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Can a Law Enforcer Make a Decision of His Own Free Will?

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Abstract

The renewal processes taking place in the society of Uzbekistan have led to the formation of new realities in the practice of legislation and law enforcement. Today, in the conditions of direct application of law, research is required to study the means of closing gaps in legislation. One of the tasks of science is to determine the structure of the expression of the law, its correct interpretation, new scientific approaches and solutions to the problems of eliminating legal gaps. The article discusses the role of legal symbols in the context of the discussion about legal realism, positivism and naturalism in the process of law enforcement, excluding gaps in law.

Keywords: *Symbols of Law; Legal Symbols; Law Enforcement; Legal Gap; Model of Legal Behavior; National Will and Goals; Legal Principles; Rule of Law; Legal Text Openness; Legal Similarities (Analogies)*

Introduction

In the Soviet era, the attitude to the means of law enforcement to close the legal gap was based on the view that it was a tool that was not necessary. As an academician A. Saidov points out, in Soviet times, administrative documents competed with laws, displacing laws from the top of the pyramid of sources of law in regulating social relations. In total, 81 laws were adopted during that period, the concept of the rule of law and law enforcement itself had a nominal value, and the rule of law was replaced by an administrative-command system **[1]**. Naturally, in such circumstances, the law enforcement tools of overcoming gaps had more theoretical value, they were only studied theoretically, but not in relation to real-life situations. The fact that laws have become the main instrument for regulating social relations, the adoption of laws of direct action increases the need to study practical means to overcome legal gaps **[2]**. In the post-Soviet countries, the relationship **[3]** between such concepts of law enforcement as the interpretation of law, the definition of law, administrative voluntariness (discretionary power) and the similarity of law and law, and their application has been studied **[4]**.

The institute of law enforcement by analogy is reflected in 3 codes of the Republic of Uzbekistan: The Civil Code (Article 14), the Family Code (Article 7), the Code of Economic Procedure (Article 13) set out the grounds for making decisions on the basis of similarity, and the Law on Administrative Procedures (Article 17) define the grounds for making administrative documents on a voluntary basis.

Also, the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan "On the decision of the court" strengthens the grounds for the court to make a decision based on the similarity of human rights and the similarity of law **[5]**. Often, speaking of gaps in legislation, we mean normative gaps, but in addition to this, we also have to talk about gaps in the expressive structure of norms. Before acknowledging that these gaps can be filled by law enforcement, one should answer the question if judges or other law enforcement officers can decide on their own. It is necessary to address the boundary issue that separates the means of addressing gaps in legislation from arbitrary decision-making.

Discussion

The discussion of this problem has led to scientific discussions among representatives of various legal scholars. "Can a law enforcement officer make a decision of his own free will? We will try to answer this question in terms of research (legal semiotics) of the study of law as a system of symbols and signs. Representatives of the American School of Realistic Law - O. Holmes, K. Levellin, J. Frank discussed this problem in terms of norm skepticism. According to them, uncertainty in natural language and its structure also leads to uncertainty in the legal text, therefore the judge should rely on existing practice in applying these norms, rather than on a legal norm with uncertainties in decision-making. They also argue that the ambiguity of norms cannot be eliminated, so legal norms have many alternative interpretations, and a judge or other law enforcement official can independently choose one of the interpretations of a legal norm. In its turn, the law enforcer decides at will **[7]**.

The founder of legal neo-positivism Herbert Hart states that whether a norm can be applied to a particular situation depends on the limited meaning of the general expressions in it. Applying a legal norm consisting of general expressions to ordinary cases is not a problem. However, in complex cases (in the case of "obscurity"), the ambiguity of the norms makes it difficult to apply them to a particular situation, the meaning of the expressions loses its clarity. This is the case which G. Hart defines it as the rules of "open text structure".

According to Hart, the legislature cannot take into account all vital circumstances in advance when creating a rule of law. G. Hart argues that despite how hard the legislature tries to take all aspects into account in the legal regulation of life situations, he cannot escape two shortcomings: first, the relativity of knowing life situations; second, the relative uncertainty of the target **[8]**. G. According to Hart, these uncertainties can be reduced through interpretation, but cannot be completely eliminated. This is because interpretation is also done using language rules and is made up of general expressions that require interpretation.

G. Hart cites the norm prohibiting the use of vehicles in recreation areas as a complex situation. Of course, there are well-known and constantly occurring cases, states G. Hart, they are clear to apply general expressions and do not cause difficulty - for example, if something is a vehicle, it is a car. But there are cases that are complicated enough that it is not known whether general expressions apply to them - for example, does the concept of "vehicle" include a toy electric car or not? In this case, the rule prohibiting the use of vehicles in recreation areas is clear for use in relation to vehicles that can harm the peace, tranquility, and cleanliness in the place, but it is vague for use in relation to an electric toy car. Now the feeling that the language of law allows one to easily define the model of behavior disappears, and a syllogic (deductive) conclusion from reason and norm can no longer be the basis **[8. 130-133]**.

