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ANALYSIS OF USING LEGAL EXPERIMENT OF LEGAL NORMS AS A METHOD OF RULEMAKING

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Abstract. *This article discusses the legal concept experiment based on domestic and foreign experience, the expediency of its use as normative method of creativity. Accord to the opinions presented, and the specific features of the application of the legal experiment, conclusions and proposals were put forward on its application. Also in this article, the other normative methods of creativity, in addition to legal experiment, are briefly touched upon. The legal conclusions and suggestions on the experiment are given in this article.*

Keywords: *experiment, legal experiment, legal rulemaking, legislative acts, the bill, regulatory impact assessment.*

HUQUQIY EKSPERIMENTNI NORMA IJODKORLIGINING USULI SIFATIDA QO'LLASH MASALALARI TAHLILI

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Annotatsiya. *Ushbu maqolada milliy va xorij tajribasi asosida huquqiy eksperiment tushunchasi, uni norma ijodkorligining usuli sifatida qachon qo'llash maqsadga muvofiqligi to'g'risida fikr va mulohazalar yuritilgan. Keltirilgan fikrlar yuzasidan huquqiy eksperimentni qo'llashning o'ziga xos xususiyatlari, uni qo'llash yuzasidan taklif va xulosalar ilgari surilgan. Shuningdek, ushbu maqolada norma ijodkorligining huquqiy eksperimentdan tashqari boshqa usullariga ham qisqacha to'xtalib o'tilgan. Maqolada huquqiy eksperiment yuzasidan xulosa va takliflar ilgari surilgan.*

Kalit so'zlar: *eksperiment, huquqiy eksperiment, norma ijodkorligi, normativ-huquqiy hujjatlar, qonun loyihasi, tartibga solish ta'sirini baholash.*

ЭКСПЕРИМЕНТ С ПРАВОВЫМИ НОРМАМИ, СВЯЗАННЫМИ С ИСПОЛЬЗОВАНИЕМ ТВОРЧЕСТВА В КАЧЕСТВЕ МЕТОДА АНАЛИЗА

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Аннотация. *В данной статье рассматривается концепция правового эксперимента на основе отечественного и зарубежного опыта, его целесообразность при применении в качестве метода нормативного творчества. По результатам изучения мнений были описаны специфические особенности применения правового эксперимента, представлены предложения и выводы по его применению. Также в этой статье, помимо юридического эксперимента, кратко затронуты другие методы нормативного творчества. В статье представлены выводы и предложения по правовому эксперименту.*

Ключевые слова: *эксперимент, правовой эксперимент, нормотворчество, нормативно-правовые документы, законопроект, оценка регулирующего воздействия.*

Introduction

How often and in what cases should the method of the legal experiment be used in connection with rulemaking? What criteria should be considered when deciding whether to use this method? In essence, if this method is a costly method of rulemaking, why is there a need to use other methods? We will try to find answers to the above questions below. According to scholars, "when it is necessary to first substantiate this or that important socio-political event carried out by the state, it is necessary to use legal experiment, if it is impossible to determine the appropriateness of this method in another way without practical examination of the proposed models" [1, pp. 5-15]. "After the adoption of the relevant normative legal act, the legal experiment will allow to apply its impact on certain areas of public life, increase their effectiveness, improve the technical quality of the normative legal acts, also helps to eliminate possible negative consequences" [2, p. 163]. However, "there is not always a need for such an inspection and in practice, it is not always possible to carry it out" [3, pp. 5-15]. Legal experiment is a costly method of testing hypotheses. In cases where it is not possible to test the legal hypothesis in another way and other methods of determining the legal effectiveness do not work, it is advisable to conduct a legal experiment. Scholars emphasize that preparing for a legal experiment requires a great deal of responsibility: "A legal experiment is a costly method that affects people's personal and material interests, as well as their position in society. It is necessary to be very careful in preparing and conducting a legal experiment and evaluating the data obtained on their basis". Experimental legislation is a specific form of legal experiment that can even be interpreted as very drastic because it is a specific experience involving the rights and obligations of citizens that directly affect society and the economy [4, p. 9].

According to Western scholars, "experimental law is based on an interdisciplinary approach and empirical methodology (in response to the need to create laws) [5, p. 20]. Experimental lawmaking, in this sense, is an additional valuable learning device because it "tests" laws in the "real world" before they finally come into force.

In particular, although some research has been conducted on "pilot" laws in Germany and France [6, p. 44], a clear definition of this concept, the concept of which is still not sufficiently studied. The legal experiment also involves testing new laws; however, the experiments should not be confused with experiments conducted under strict supervision in practice. In fact, the experiment used in the natural sciences is somewhat different from the legal experiment we envisage. In our view, a legal experiment, unlike physical, chemical, biological, sociological, and other experiments, can only be conducted under natural conditions. However, not all authors agree, for example, Kess van der Bos, a professor at the University of Utrecht, states that "considering the types of legal experiments, it distinguishes between legal experiments as well as laboratory experiments (testing of legal innovations assumed under artificial conditions)" [7, p. 20]. If a legal experiment is based on a legal norm established by law, it can be witnessed that the question of its right or obligation is disputed. Since it is impossible to answer this question through the existing legal basis of a legal experiment, it is necessary to refer to the scientific and theoretical aspects of a legal experiment. This is approached by the nature of the legal experiment as a method of cognition. That is, according to it, a legal experiment is a method used when it is not possible to know the effect of a normative legal act through theoretical methods of cognition [8, p. 44]. N.P.Koldaeva rightly stressed the need to ensure the possibility of comparing the performance of experimental and control objects [9, p. 69].

