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STATE OF A LAW IN THE TRANSITION PERIOD OF THE DEVELOPMENT OF THE KYRGYZ REPUBLIC

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Abstract. The article is devoted to the theoretical and legal analysis of the issue of the realization of rights in the transition period of the development of the Kyrgyz Republic. Were considered factors which impact on the effectiveness of law in modern transition period in the Kyrgyz Republic.

Key words: law; transition period; legal regulation; legal system; legal reform; legal nihilism.

О СОСТОЯНИИ ПРАВА В УСЛОВИЯХ ПЕРЕХОДНОГО ПЕРИОДА РАЗВИТИЯ КЫРГЫЗСКОЙ РЕСПУБЛИКИ

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Аннотация. Статья посвящена теоретико-правовому анализу вопросов реализации права в переходный период развития кыргызской Республики. Рассмотрены факторы, влияющие на эффективность действия права в современный переходный период в Кыргызской Республике.

Ключевые слова: право; переходный период; правовое регулирование; правовая система; правовая реформа; правовой нигилизм.

A continuous process of transformation of the state forms, political and social system of power relations determine the existence of the transitional period in the development of the state, which covers exactly the process of formation of a new state: from the beginning of the changes to its stable functioning.

The transitional period of the development of the statehood is characterized by high degree of instability, multidirectionality. Quite often there are sit-

uations of «reverse transfer». In such environment the problem of understanding the features and mechanism of transition from a quality status of a state and law to another acquires special significance.

The value of this scientific problem repeatedly increases and as a result of its organic linkage with a complex of extremely important aspects of practical activities of public authority in the transition period.

Analysis of the law of the transitional period in a normative aspect without practice of its implementation is insufficient. Conditions of the implementation of legal norms in the transition period are so specific that the model of social behavior which is laid in norms is not embodied in concrete social relations. The crisis of legal regulation that accompanies the process of construction and adaptation of new legal system negatively affects the mechanism of law action.

The right is the subject to change eventually and the whole legal order of each country reflecting its life is constantly transformed.

The right exists and develops in the society, in its space and time and it cannot be considered outside of these parameters. Spatial and temporal parameters are integral elements of the right. If we consider law in its duration and consistency then the law takes the time and its fundamental parameters: the past, the present and the future. Therefore, knowledge of the law as well as the whole legal system outside of its time frame is impossible.

The transition period is the time period during which it is accomplished radical legal transformation. Legal phenomena and processes combined by legal system, – states V.V. Sorokin – exist in a special transition time, which determines the originality of their changes. Well, if in the twentieth century it was discovered and studied social time, then in the twenty first century it should be discovered and subjected to serious analysis particular legal time, the time of transitional systems in particular [6, p. 180-181].

Active transforming role of the transition right is realized only if the new law norms set in motion the mechanism of regulation which is stipulated by

them. Legal practice of transition countries knows a lot of examples of how legal positions remained declaration since they did not provide for an effective mechanism of implementation or this mechanism does not «work» in the prevailing social conditions.

A big problem obstructing the effective implementation of rights in the transition conditions is that the correspondence between the set of statistical legal acts and their effects, practical regulation of social relations is violated. Legal systems of transition countries do not imply the full compliance with the existing legal relations to the acting legislation. There are contradictions between law-making and law enforcement, between the juridical and actual content of rights. The transition period is characterized by the adoption of numerous laws but many of legal norms will never be realized. Transitional legislation contains a lot of attractive regulations and institutions but jurisprudence levels them, turns to fiction. As a result it is created a semblance of intensive formation of a new legal system.

The Kyrgyz Republic, as well as the other independent states that were formed after collapsing of the Soviet Union in the post Soviet territory, chose the democratic path of development, however, in practice after two decades the country has not taken the form of genuine legal state yet. Transformation process which occur in the Kyrgyz Republic, in fact, does not mean a guaranteed transition to democracy [4, p. 60-62].

In the process of transformation are distinguished a number of objective as well as created by the most power problems which introduced Kyrgyzstan into systemic crisis. One of the main problems is the problem that is the result of incorrectness of the approach to the legal reform in general and to the political-legal foundation of the state structure in particular. Undeveloped level of integrated scientific and methodological tools in determining strategic goals of transformation itself, their validity, clear mechanism of implementation resulted to elaboration and adoption of such Constitution that does not meet the

objective requirements and laws of the social and political development of the country.

All transformation without exception especially at the constitutional level can not occur at the behest of some specific social groups even if they represent political elite of the country. Qualitative transformation in the country are based on a certain objective factors, laws of social development, living conditions and the needs of the society at a particular historical period of development of the state.

Consequence of irresponsible attitude of authorities to the essence of the reform is that the process of transformation is going on now in the Kyrgyz Republic, that is confirmed by the imperfection of normative and legal base of the state accompanied by frequent changes to the Constitution. The reason is that such reforms were not objectively justified.

The Kyrgyz Republic at this stage of its development is characterized as a state of transition period. And when the country is in crisis, in the transient conditions, the stability of the state, its integrity and effectiveness depend on how strong and active the acting authority [1, p. 31-35].

Crisis which often provoke the transition condition of the state and law were separated into two categories by a French lawyer M. Oriu «from the historical point of view»: crises that arise during the growth and centralization of the state and legal systems, when a young state «asserts itself, strengthens its power and itself is the scene of fierce struggle for the conquest of the power», and crises «which occur during the period of decentralization» of mature, established states [2, p. 723].

In modern conditions when there are centralized transformation it is important an accurate execution of legal acts which were adopted on these transformation. This is caused frequent calls to follow the laws, which are addressed to the citizens and officials of the administrative apparatus.

As V.M. Manokhin points out – «Ignoring of the adopted law – the situation is more dangerous than filling a legal vacuum with free discretion and departmental rule-making» [5, p. 26].

