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DOCTRINAL CHARACTERISTIC OF THE THEORY OF THE CONTRACTUAL LEGAL REGULATION

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Abstract: The general theory of contractual legal regulation is defined as a system of theoretical views and initial scientific provisions, expressed in the categorical and conceptual apparatus of the general theory of law, which makes it possible to reveal the essence and content, functions and forms of manifestation, levels and types of impact on social relations using contractual regulatory means.

The doctrinal characteristics of the theory of contractual legal regulation within the framework of this article is revealed in three aspects: (1) the genesis of theoretical knowledge about contractual regulatory activities; (2) identifying the epistemological, ontological and axiological foundations of the theory of contractual legal regulation, (3) forming the structure of the general legal theory of contractual regulation.

Keywords: contract law regulation, general legal theory, doctrinal characteristic bases of the theory, the theory of the structure.

Introduction

The category of "contractual regulation", despite its comparative novelty for the logical-conceptual apparatus of the general theory of law, has become quite widespread in sectoral legal disciplines. However, the systematization of the formulated provisions is complicated by the fact that these studies highlight only certain sectoral aspects of contractual regulation. Therefore, the formulation of a single, generalizing, general theoretical construct of contractual legal regulation is faced with certain difficulties both for the legislator and for legal theory.

In the conditions of the formation of a legal democratic socially oriented state in Russia, the very phenomena of legal regulation are changing. If historically the treaty was an institution of private law, then, in the public law sphere, this toolkit appeared in the era of the New Time. This marked the establishment of liberal values and democratic institutions: the theories of social contract, constitutionalism, parliamentarism and separation of powers were clothed in the legal form of an agreement between citizens and the power structures established by them.

The corresponding transformations in the development of public institutions in modern Russia, on a contractual basis, are very clearly reflected in the legislation of the political system, the local self-government, the status of state corporations, the provision of public services, the public procurement, etc. In recent years, new forms of consolidation and implementation of public interest have emerged – national projects, concepts, strategies, which also reflect the contractual nature of the regulation of innovation processes. On the other hand, the development of social ties brings to life fundamentally new areas of legal regulation – informatization, electronic document management, biotechnology, new types of communication and transport. These new areas inevitably presuppose the harmonization of public and private interests, where contractual tools are quite effective.

Research methodology

The construction of a theoretical system that integrally reproduces the essential aspects of contractual regulation is based: firstly, on the formation of a general theoretical and sectoral scientific base that contributes to the development of fundamental scientific and theoretical provisions, based on the methodology of post nonclassical rationality for the formulation of the problem of contractual regulation and determination of ways to solve it; secondly, on the empirical material of socially determined contractual and regulatory practice. At the general theoretical level, this led to a revision of the initial epistemological positions and principles of the study of legal matter, the advancement of new methodological approaches, the creation of fundamentally different categorical structures reflecting the complex process of functioning of the legal form. At the sectoral level, the general methodological reorientation of legal research has led to the transition from the study of the content originality of legal phenomena to the analysis of their functional manifestations in specific spheres of social relations.

The formulation of the conceptual provisions of the general theory of contractual legal regulation was carried out taking into account the methodological principles of the modern stage of development of science, based on post nonclassical rationality. The methodological toolkit for the formation of a general theory of contractual legal regulation is determined, first, by the general doctrine of legal

regulation; second, by extrapolating the instrumental and activity-based approaches to legal research; third, the inclusion of axiological aspects in the formation of modern legal theories based on the principles of post-nonclassical rationality.

Main results

The doctrinal characteristics of the theory of contractual legal regulation within the framework of this article involve the study of three main aspects: (1) the genesis of theoretical knowledge about contractual regulatory activity; (2) the identification of epistemological, ontological and axiological foundations of the theory of contractual legal regulation; (3) the formation of the structure of the general legal theory of contractual regulation.