It is obvious that if the current state of social relations, together with its legal regulation, clearly lags behind the needs of life and therefore the need to correct the situation by changing the legal regulation, then by applying the method of legal experiment and adopting a fully effective legal regulation would be right to apply. Naturally, we believe that it is advisable to approach the regulation of the relevant relationship of forecasting the possible consequences, taking into account the requirements of qualified modeling, including a correct understanding of the competition of different approaches at the stage of development and decision-making.

However, there are also uncertainties here. Legal experiment should always be viewed as a competition of different ideas, as a rule, between

current and new models of legal regulation. However, there are cases when in practice the existing legal regulation should be changed to a completely new one, but it is not possible to determine in advance by the rule makers whose option is appropriate. In our opinion, the most effective, but at the same time understandable position is to conduct two experiments at the same time with the possibility of choosing the best.

Nevertheless, it is advisable to make such a choice, using all forecasting resources, and based on the uncertainty of the existing regulation and the priority of any new one. The problem situation is to eliminate uncontrolled effects, if possible, and to minimize the influence of subjective factors on the experimental process. The experimental legal norm is always limited by space and time. As V.I.Nikitinsky states: "For example, it may be time-limited but not limited in space, and vice versa" [10, pp. 26-34].

How can one find a reasonable line between the circumstances in which a legal experiment is necessary and the circumstances in which the rule maker has the right to change the legal regulation of social relations to a new one? At first glance, it seems necessary to encourage frequent conduct of the legal experiment method. Indeed, before a legal regulation can be applied to, say, an entire country, it would be useful to "test" it to prevent the negative economic and social consequences that could result if it fails. However, when the state (rulemaking subjects) begins to use the method of legal experiment too much and too often, it is perceived in the public mind that the state as a form of people's power is devalued, in the situation when the state can not act wisely in the exercise of power and effective regulation of social relations.

The activity of the rule-makers, which is authorized by the people through direct elections and has the right to adopt universal legal norms [11, pp. 5-8], is the basis for suspicion in the public consciousness. The expression of the will of the state (people), expressed in the normative legal acts, as a rule, should imply actions without time in the prescribed manner.

In addition, the desire to experiment too much or too often can also hinder the development of law. First, the legal experiment method delays the entry into force of full legal regulation. Second, legal regulation can also have negative consequences if insufficiently substantiated or unreliable information is used in the process of conducting a legal experiment. This may be related to the incorrect choice of the location of the legal experiment or the scope of the subjects conducting it, and the resulting conclusions may have a serious negative impact on the effectiveness of the new legal regulation. Moreover, in any case, the evaluation of the results of a legal experiment is not devoid of a certain degree of uncertainty, as opposed to an experiment in the exact sciences. This, in turn, may lead to the idea that those who oppose the introduction of new legal norms may be satisfied and that everything can be done in the old way, and that the assessment of such views often depends on decision-makers' ability to inform rather than objective results. A balance against this may be to set criteria for its success in deciding on an experiment, but it is not always possible to express them in rigid, measurable indicators.

Also, when talking about the limits of the application of a legal experiment, it should be borne in mind that if it implies the application of other rules in one part of the territory of the country, it will certainly raise the question of the principle of equality. As some French scholars have pointed out, "in the experimental process, inequality is seen from beginning to end: first, how its scope is determined, then how they respond to the problem, experience gained, and finally, as a result of experience, differentiated legal regimes are adopted" [12, p. 1150]. This does not preclude the possibility of conducting an experiment, for instance, deviating from the principle of equality, especially if the subjects of the experimental legal relationship are placed in better conditions than the subjects of the legal relationship under the current legal regulation. However, the decision to conduct the experiment is assumed to be balanced by constitutional values that must be of a higher quality than the current legal regulation. But such a state of balance implies, among other things, that the relevant legal decision on the experiment is somewhat peculiar.

When considering the draft normative legal act to address the issue of adoption of the normative legal act, the subject of the rulemaking will have to be convinced of the state of its effective implementation in practice in relation to social

relations. A one-sided approach would be to look at the regulatory impact assessment reports of a new institution that has entered the rulemaking process as a criterion for building trust. According to the established procedure, the proposals and comments received during the public discussion of draft normative legal acts should be summarized, included in the report on the impact assessment of the regulation and submitted to the body adopting the normative legal act. This report includes the names of developers and partners, the type and name of the draft normative legal act, the expected date of entry into force, the analysis of problems to be addressed by the draft, the goals to be achieved through the project, the analysis of benefits and costs of alternative methods of regulation, the expected outcome, the measures needed to achieve regulatory goals, and the suggestions received in the public discussion [13].

