LEGAL STUDIES

THE LIBERTARIAN-LEGAL CONCEPT OF LAW

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Abstract

The essence and substantive features of the libertarian-legal concept were thoroughly analyzed in the article. The author of this concept is the world-famous scientist, Academician of the Russian Academy of Sciences, V. S. Nersesyants. According to this concept, law, and rights, as well as legal law and non-legal law, are distinguished. The libertarian conceptual approach assumes all possible forms of differentiation and correlation between natural law and positive law, from separation and conflict between them to their overlap (legal law).

Keywords*: law, rights, positive law, legal law, liberal jurisprudence, natural law, formal-legal and liberal-legal approaches.*

The consistent overcoming of the disadvantages of the natural legal approach (in the field of legal axiology as well as in the ontology of legal epistemology) leads not to positivism and legalism, but to a theoretically more developed form of legal understanding. In other words, it leads to the concept of law, the value and significance of law, and the appropriate interpretation of the state.

In this regard, two different approaches are distinguished within the framework of the juridical (anti-legalistic) type of legal understanding. The first is the natural legal approach, which is based on the recognition of natural law as opposed to positive law (the term "positive law" originated in medieval jurisprudence). The second is the libertarian-liberal legal (or liberal-legal) approach to the general theory of legal understanding, which is based on the principle of distinguishing between right and law (positive law). In this regard, the current approach does not mean natural law, but formal equality (as the essence and distinguishing principle of law) and recognizes four normative specifications of law (Nersesyants, 2004).

At the same time, according to the libertarian-legal concept, the principle of formal equality is interpreted and explained as the completeness of three main components within the legal form (law as a form of relations): abstract-universal equality (equal norms and measures for everyone), freedom, and justice. As component moments of the principle of formal equality (and therefore also components of legal forms of relations), all elements of this trinity (equal measure, freedom, and justice) within the framework of the liberal-legal understanding of law

have a pure and consistently formal character, since law, as a form of relations, should not be conflated with the actual content of those relations.

The mentioned elements not only complement each other but also imply each other, as they are different aspects and forms of manifestation of a unified legal principle, which is the principle of formal equality. Such a formal-legal approach to law, which consistently separates the legal form (law as form) from the empirical content mediated by that form, constitutes the core of the libertarian-legal concept. As different forms of legal understanding, the natural-legal approach and the libertarian approach represent various stages and degrees of emergence, deepening, and development of the theoretical approach to law, and historical progress in the field of theoretical-legal thought.

The libertarian approach assumes and includes all possible forms of distinction and correlation between right and law, from separation and conflict between them (in the case of non-legal law) to their overlap (in the case of legal law) (Chashkin, 2014, pp. 58-75). The same logic applies to law and the state. From the libertarian-legal point of view, the state is perceived across the entire range of its legal and anti-legal manifestations (from the criminal state to the legal state).

According to the libertarian-legal (formal-legal) understanding, law represents a form of relations characterized by equality, freedom, and justice, defined by the principle of formal equality among participants. Wherever the principle of formal equality (along with the norms that define it) is present, it signifies the existence of valid law, the legal form of relations (Nersesyants, 2001). According to the liberal-legal concept, there is nothing in law except the principle of formal equality (and the concretizations of that principle). Any deviation from or contradiction to this principle is deemed illegal.

Equality represents a certain abstraction, that is, it is the result of conscious (thoughtful) abstraction of all the differences that are characteristic of the objects being equated. Equality implies the differences of the objects being equated and, at the same time, the insignificance of that difference. That is the possibility and necessity of eliminating these differences.

Thus, the alignment of different objects according to their numerical basis is abstracted from their various content differences (individual, gender, species, etc.). This is how mathematics was formed, where the composition and solution of equations play a key role and where equality, “purified” from qualitative differences, is brought to the abstraction of quantitative definitions. Legal equality is not as abstract as numerical equality in mathematics. The basis (and criterion) of the legal equality of different people is their freedom in social relations, in the form of recognized and confirmed legal capacity and competence. This is the peculiarity of legal equality and law in general.

Legal equality in freedom, as an equal measure of freedom, implies symmetry and equivalence in the relationships of free individuals (Nersesyants, 2004). Legal equality is the equality of free and independent subjects of law, according to a uniform norm of a common scale for all, equal measure. When people are divided into free and unfree, the latter are not subjects of law, but objects, and the principle of legal equality does not apply to them.

Legal equality represents the equality of the free and the equality of freedom, a general scale, and equal measure of individual freedoms. The law operates in the language and means of this equality, acting as a universal and necessary form for the existence, manifestation, and realization of freedom within human coexistence. In this sense, it can be said that law is the mathematics of freedom (Nersesyants, 1996, pp. 152-153).

Moreover, it can be speculated that mathematical equality, being a more abstract concept, has a later historical origin and is derived from legal equality. The further development and scientific elaboration of equality's foundations suggest that the idea of equality was introduced into law from mathematics.