1. As a theoretical and methodological "matrix" of research into the genesis of theoretical knowledge about contractual legal regulation, the proposed by V. S. Stepin identified the typology of scientific rationality and types of civilizations[1]. This made it possible to determine the epistemological, ontological and axiological foundations of the theory of contractual legal regulation. This, in turn, made it possible to highlight the stages of formation and development of the theory of contractual legal regulation, due to the peculiarities of the formation of scientific and legal knowledge and legal practice.

Formation and development of the "jurisprudence of concepts" as a conditional first stage of formation of legal science, the meaning of which is to move from the casuistic analysis of the specific relationship of the individual types of contracts to conceptualize authoritative legal texts of the Roman canon law, the ordinary and the royal contract law by direct s mov scholasticism of the XII–XV centuries (grammatical, formal-logical, systemic interpretation), and then the humanistic science of the 16th century (historical and philological interpretation), covers Antiquity and the Middle Ages up to the Renaissance[2]. Chronologically, this stage coincides with the classical period in the development of technogenic civilizations, when the mechanical picture of the world dominated as a general scientific research program, that had a significant impact not only on the study of natural processes, but also on the system of knowledge about man and society.

It should be noted that the formation of social and humanitarian knowledge in the Middle Ages was based not only on the methodology of scientific rationalism, but also on taking into account the prevailing theological and later metaphysical

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[1] *Stepin V.* Theoretical knowledge: Structure, historical evolution, 2003 . 743 p. [См.: *Степин В. С.* Теоретическое знание. М.: Прогресс-Традиция, 2003. С. 18–29; *Он же.* Человеческое познание и культура. СПб., 2013.]

[2] *Atiyah, P. S.* The Rise and Fall of Freedom of Contract. Oxford: Oxford University Press. 1979.

worldview. It implied an appeal to religious and philosophical sources. The result of such a revolution in legal thinking was the doctrine of the contract. Its content was made up of the conceptual apparatus, principles of contract law, general provisions on the contract, classification of certain types of contracts, and determination of the place of the contract in the system of private law.

By the end of the classical period in the historical development of the social sciences, there was a break with the principles of mechanism, due to, according to V. S. Stepin, "paradigmatic grafts" from biology (as the ideas of evolution develop in it). Then, already in our century, the break came from systems theory, cybernetics and information theory. As a result, the formation of the conceptual foundations of contractual regulation at the second stage of development of legal science, which can be conventionally designated as "jurisprudence of interests", was carried out within the framework of sociological directions of research of state and legal reality. In legal science, this led to the emergence of organic (biological) and psychological concepts of legal thinking to reach an understanding of the triune nature of man (psychological, motivational, volitional, behavioral aspects, affective states, genetic causes of offenses, anthropological trends in criminology, etc.). In Western European countries, the institutionalization of the idea of a contract took place, which received a philosophical justification in the theory of a social contract based on liberal values and normative consolidation as a civil legal category.

The non-classical stage in the development of scientific knowledge was characterized by the study of objects as complex self-regulating systems. Complex system objects appeared as process systems, self-reproducing as a result of interaction with the environment and due to self-regulation[1]. Consequently, contractual legal regulation, as a complex polystructural object of research, involves the study not only of its constituent elements, but also the process of contractual regulation (contractual regulatory activity), its functioning as a structural component of another macrosystem – legal regulation, and also its interaction with the environment through a system of direct and feedback.

Modern post-non-classical science develops and functions in a special historical era. Its general cultural meaning is determined by its involvement in solving the problem of choosing the life strategies of mankind, searching for new ways of civilizational development. The needs of this search are associated with the crisis phenomena with which civilization pushed at the end of the 20th century and which led to the emergence of modern global problems. Their comprehension requires a new assessment of the development of a technogenic civilization,

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[1] *Stepin V.* Types of scientific rationality and the synergetic paradigm, 2013. P. 45–59. [См.: *Степин В. С.* Типы научной рациональности и синергетическая парадигма // Сложность. Разум. Постнеклассика. 2013. № 4. С. 45–59.]

which has existed for four centuries. Many of the values related to the attitude to nature, man, understanding of activities, etc., which previously seemed an unshakable condition for progress and improving the quality of life, are questioned today. The value system of an industrial society, oriented towards the ideals of consumption, creates an atmosphere of mega-risks. The modern world, which is largely a technologized space, transforms the very essence of man in the direction of technization[1].