G. Hart raises the question, "What is the role of a judge or other law enforcement officer in applying the rule to such complex cases?". And points to two methods (the method of similarities):

First, the law enforcer first begins to determine the situation. In this case, if it is determined that the norm is uncertain for certain cases, it is necessary to answer the question: "Can it be applied to these cases?". To do this, it is first necessary to determine whether the current new situation is sufficiently

similar to the previous obvious cases or not. Here, language provides a wide range of possibilities, adding the new situation to the list of legally regulated cases due to the similarity and closeness of the rule applicant **[8. 131]**. In the example above, the law enforcer begins his interpretation of the meaning of the legal norm, which states that "the use of a vehicle in recreation areas is prohibited," with the consideration that "a vehicle is a car". Then, based on the purpose of the rule in question to restrict the movement of cars, buses and motorcycles in recreation areas, it will be necessary to decide whether the term "vehicle" can be applied to toy cars with electric motors or not. This takes into account whether or not these circumstances clearly recall the specific situation to which the rule applies **[9]**. In particular, does an electric toy car, like a car, make noise, endanger order, or pollute the air? In this case, some criteria are correct, while some are incorrect.

Secondly, when the rule that it is not allowed to bring vehicles into recreation areas is clearly understood, the circumstances of cars, buses, motorcycles and the purpose of the law to ensure peace, tranquility and fresh air in the place become clear. But the goal remains unclear until an electric motor toy is connected to the car, which has not been considered as part of the goal of providing peace, tranquility and fresh air in recreation areas **[8. 130-132]**. There is a problem that has not been considered and resolved by the legislature before:The question if children who use electric-powered toy cars should sacrifice some of the peace in the garden, or should the peace be protected from them was not answered. In this case, the law enforcer (judge, official) determines the legislator's purpose by asking hypothetical questions such as, "Even if the legislature did not consider the use of an electric toy car in recreation areas, what would he say about it?" [**10]**. In the event of unforeseen circumstances, the problem is solved by choosing the most important among the competing interests. In this way, the question of the purpose of the law is resolved [**11]**.

G. Hart's opponent, Ronald Dvorkin, opposes the idea of a "clear text structure" of law. According to him, in the consideration of any complex case, the judge relies on and uses the principles of law. Principles encourage a particular decision, but unlike norms, they remain unchanged even if they are not followed. If a judge is compelled by a principle which he considers to be obligatory to a particular decision and the principles which compel him to make another decision are not of equal importance to him, then he shall make a decision in accordance with the first principle, as if he were following a binding norm. The judge assesses the relative importance of the different principles, so he cannot make a decision on his own **[12]**.

American lawyer Lon Fuller, a representative of modern legal naturalism, participated in this scientific debate and argued that the rule of law is essentially goal-oriented and that in order for a rule of law to exist, it must express a specific purpose **[13]**. According to Fuller, there are no legal norms that do not provide for the achievement of a particular goal and do not reflect the means necessary to achieve that goal. According to Fuller, the legal norm is, first of all, the material basis - the text of the legal norm; second, the purpose of the norm set by the lawmaker; thirdly, the means of applying the rule of law in accordance with its purpose.

Fuller describes law as "a measure of the subordination of human behavior to the rule of law **[14]**." According to Fuller, individual terms and phrases, expressions, or sentences that are expressed in a legal text cannot in themselves express legal requirements. He analyzes the norm that "vehicles are prohibited in recreation areas" in terms of the purpose of the law. For example, if someone brings a World War II-era working Jeep to a recreational area for viewing as a military memorial, and a law enforcement officer interprets the situation in accordance with the wording of the rule of law, it is a violation. But if he takes into account that the purpose of the above norm is to ensure peace and tranquility in the recreation area, then it would be unfair to conclude that an offense has been committed. It is not possible to come to a definite conclusion and apply a legal norm without knowing what the purpose of the legal claim is. Fuller, therefore, criticizes legal realism, arguing that the question of "how law is in practice" cannot be resolved without answering the question "what should law be" **[15]**.

It is worth considering the above discussion from the point of view of legal semiotics. The American tradition of legal semiotics supports the fact that the rules of conduct are not always defined by law, and that there are small legal systems in society that constantly compete with each other. The conclusions of the American tradition of legal semiotics also support the judge choosing one of the rules of the competing legal system supporting the view of legal realism that "the judge decides at will". The European tradition, on the other hand, supports the idea of a plain text structure of law from a neo-positivist point of view. The following grounds are put forward:

First, no phrase or term can be legal in itself, they can only be legal in the context of a legal statement in the text of the legislation **[16]**. As the legal text becomes an integral part, the term and phrase lose their usual breadth of meaning and strictly limited meanings arise **[16. 302]**.