Familiarization with the conclusion of the regulatory impact assessment will help the competent authority to form an appropriate opinion on whether the normative legal act is effectively implemented in practice. Therefore, the body authorized to adopt a normative legal act carefully examines the conclusion obtained on the assessment of regulatory impact when considering the adoption of a regulatory legal act. However, the findings of the regulatory impact assessment may not be the only and expedient mechanism for deciding to conduct a legal experiment for some reason.[14]. In particular, the assessment of regulatory impact is not carried out on each draft of the adopted normative legal act. In addition, the assessment of regulatory impact by nature is a three-stage process, the third stage of which is carried out after the entry into force of the normative legal act. This means that at the stage of adoption of the normative legal act, complete information on its effectiveness has not been formed.

In the process of working on a draft normative legal act, a lot of research will be conducted, and based on the analysis of the data obtained, it will be possible to make certain predictions on the implementation of the act in practice. That is, the working group developing the draft normative legal act is directly confronted with the real situation of the existing social relations and their prospects for the project. Therefore, the working group developing the draft normative legal act should consider whether there is a need to conduct a legal experiment in the process of preparing the draft for its effective implementation in practice. The conclusion on this issue should be included in the list of documents to be submitted when the draft normative legal act is submitted to the competent authority. The state body authorized to adopt the normative legal act shall study this conclusion submitted during the consideration of the draft for adoption and decide whether to accept the draft as a legal experiment or not [15, p. 25].

There are also certain opinions in the special legal literature about the circumstances in which a legal experiment should be applied. In particular, R. A. Safarov believes that they should use a legal experiment in the following cases:

- the expediency or effectiveness of the adoption of a particular normative legal act can not be justified by logical conclusions;
- it is not possible to scientifically predict the most important results of solving existing problems;
- it is not possible to reliably confirm or deny the correctness of the normative legal act, which is the subject of a legal experiment, based on existing practice;
- it is not possible to predict the content and nature of the inevitable consequences of economic, political and social nature;
- when it is difficult to predict the attitude of public opinion to the proposed regulation [16, pp. 701-708].

It is also recommended to adopt a normative legal act as a legal experiment if the adopted normative legal act is related to the following relations:

On the introduction of innovations in science and technology:

When it comes to using artificial intelligence;

On a radical change in the traditional order;

In the application of the experience of foreign countries;

If the situation is a novelty for the rule maker when it is beyond his level of knowledge and worldview [17, pp. 14-22].

It should be noted that there are also various controversial views on the timing of the legal experiment. The experimental norm is

temporary in its meaning, but the application of the experimental norm can lead to unintended consequences and problems, the solution of which, in turn, requires additional study or expansion of the composition of the experiment participants. In this regard, V.I.Nikitinsky included the experimental rules in a series of vaguely hasty and operative rules [18, p. 9].

The process of conducting a legal experiment and regular monitoring of participants' behavior should be conducted. Analysis of the results of such monitoring should be the basis for conclusions about the appropriateness of continuing the experiment.

A positive assessment of the results of a legal experiment provides a basis for adopting an appropriate rule of general action. However, this rule, as rightly pointed out, "may not be the same as experimental". The identified inconsistency of the current hypothesis of the presumed variant of legal regulation should lead to the abolition of the experimental rule.

Conclusions

However, acknowledging the positive results of a legal experiment and consolidating a particular model in an appropriate level of a normative legal act does not mean the end of the experiment. A legal experiment can be continued to develop legal norms aimed at solving specific problems. The legal experiment should end with the adoption of the final analytical document. These experimental results can be positive or negative, acceptable to the initiating subjects, or performed regardless of whether the model tested during the experiment is canceled or modified. In addition, the official position and point of view of the experiment participants and the experts who conducted the monitoring should be stated. Ignoring the significance of this requirement then precludes the possibility of taking into account the results of a legal experiment in such circumstances, leading to a loss of significance of the experience accumulated during the experiment.

Based on the above considerations, it should be noted that the method of legal experiment is relevant in cases where the typical conditions of the research object, a set of stable typical features, allow comparing the experimental results and then comparing the data obtained during the legal experiment. As R.A.Safarov noted, "the specificity of the object is necessary for the experiment" [19, p. 29].

Based on the above analysis, it can be noted that the adoption of a normative legal act as a legal experiment and the study of its effectiveness to a limited extent is not voluntary. Although the study of the effect of a normative legal act through legal experiment is not directly defined in the legislation as an obligation of the body authorized to adopt a normative legal act, such a conclusion can be drawn from the general rules and principles of rulemaking and the legal nature of legal experiment.

Therefore, on the one hand, it is necessary to call on the subjects of the right of a legislative initiative to use legal experiments more than now and the legislation (both at the local and republican levels) to accept them with confidence. However, we believe that the rule should be treated with caution in the use of these forms of rulemaking activity.

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