As a result, new scientific approaches of the third stage of development of legal science, which can be conditionally defined as "jurisprudence of values", are based on the idea of a harmonious relationship between people, man and nature, the priority of cooperation over competition, and the dialogic nature of cultures.

2. Formation of the theory of contractual regulation was prepared by significant changes in the problems of general theoretical and industrial research, and the turn of legal science to the knowledge of the dynamic, active-functional side of legal reality due to a new non-classical stage in the development of science.

In methodological terms, legal science in developing the problem of contractual regulation is based on the general doctrine of legal regulation[2], in which the process of organizing and ordering the impact of the law on social relations is reproduced in a strict logical-conceptual form.

In the middle of the last century, the formation and implementation of an instrumental approach to legal research took place. The instrumental approach, focusing on the functional, "service" role of legal phenomena, became the initial methodological basis for understanding the "technological" arsenal of contractual regulation as a manifestation of an active-effective side of legal reality. At the same time, the instrumental approach in itself is not capable of providing meaningful knowledge about contractual regulation. It only directs the researcher in a certain way. In fact, is a kind of "choice of an object", the initial orientation of the cognizing subject to the study of one or another of its facets, a set of properties, its consideration in one or another plane[3].

The end of the twentieth century was characterized by the introduction of active approach to law. The investigations have been concerned. The activity approach,

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[1] *Stepin V.* Human knowledge and culture, 2013. 140 p. [См. подробно: *Степин В. С.* Человеческое познание и культура. СПб., 2013.]

[2] *Kazantsev M.* Legal contractual regulation: initial general theoretical questions, 2001. P. 249–258. [*Казанцев М. Ф.* Правовое договорное регулирование: исходные общетеоретические вопросы // Научный ежегодник Института философии и права Уральского отделения Российской академии наук. Екатеринбург: УрО РАН, 2001. Вып. 2. С. 251.]

[3] *Sapun V.* Instrumental theory of law and human, 2013. P. 14–32. [*Сапун В. А., Шундиков К. В.* Инструментальная теория права и человеческая деятельность // Правоведение. 2013. № 1. С. 18.]

which takes conscious, purposeful human activity as the starting point for understanding legal reality, was the conceptual basis for building an integral model of contractual legal regulation as a unity of goals, contractual legal means and conscious-volitional activity and subjects for their application.

The beginning of the third millennium was marked by the inclusion of y axiological aspects in the formation of modern legal theories. The development strategy of modern post-non-classical science is determined by the development of complex self-developing systems. These systems are characterized by openness, exchange of matter, energy and information with the external environment and the inclusion of human action in it, irreversibly changing its possible states, determined by V. S. Stepin as "human-sized" objects. The study of "human-sized" objects, which include contractual regulatory activity, directly affects humanistic values, which objectively presupposes the inclusion of axiological factors in the explanatory provisions of the general theory of contractual legal regulation.

The active development of contractual regulation in the branches of private and public law was reflected in the emergence of legal research, the purpose of which was to comprehensively comprehend the specifics of contractual regulation of a particular type of social relations. Trade developments have convincingly demonstrated the universality of the contract as a general legal structure used for the development and formal legal fixation of mutually agreed models of behavior, as well as the adaptation of the content, design parameters and regulatory properties of the contract to the specific specifics of private law and public law relations, their subject composition and expressed in their interests[1].

Generalization and comprehension of the richest empirical material within the framework of specific industry studies, revealing the specific features of individual contractual relations and the order of their regulation, yielded the following results. Firstly, it discovered the private and public law specifics of contractual regulation[2]. Secondly, it showed a special procedure for the development and implementation of individual and normative (general) contractual models of behavior[3]. Thirdly, he revealed the features of the use of contractual legal means in procedural and

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[1] *Melekhova A.* Types of administrative contracts, 2012. P. 70–73. [См., например: *Мелехова А. Ю.* Виды административных договоров // Административное право и процесс. 2012. № 1. С. 70–73; *Fried J.* Contract as Promise. A Theory of Contractual Obligations. N. Y., 1981. P. 3–58.]