The low level of efficiency of the law, the lack of regulatory developed and protected procedure of its actuation allows the executive branch to interpret the law not being bound by any borders. This fact means the substitution of legal regulation by political process that inevitably leads to the contradictions and conflicts in the course of implementation of legal norms. In order that the law start working it must have a legal procedure of execution, joining substantive establishments with the procedural mechanisms, mediating their implementation. Only then can we count on the ordering of social relations in the transition period.

During the transition period the decisive role in the process of law realization is assigned to state government agencies. But lack of ability of state agencies to prevent the destructive processes in the community paralyze the efficiency of legislative acts. For example, it was adopted the system of legislation on the protection of public health in the Kyrgyz Republic. Health of insured citizens in the country today is subjected to various negative influences, but most of them do not receive effective protection of relevant agencies and organizations receiving services from dishonest subjects, they address to the court for legal protection. However, courts at the present time cannot cope with the volume of applications, but the ability to obtain protection outside of the court nullified.

Therefore, in a systemic crisis the functioning of a transitional state law implementation is very difficult. New law takes its active effective role when constituted authorities of the created power purposefully achieve the objectives of the transitional period. Slowness and passivity of the design process in the transition period of the country development respectively drug out the duration of the period of ineffectiveness of legal establishments. Thereby, it is confirmed the scientific conclusion about the practice of transitional develop-

ment, which is reflected that in the transitional conditions it should not be allowed breaks in the activity of key law enforcement agencies of the state. In the implementation of the process of the social transformation and continuity it should consider this factor so that a peaceful, non-violent form of qualitative transition is favorable environment.

Analyzing issues of the law of transition period it is necessary to focus on such significant differences that exist between the rules of new legislation and realia of current practice. The level of prevalence of one or another tendency in the transition period is set not only by declared and doctrinal goals and their official formalization in the legislation but also law enforcement activities. In such conditions transitional society will face with a high level of discrepancy between the proclaimed rights and their implementation in the practice. High risk for certain historically formed social order is attack on constitutional institutions and norms because through them the state ensures the protection of its existence. In fact, the practice of implementation of transitional transformation will create a new (alternative) Constitution.

At the time of drawing up a draft of Constitution at the transition period the authors often rely on favorable connecting and ideological actions of constitutional obligations, to attract a broader social base of support. Ultimately, «designers» neglect the issue of real rights and freedoms of the individual to proclaimed humane and democratic principles, the question of personality gives up into the background of enforcement.

It is necessary to mark one important circumstance, that the reasons of ineffective law enforcement activities at the transition period are rooted not only in the legal area. One of the sources that generates and reinforces the problem of realization of rights is economic crisis and economic and social tensions which are provoked by it. Obviously, it is required a certain period of time to create necessary conditions not only realization of rights but also corresponding performance of certain duties [3, p. 63-74].

In the transition period the efficiency of the right to a broad measure depends on the right mix of legal norms with the existing social relations, in this connection, integration of social conditions is of particular importance in analyzing the issue of the right at the transition period [4, p. 60-62].

Integration of social conditions is of particular importance for analyzing the realizations of rights at the transition period due to the fact that the effectiveness of the law to a large extent depends on the right norms with the actual prevailing social relations.

The practice of law fastening in the transient conditions the regulations that by their social and historical content are suitable only for stable functioning democratic system is doomed to failure.

In transient conditions, the declaration of rights that the citizens can realize only in economical developed society cause a significant discrepancy between the statutory provisions and reality. In such circumstance, the right ceases to be valuable for the citizens, in the view of the fact that it loses its property of reliable guarantor. In a transitional society it is formed legal nihilism, and it is increased the number of illegal acts. Promotion of fundamental reforms of social and economic, political system that creates social conditions for the actual implementation of constitutional rights and freedom by the citizens, ensuring interests of an individual and his deserving existence in the society is the main asset of legal nihilism and reducing the number of offences in the transition period. Concerning about improving legal culture of citizen as a condition to overcome legal nihilism it is the task of a continuous nature and within the transition period it is impossible to solve it. Thereupon, the primary task of the transition state is the social aspect of human rights which is characterized by the actual position of an individual in a society [1, p. 31-35].

The degree of reality of human rights as an element of a life quality is in existing system of interrelation between a man and a transition authority, between different groups of people including an attitude to the means of production, measure of labor and measure of consumption, distribution of rights and duties.

In legal sphere there is confrontation of the same trends that are inherent to phenomenon of transition in general, until the legal principles and forms will be strengthen to ensure the functioning and further development of a new constitutional system.

In the Kyrgyz Republic vestiges of the old legal regime, old traditions, customs and conceptions check the full realization of some legal acts which were adopted in the transient conditions. Poly system character of the transitional law has a negative impact on the nature of functioning of the legal norms. Status of low juridical quality which is characterized by discrepancy, imperfection of technical and juridical means, casuistry of adopted legal acts – complicate realization of law practice, leads to loosing of the regime of legality and law order. Interdependence of quality and effectiveness of adopted juridical documents are of direct character [7, p. 52-56].

Analysis of the statistics of law drafts which were completed by Zhogorky Kenesh (Parliament of the Kyrgyz Republic) of 5 convocation in 2012 shows that 236 bills were considered, 6 of bills were canceled, 24 bills were rejected and 206 bills were accepted [8].

Adoption of a large number of laws that are approved by the «good» but for some reason they are not put into practice, cannot be positive development. The law may be recognized as irreproachable if relations which are regulated by it fully implemented, and the legislative requirements were completely fulfilled.

At present there is need careful study of the whole complex of interdependent legal, organizational and legal, social and economic, ideological factors that ensure the adoption of the proposed law but also actual execution of it.

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