Such an interpretation can already be found among the Pythagoreans, whose serious interest in mathematics was combined with a fascination with numerical mysticism and the extension of mathematical ideas about equality to social phenomena, including law. According to the Pythagoreans, the essence of the world, both physical and social, is a number, and everything in the world has a numerical characteristic and expression. They viewed equality as the proper measure of a certain numerical proportion, expressing justice (i.e., law with its principle of equality) in the form of the number "four", in line with their social mathematics (Maltsev, 2013, pp. 125-126; Bengston, 1960, pp. 108-109).

The spread of numerical (mathematical) notions of equality in social relations reflected an underdeveloped understanding of law, essentially ignoring the uniqueness of equality in social life as the formal-legal equality of free people. Having this principle of formal equality, the law itself is a kind of social mathematics in the sense of the teaching about inequality of equality in social relations.

Equality in the social sphere is always legal equality. Formal-legal equality is not legal equality. Like any form of equality, it is also abstracted, according to its own basis and standard, from real differences and therefore has a formal character (Nersesyants, 1983).

The history of law is the history of the progressive evolution of the content, scope, scale, and size of formal (legal) equality, preserving this very principle as the principle of any system of law and the principle of law in general (Nersesyants, 2004, pp. 333-334; 349-350). Each stage of historical development in human relations reflects its own scale and measure of freedom, its own framework of relations and subjects of freedom and law. Thus, the principle of formal (legal) equality remains a constant in law, albeit with historically changing content.

The historical evolution of the content, scope, and sphere of action of the principle of formal society is generally not a denial, but on the contrary, strengthens the importance of this principle as a distinguishing feature of law in relations and disagreements with other types of social regulation (moral, religious, etc.). In this context, law can be seen as a normative expression of freedom through the principle of formal equality in social relations.

The initial differences between people, considered (and regulated) from the point of view of the abstract-universal principle of equality (of equal size), result in the inequality of already acquired rights (the inequality of the rights of different individual subjects of law according to their content and scope). Law, as a form of

relations based on the principle of equality, does not eliminate these fundamental differences but formalizes and regulates them according to a common standard. It transforms vague, factual differences into the form of free, independent, equal persons with certain unequal rights. In essence, this is the specificity and meaning, limits and limitations, importance, and value of the legal method of mediation, regulation, and regulation of public relations.

Legal equality and legal inequality (equality and inequality in law) are legal definitions and concepts of the same order (presupposing and complementing each other), which are equally opposed to factual differences and differ from them. The principle of different legal subjects implies that the subjective rights acquired by them will be unequal. Thanks to law, the chaos of differences is transformed into an order of inequalities of equalities, structured according to a common basis and norm.

The formally equal recognition of different individuals means recognizing of their equal rights to respective goods, and the possibility of obtaining this or that right regarding specific objects. However, it does not mean the equality in the rights already acquired concerning individual-specific objects, and goods. Formal equality is only a legal capacity — an abstract free opportunity to acquire, in accordance with the general scale of legal regulation, an equal amount of individually determined rights to a given object. In the case of formal equality and equal legal capacity among different people, the rights they actually acquire will inevitably (due to the differences between people, their real opportunities, life conditions, and circumstances) be unequal. These vital differences are measured and evaluated on the same scale and equal measure of the law, resulting in are the difference between rights acquired by a specific subject, belonging to him personally (and in that sense subjective). Such a difference in the rights acquired by different persons is a necessary result of the maintenance of the principle of formal equality of these people and not a violation, the result of their equal jurisdiction.

As a unique principle of legal regulation, the forms of manifestation of equality have a social-historical nature. This is due to the peculiarities of these forms in different socio-economic formations, at different stages of the historical development of law, as well as changes in the scope and content, place, and role of the principle of formal (legal) equality in public life.

At the same time, this principle, with all the variety and differences of its manifestations, has universal significance for all historical types and forms of law. It expresses the specific distinguishing feature of the legal method of regulating social relations of free individuals. Wherever the principle of legal equality applies, there is also a legal beginning and a legal method of regulation. Thus, where there is law, there is also the principle of equality. For this reason, the formal equality of free individuals is the most abstract definition of law, applicable to any general right and to special rights in general.

The concept of law as a form of social relations is also related to the principle of formal equality. The specificity of legal formality arises from the fact that law functions as a form of social relations of independent entities that are subject to a general norm in their behavior, activities, and relations. Their independence within the limits of the legal form of their relations and at the same time their identical,

equal submission to the general norm, defines the meaning and essence of the legal form of existence and the expression of freedom.

The legal form of freedom, showing the formal nature of the universality of equality and freedom, implies and expresses the essential unity of legal formality, universality, equality, and freedom.

Conclusion

Summarizing the conducted research, we conclude that Academician V.S. Nersesyan's liberal-legal concept represents a substantive novelty in the discipline of the theory of law. This concept addresses two major points: firstly, it tries to smooth out the contradiction between the theory of natural law and positive law; secondly, the concept distinguishes the substantive features of right and law, legal law, and non-legal law.

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