[2] *Shershen T.* Private and public interest in the contractual regulation of family relations, 2002. 23 p. [См., например: *Шершень Т. В.* Частный и публичный интерес в договорном регулировании семейных отношений: автореф. дис. ... канд. юрид. наук. Екатеринбург, 2002.]

[3] *Nurtdinova A.* Collective-contractual regulation of labor relations: Theoretical problems, 1998. 41 p. [См., например: *Нуртдинова А. Ф.* Коллективно-договорное регулирование трудовых отношений: теоретические проблемы: автореф. дис. ... канд. юрид. наук. М., 1998.]

material branches of law[1]. Fourthly, it revealed the existence of intersectoral links in contractual regulation[2].

3. As the highest form of organization of scientific knowledge, which provides a holistic view of the patterns of development of a particular level of reality, scientific theory acts as a logically organized set of consistent statements about a certain class of ideal objects and their properties and relationships based on a system of principles and laws.

The following are the universal components of any type of scientific theories: (1) initial foundations (fundamental categories, principles, laws, axioms, etc.); (2) an idealized object (an abstract model of the essential properties and connections of the studied subjects); (3) the logic of the theory (a system of rules and methods of proof that can explain the structure and change of knowledge); (4) a set of statements, laws, etc., deduced as consequences from the main provisions of this theory; (5) philosophical attitudes and value factors[3]. In different types of theories, this structure can manifest itself in different ways and not all structural components can be explicitly defined.

From these positions, the formation of its structure becomes a necessary condition for the formulation of a general legal theory of contractual regulation[4]. The main elements of a general legal theory of contractual regulation are the following components:

1) The fundamental categories of philosophy, social sciences and humanities are the initial grounds for the formation of the categorical and conceptual apparatus of the general theory of contractual legal regulation. This apparatus is associated with the interdisciplinary nature of the constructed object of social and legal reality, respectively:

a) philosophy (classical, non-classical and post-non-classical type of rationality, methodology, ontological, epistemological, axiological foundations of the object of knowledge, human activity, principles);

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[1] *Antonov I.* The regulations of agreement between defense and prosecution in criminal procedure: state and development perspectives P. 74–81.

[2] *Mingazova A.* Contractual regulation of investment activity, 2017. 26 p. [См., например: *Мингазова А. М.* Договорное регулирование инвестиционной деятельности: автореф. дис. ... канд. юрид. наук. Казань, 2017.]

[3] *Kokhanovsky V.* Fundamentals of philosophy of science: a textbook for graduate students, 2008.-603 p. [См., например: *Кохановский В. П., Лешкевич Т. Г., Матяш Т. П., Фатхи Т. Б.* Основы философии науки: учебное пособие для аспирантов. 6-е изд. Ростов н/Д: Феникс, 2008.]

[4] *Bakulina L.* The structure of the general theory of contractual legal regulation. P. 161–165. [См.: *Бакулина Л. Т.* Структура общей теории договорного правового регулирования // Государство и право. 2019. № 10. С. 161–165.]

b) jurisprudence (action rights legal activist nost, legal regulation, Pravov s relations, the principles of law, legal means, mechanism of legal regulation, the effectiveness of law);

c) sociology (communication, social relations, relations of cooperation and rivalry, conflict, behavior, activity, individual);

d) psychology (will, consciousness, motivation, emotions, feelings, action, behavior).

