotle spoke about specificity of knowledge system namely; Kant justified systematicity of cognition and Schelling and Hegel wrote about it further on. In the 17-19th centuries certain types of systems (geometrical, mechanical, etc.) were studied in different sciences (Frolov, 1987, 427).

The word "system" itself is translated from Greek as "composed of parts, connected". In the

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Explanatory Dictionary of the Russian Language system is a certain order in arrangement and connection of actions; a form of organization of something; something integral, represented by a unity of regularly arranged and mutually connected parts (Ozhegov, Shvedova, 2010, 720).

In theory of systems and systems analysis understanding of system as a set (multitude) of objects and processes that are called elements and which are interrelated and interact with each other, forming an integral whole, possessing properties not typical of the elements that constitute it taken separately, is used as one of the most common definitions (Kachala, 2007, 58).

An important condition of a system existence is presence of a systemically important purpose (and the main function) of a system. It is the presence of such a purpose (function) that determines formation of a system structure (internal structure) and allows proving the need for separation of a system as an independent object (Kachala, 2007, 66).

Such an understanding in general is correlated to the teachings of modern philosophy and sociology.

Thus, the *main features* of any *system* are, inter alia:

- presence of a systemically important purpose (and the main function resulting from it);
- a significant number of elements;
- presence of mutual functional relationships between the elements that, in fact, ensure system existence;
- qualitative difference of system as a whole from the total of the elements that constitute it.

Systematicity itself in philosophy in general terms is understood as universal, inherent property of matter and its attribute that record predominance of *organized nature* over chaotic changes in the world (Alekseev, Panin, 1998, 380).

From the perspective of systems theory "systematicity" may be considered as the most general concept that defines all *the possible manifestations of systems* (Kachala, 2007, 193).

Accordingly, *systematicity* can be considered as a universal property of an object, which characterizes its organized structure.

Understanding law through the category of system is quite common. Such an understanding does not contradict to the traditional concepts of legal consciousness: the theory of natural law, legal positivism (normative legal consciousness) and sociological conception of law.

So-called integrative (multidimensional) understanding of law that combines the basic ideas of the existing legal concepts corresponds to understanding of law as a system phenomenon even more (Ershov, 2008, 4-15), including based on essentially-substantial elements (primarily on the rights and freedoms of a man and a citizen) (Shafirov, 2004, 87).

In particular, in the integrative legal consciousness definition of law as *a system, that includes regulatory legal acts containing the norms of law, other forms of law, first of all the basic (fundamental) principles of law, normative legal agreements containing the rules of law, as well as customs that contain the rules of law* is offered (Ershov, 2008, 14).

Besides, it should be noted that in the theory of law, the term "system" is traditionally used when indicating such legal categories as "the system of law" and "legal system". System of law (in general terms) is understood as legislative mandates, institutions, sub-institutions, industries, sub-industries, etc. (substantial elements of law) in their unity and interaction, and ways of their external expressions (sources (forms) of law). Legal system is defined as a broader phenomenon

that includes, in addition to legal system of justice, legal awareness (legal ideology) as well as legal practice (Kartashev, 2011, 101).

With this in mind, it seems reasonable to understand systemacity of law as a universal (essential) feature of law as an organized phenomenon, which implies:

- existence of many elements of law;
- presence of mutual functional relationships between the aforementioned elements;
- qualitative difference of law as a system in general from the total of the elements that constitute it;
- presence of a single (basic) function of law (systematically important purpose) (Petrov, Shafirov, 2014, 15).

At that, undoubtedly, law as a system is a complex system, non-linear and open, with polysystemic and polystructural properties that exclude the possibility of simple allocation of its initial homogeneous elements (Vlasova, 2011, 146). As well as law itself, in a sense, it can be considered as a subsystem of a more general system and in the structure of law as a system it is possible to allocate a number of sub-systems both multi-leveled, built on the principles of hierarchy (Petrov, Shafirov, 2014, 39) and as subsystems of one order based on the principles of coordination (interaction).

At the same time, in order to determine the primary elements of law and its sub-systems, it is necessary to determine systematically important purpose and the main function of law, which, in this paper are simplified and is proposed to allocate *preservation of human society and providing its development* as a goal, and *regulation (ordering) public relations* as a function (Alekseev, 1999, 313-326).

In the theory of systems analysis an element of system is understood as an internal elementary unit, the functional part of a system, which structure is not considered, and only its properties, necessary for construction and operation of a system, are taken into account. At that, the notion of "element" is not equivalent to the notion of "part". The word "part" denotes to the internal belonging of something to an object (to a system), and "element" always means a *functional* unit (Kachala, 2007, 60).

Allocation of the initial element of law as a system depends on the definition of the fundamental function of law, which, as it was said above, is advisable to understand as its *regulatory influence* on social relations (which does not exclude value-orientational significance of law).

Accordingly, the initial regulatory unit of law is *the rule of law*, because it is the rule of law in its traditional sense that has a minimum sufficient potential to regulate social relations.