Second, when legal phrases and terms are combined into a legal text, the created text has more meaning than the sum of the simple meanings of the individual phrases and terms. This last created meaning will have a "code" property that requires interpretation. Therefore, when talking about the application of the law, it is necessary to take into account the difference between meaning and interpretation **[16. 308]**. If meaning is a matter of the meaning of terms and phrases in the text of the law, interpretation is a matter of interpreting the meaning of the text of the law in the exercise of this right. In this case, the difficulties of interpretation come into being when new cases arise that the legislator did not take into account in advance [**16. 269]**.

French scientists A. Greymas and E. Landovsky state that the text of the law will be virtual until it is applied, and its practicality will be ensured through the application of the law. In doing so, the judge examines the status of the expressions and statements used by the legislator in the application of the law and converts potential legal information into practical legal information **[16. 35]**.

B. Jackson objected to the idea that the text of the law should be virtual until it is applied by a judge. According to Jackson, in order to decide whether a judge can "make a decision of his own free will," it is necessary to take into account that legislation consists not only of signs, but also of symbols. In this case, the problem of ambiguity in the interpretation of the text of the law is eliminated by referring to the text. Legal texts can, of course, have many interpretations, but if the text is approached in terms of its purpose, the question of which one to choose will be decided **[16. 296]**.

Indeed, if we accept that the text of law consists of a structure of symbols and signs representing legal behavior, we see that the problem of interpretation is addressed by referring to the legal text. It is worth noting to look at this in the example of the behavioral model in Hart's analysis about people having a rest in a recreational area.

This model of behavior has the following components:

1. The purpose of the behavioral model is to create conditions for people to relax;

2. The main subject of the behavioral model are people in the recreation area;

3. The object that the main subject seeks to achieve - rest in a quiet, peaceful, clean environment in the recreation area;

4. The subjects that should help the main subject to achieve their object include government agencies, officials and civil servants, who are responsible for creating conditions for recreation in the park and are given the appropriate powers;

5. The main subject includes persons who may commit illegal acts (including the use of vehicles in the park) in connection with the violation of the conditions for recreation of the subjects that may prevent them from reaching their object.

The model of behavior is represented by the symbols and signs that make up the text of the law:

1. The purpose of the model of behavior is the symbols of law;
2. The main subject and the object he aspires to is symbols;
3. Entities that need to create conditions for the main subject to achieve the goal;
4. Subjects that may prevent the main subject from achieving the goal - the sign is represented by means of symbols.

In legal communication, it can be seen that the legislator sends to the participants of social relations a sign consisting of not one, but two general expressions: the first is the prohibition of the use of these vehicles in the recreation area, and the second is the prohibition of obstructing the peace, tranquility, cleanliness and fresh air of the people in the area. In this case, the signs will be linked to the symbol of the law, that is, the content of the texts, which represent the purpose of creating conditions for people to rest. This means that the use of vehicles is prohibited not because they are vehicles, but because they can prevent people from relaxing in recreation areas. If the vehicle is an electric vehicle that moves quietly and does not pollute the air, its use will be evaluated in terms of whether it will harm the people in the recreation areas in any other way, for example, in terms of ensuring free movement in the areas.

When it comes to an electric motorized toy car, two behavioral models are considered: symbols and signs related to the garden recreation behavioral model and the child behavioral model. In this case, in order to ensure peace, tranquility and cleanliness for holidaymakers in the garden, the priority of which is to create conditions for children's play activities and recreation is decided on the basis of the connection of legal symbols and signs. If an electric-powered toy car operates quietly and does not pollute the air, it is allowed as a means that does not contradict the purpose and principles of creating conditions for recreation in the area, but if it makes noise or pollutes the air to the extent that interferes with recreation, it prevents prohibited as a means of doing so.

Conclusion

Thus, if a particular component of the behavioral model is insufficiently expressed in the text of the law, this defect is filled with other symbols in the symbolic and expressive structure of the law, meaning that it is related to the content of the law-enforcement behavior model makes decisions based on a pattern of behavior, not on an arbitrary basis.

From the point of view of studying law as a system of symbols and signs, practical means of overcoming legal gaps, including the institutions of similarity and administrative voluntariness, are a necessary element of law enforcement activities and can be applied except in cases prohibited by law. It is therefore necessary not to abandon them, but to establish means to prevent them from becoming arbitrary.

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