In turn, the categorical conceptual apparatus of the theory of contractual legal regulation includes the following theoretical constructions that form conceptual series:

a) activity – legal activity – legal regulation (law-regulatory activity) – contractual legal regulation (contractual and regulatory activities);

b) Contractual regulatory activity unfolds in the following categories: subject, object, activity of the subject of activity; each of the named categories gets detailed in the conceptual series of the next level: the subject – respectively, in the categories of legal personality, purpose, means and result; object – the subject of contractual legal regulation, consciousness, will, expression of will, contractual legal relationship, behavior; activity of the subject – disclosed as a two-component system comprising a linguistic element (information influence language constructs) and registered member (Method contractual legal regulation, the methods of the contractual legal regulation to Zvolen, Bind prohibition);

c) contractual legal regulation as a structural and functional level of legal regulation is disclosed in the following concepts and categories: autonomous and centralized levels of legal regulation, general and individual sublevels of contractual legal regulation, systemic, including intersectoral relations;

d) principles – principles of law – principles of legal regulation – principles of contractual legal regulation;

e) means – legal means – means of contractual legal regulation – contractual and regulatory means;

f) the mechanism of legal regulation – the model of the mechanism of contractual legal regulation – the effectiveness of the mechanism of contractual legal regulation.

2) The idealized object of cognition is a constructed model of contractual legal regulation, presented as a complexly organized self-regulating polystructural multilevel complex, socially conditioned by a certain system of research coordinates.

3) The logic of the theory is due to pluralism, conventionality, "human dimension", textuality, procedurality, constitutionality and other principles of the methodology of post-non-classical science. The use of these made it possible to use the heuristic potential of the activity approach, which conceptually formalized particular, including industry-specific, aspects of contractual-regulatory problems;

to identify the specific structural and functional dependencies and multidimensionality of its internal structure inherent in contractual regulation; to approach the solution of practical problems of the effectiveness of contractual legal regulation, taking into account the complex interaction of goals, means and results.

4) The construction of the theoretical system, the integrity of reproducing the essential aspects of the contractual legal regulation, based, in – the first, on empirical material socially conditioned contractual regulation of the practice, and secondly, on the formation of the general theoretical and industry-academic framework conducive to the development of fundamental scientific approaches to the problem of contract regulation and determination of ways to solve it.

5) Value factors in the structure of scientific theory have a dual meaning: on the one hand, values are the most important factors in achieving goals in research activities. On the other hand, the analysis of the axiological aspects of the object under study is associated with the application of modern methodology of post-non-classical rationality.

Conclusions

1. The general theory of contractual legal regulation is defined as a system of theoretical views and initial scientific provisions, expressed in the categorical and conceptual apparatus of the general theory of law, which makes it possible to reveal the essence and content, functions and forms of manifestation, levels and types of impact on social relations using contractual-regulatory means.

2. There were many reasons for the formation and development of the general theory of contractual legal regulation. First, the fundamental changes in the starting methodological and axiological attitudes of legal knowledge, taking into account the principles of post-non-classical rationality, the implementation of which provided a fundamentally new perspective on the properties of contractual legal regulation; second, the expansion of the sectoral boundaries of contractual regulation, which made it possible to comprehensively reproduce the basic properties and patterns of contractual regulatory activity, taking into account the private law and public law specifics of their manifestation; third, the expansion of the functional specialization of contractual regulation, which is associated with the introduction of decentralized principles into the legal regimes of the public legal branches; fourth, the complication of the hierarchical organization of contractual legal regulation, which includes two relatively autonomous, qualitatively unique subsystems (normative contractual and individual contractual levels), which in general reveals broad modification possibilities for adapting contractual and regulatory means to the specific needs of lawmaking and law implementation as in the private and public law spheres.

3. The proposed structure of the general legal theory of contractual regulation allows one to consistently identify the essential and substantive parameters of contractual regulatory activity as a complex and self-developing systemic phenomenon of social and legal reality ("human-sized" object of cognition); the formulated scientific provisions of the theory of contractual regulation, based on interdisciplinary empirical and theoretical material, allow for the possibility of wide application not only in the branches of private and public law, but also outside the legal regulation of public relations; The regularities, principles, and trends in the development of the contractual regulatory process derived as consequences from the main provisions of this theory open up new horizons in the study of different levels of activity of various subjects of social interactions in a new system of value coordinates of modern technogenic civilizations.

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