Alongside with that, opinions about the presence of other regulatory means of law that do not fit into the notion of norm, expressed in the literature, seem reasonable; these are so-called normative generalization (principles of law, definitions, presumption, goals and objectives, etc.) (Shafirov, 2013, 96).

Thus, initial elements of law as a system can be represented by *the rules of law and normative generalizations* (primary regulatory means of law).

The aforementioned initial elements, in terms of regulatory function of law, are single-level phenomena; the need for their alignment according to hierarchical principle arises only in the case of fixing these normative regulatory means in the sources (forms) of different levels of law.

In particular, an example of coordination link between the rules of law (normative generalizations) that reflect the property if systematicity of law may be a link between the enabling norm and mandatory norm, corresponding to it (Shafirov, 2013, 90).

Thus, the norm that provides with the right of a person concerned to petition the arbitration court for protection of his/her violated or disputed rights and legitimate interests (Part 1 of Article 4 of the Arbitration Procedure Code of the Russian Federation), corresponds the obligation of arbitration court to note a claim that was initiated in compliance with the requirements of the APC of the Russian Federation to its form and content (part 2 of article 127 of the Arbitration Procedure Code of the Russian Federation).

Allocation of the further single-level subsystems of law should be performed taking into account the functional feature of the elements of law – the ability to regulate social relations.

In this regard, allocation of the subsystems of law in the traditional understanding of the structure of law (institutions and branches of law) seems wrong. An institution or a branch of law does not perform regulatory function directly. The aforementioned traditional elements of the structure of law represent scientific abstraction and are the result of doctrinal interpretation of law.

Subsystems of law in legal reality are forms (sources) of law that formally express and consolidate the rules of law: normative legal acts, normative civil agreements, legal customs and legal precedents.

With regard to the Russian legal system it is reasonable to allocate subsystems of normative legal acts, law treaties and legal customs.

These subsystems can be connected both by coordinating and hierarchical links, determined by the status of a particular source (form) of law.

For example, Federal Law has an absolute advantage over the local normative agreement (for example, a collective agreement at an enterprise), and is inferior, according to general rule, to international agreement ratified by the Russian Federation.

The relationships between subsystems of sources (forms) of law require a detailed study that is impossible in this paper.

Most important for the Russian Federation subsystems of normative legal acts and law treaties are based on the principles of hierarchy, the main criterion of which is legal force (Petrov, Shafirov, 2014, 35).

A classic example of such a hierarchy can be based on the Constitution of the Russian Federation, generally accepted in the theory of law and constitutional law, system of normative legal acts (in the order of decreasing legal force): the Constitution of the Russian Federation, the Law on Amendments to the Constitution of the Russian Federation, Federal Constitutional Law, federal laws, etc.

So-called horizontal hierarchy of normative legal acts (or the doctrine of "the leading role" of codification act) (Ruzanova 2012, 24 – 27), formulated as early as in the Soviet science of law is of particular interest.

An example of such a horizontal hierarchy can be provisions of Part 2 of Article 3 of the Civil Code of the Russian Federation, according to which civil legislation consists of this Code and *other federal laws, adopted in accordance with it*.

With that, in the subsystem of regulatory legal acts of the Russian Federation such provisions contain not only codified acts.

Thus, part 2 of Article 3 of the Federal Law dated 02.10.2007 № 229-FL "On Enforcement Proceedings" establishes that the rules of federal laws that regulate conditions and procedures for compulsory execution of judicial acts and acts of other bodies and officials must *comply with this Federal Law.*

However, the relevant rules of enforcement proceedings are also contained in the procedural

codes – section VII of the APC of the Russian Federation "Proceedings relating to executions of judicial acts of arbitration courts" and section VII of the CCP of the Russian Federation "Proceedings relating to executions of court decrees and decrees of other bodies".

At that priority (supremacy) of the aforementioned Codes over other federal laws is enshrined in article 3 of the APC the Russian Federation and article 1 of the CCP of the Russian Federation.

It appears that the problem is horizontal hierarchy can be eliminated only by consolidating them at a level, higher regarding federal laws and priority of codified normative legal acts.

Determination of the place of such a phenomenon of legal reality as *cases* in law (as a system) is of particular interest.

It is necessary to note that as early as since the 60s of the last century the theory of the so-called *legal provisions* had been developing in the Soviet legal science. This category was recognized by S.S. Alekseev, A.K. Bezina, S.N. Bratus', A.B. Vengerov, N.N. Voplenko, I.Y. Diuriagin, V.P. Reutov, and was also developed by V.V. Lazarev.

It was offered to understand legal provisions as sub-normative means of legal impact on social relations, generated in the course of law enforcement activities (primarily, courts), which is also formulated by the bodies that control law enforcement and give assistance to lower elements by generalizing law enforcement practice (highest judicial agencies).

As V.V. Lazarev wrote in 1976, legal provisions are inferior to legal norms in force and value. They are sub-normative, that is, aligned with certain standards and are in a kind of subordination and do not have their own support facilities. Legal provisions are connected with factual circumstances more closely than legal norms. They are initially developed when different facts of life take place, and only then, as they are connected by the general rule of conduct, as if separate from them and start to act in relation to all the similar facts (Lazarev, 1976, 3-15).

In the modern Russian literature on the theory of law one can find the definition of legal practice in terms of *a set of legal provisions* or, the other option, as a form of judicial activity on application of the rules of law, which is connected to the development of specific *legal provisions* on the basis of disclosure of the meaning and content of the rules used and, whenever necessary – their specification and detailization (Rybakov, Panchenko 2012, 170).

It seems that from the point of view of systematicity of law cases also act as a means of ensuring the stability of functional connections between the elements of law, as well as its subsystems.

As an example, it is possible to provide the problem of relation of the current legislation of the Russian Federation on control and supervisory activities and the Code of Administrative Offenses of the Russian Federation (CAO of the RF).

Thus, Part 1 of Article 28.1 of the Administrative Code provides possibility for the initiation of administrative proceedings in the following cases, including: direct detection by the officials authorized to draw up protocols on administrative offences of the sufficient data indicating the existence of an administrative offense; 2) arrival of materials that contain data indicating existence of an administrative offense from law enforcement agencies, as well as from other government agencies and local government bodies.

The aforementioned sufficient data can be identified by an official during the inspection as part of a state or municipal control, the procedure for which is set by the Federal Law of 26.12.2008 № 294-FZ "On **Protection** of **Rights** of **Legal**

Entities and **Individual Entrepreneurs** in the **exercise** of **state control** (**supervision**) and **municipal control**".

With that, the aforementioned Federal Law of 26.12.2008 № 294-FZ does not relate initiation of administrative proceedings (drawing up a protocol on administrative offense) or imposition of administrative sanctions to the possible results of verification activities that complicated the use of the consequences of the so-called serious violations of the established requirements for organizing and conducting inspection that suppose abolishment of the results of the inspection in court (Article 20 of the Federal law of 26.12.2008 № 294-FZ).

Only the Federal Law of 18.07.2011 № 242-FZ (one and a half years after the adoption of the Federal Law of 26.12.2008 № 294-FZ) in the CAO of the RF contains relevant amendment of the required rule: "In the case of an administrative offense it is not allowed to use the evidence received with violation of law, including evidence obtained during inspection in the **exercise** of **state control** (**supervision**) and **municipal control**" (Part 3 of Article 26.2).

For a considerable time the rules, contained in these normative legal acts were not coordinated with each other and, from the point of view of system, it was a defect of functional relationship between the elements of law.

However, approaches (legal provisions) developed in cases allowed to neutralize the problem partially, that is, to ensure the presence of the minimum necessary connection between the rules of law, up to the appropriate amendments.

For example, when considering a particular case concerning contestation of administrative regulation on imposition of administrative sanctions, in the resolution of the Twelfth Arbitration Appellate Court dated 27.01.2010, the decision of FAC of Volga district dated 02.06.2010 on case № A12-22144/2009, long before elimination of the above defect in the course of legislative activity, the corresponding point of view on the inadmissibility to use the evidence obtained through violation of the order of inspection was expressed.

Thus, study of the problems of systematicity of law appears quite topical both from the standpoint of theory and practice.

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Системность права:
некоторые проблемы теории и практики

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«Системность» представляет собой максимально емкое понятие, применимое к любым объектам исследования, которое обозначает все возможные проявления систем.
Право является системным явлением, характеризуется организованным строением, которому свойственно множество составляющих элементов и наличие между ними разноуровневых функциональных связей.
Выделение начального элемента права как системы зависит от определения основополагающей функции права, под которой целесообразно понимать его регулятивное воздействие на общественные отношения. В связи с чем исходными элементами права как системы могут быть выделены нормы права и нормативные обобщения (первичные регулятивные средства права).
Названные первичные регулятивные средства права представляют собой одноуровневые явления; связи между ними, как правило, носят координационный характер.
В качестве подсистем права следующего уровня предлагается выделять формы (источники) права, формально выражающие и закрепляющие нормы права, в том числе применительно к отечественной правовой системе: подсистемы нормативных правовых актов, нормативных договоров и правовых обычаев.
Данные подсистемы могут быть связаны между собой как координационными, так и иерархическими связями, что обусловлено статусом конкретного источника (формы) права.
Кроме того, обосновывается особая роль такого правового явления, как судебная практика, которая с точки зрения системности права выступает в качестве средства, обеспечивающего стабильность функциональных связей между элементами права, а также его подсистемами.

Ключевые слова: системность, система, системность права, элементы права, подсистемы права, функциональные связи между элементами права, судебная практика, правоположения.

Научная специальность: 12.00.00 – юридические науки.