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### CATEGORY “LEGAL REGIME” IN THE THEORY OF LAW

*Присвячено опрацюванню наукових висновків і підходів до дослідження категорії правового режиму та визначення його місця і сутності у теорії права. Досліджено суспільні відносини, які пов'язані з функціонуванням правових режимів у різних сферах правового регулювання. Проаналізовано специфіку регуляторного впливу правових режимів на соціальні відносини, яка полягає у правовій регламентації, встановленні за допомогою різних юридичних засобів особливого порядку законодавчого регулювання певного виду діяльності суб'єктів права. Визначено, що особливість правового режиму, як різновиду соціального, полягає в тому, що він заснований на праві – створюється, закріплюється, регулюється правовими нормами; особливу роль у правовому режимі відіграє законність, яка опосередковує всі його рівні.*

*Ключові слова: правовий режим; соціальний режим; метод правового регулювання; законність.*

*The article is about the definition of the features of legal regime. A legal approach to understanding of the legal regime meaning reflects specifics of regulatory impact on social relations subject to legal regulation, particularly by establishing a special procedure for legislative regulation of a certain type of activity of subjects of law by means of various legal techniques. The specifics of the legal regime as a social one is that it is based on the law, i.e. it is established, created, provided for in and regulated by legal provisions. Legality plays a special role in the legal regime mediating all levels of the latter. A broad use of this concept is associated with the fact that it allows considering the legal form in close relation to the content of relations regulated by the law.*

*Key words: legal regime; social treatment; method of legal regulation; legality.*

**Problem formulation.** In Ukraine there are in progress fairly dynamic economic, political, social, cultural, information and other changes, which rather strongly affect the nature of social relations, mainly regulated by the legal system, that is a complex of interrelated and agreed legal means intended for their regulation. After these changes, all components of this system become readjusted. One of such components is the legal regime [1].

The relevance of this subject is that lately the category “legal regime” remains one of the most widely used in legal science, as it is quite often implemented in laws and regulations. The specified conditions emphasize the necessity for implementation of updated legal regimes related to legal institutions reforming, as well as focusing on the improved legal regulation methods. Certain reformation or implementation of new legal regimes related to the required changes in the legislation, and bringing them in compliance with the requirements of the international standards, improvement of the state regulatory system, strengthening of the mechanism of civil rights protection, etc.

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**Analysis of resent researches and publications.** During a long period, fairly much attention was paid to the study of the legal regime with an increase in the number of research works in this field.

“Legal regime” was an issue duly considered by famous legal theorists, namely S. S. Alekseev, M. I. Baitin, D. M. Bakhrakh, B. Y. Bliakhman, V. V. Borisov, V. M. Gorsheniov, V. B. Isakov, A. M. Kolodii, O. D. Krupchan, P. V. Kosmynina, V. V. Lypen, O. V. Malko, M. I. Matuzov, L. A. Morozova, S. P. Pohrebniak, P. M. Rabinovych, O. S. Rodionov, I. S. Samoshchenko, R. B. Syvyi, O. F. Skakun, Y. O. Tykhomyrov, Y. O. Kharytonov, E. F. Shamsumova and other authors. Particular challenging aspects of the legal regime have been analyzed in some papers by Ukrainian scientists, namely Y. E. Atamanova, S. V. Bobrovnik, I. V. Zhilinkova, N. S. Kuznetsova, V. V. Lemak, V. Y. Nastjuk, S. M. Oleinikov, N. M. Onishchenko, N. M. Parkhomenko, A. S. Spaskyi, L. V. Taran, L. V. Tomash, Y. M. Shevchenko, Y. S. Shemshuchenko, V. Y. Yarotskyi and others.

Greater focus is placed on the study of peculiarities of the legal regime, but it should be noted that the definition of the category “legal regime” and the determination of its place in the theory of law stay underresearched. There are actually no comprehensive monographic studies of this concept, which would enable to cover the general definition of the legal regime. Practical application of the category “legal regime” faces a problem, namely absence of a state regulatory system, importance of responding to social relations that arise and modifying already implemented ones.

**Purpose of the article** is to study scientific conclusions and approaches to the research of the category “legal regime” and the determination of its place in the theory of law.

**Main material.** The object of the study is social relations associated with functioning of the legal regime in various fields of legal regulation.

The scope of the study is to determine the very category “legal regime”, its importance and place in the theory of law.

Perhaps currently, there are no laws of any state having implemented a perfect approach to the regulation of all groups of social relations continuously arising and changing, particularly in those states where rules of law are time-proved and applicable and became traditions.

Since Ukraine declared independence it has been going through quite essential changes in economic (the onset of the economic crisis), political, cultural and other processes, thus involving changes in the social relations. In this case, existence and functioning of the country depends on immediate and decisive actions of the machinery of government, which should change not just rules and regulations, but specific directions of regulation and laws and regulations, etc.

The most effective element of the legal form for the modern Ukrainian legislation is the legal regime. It is implemented through the establishment of special comprehensive regulation of certain social relations, which require immediate coordination of economic processes, protection of civil rights, etc. Namely the legal regime functions as a special comprehensive regulator of social relations in this case. Normally, a regime handles relations, which can hardly be “squeezed” into a particular area of law, and is mostly of interbranch nature of regulation and integrates different legal regulation methods [2].

Focusing on the meaning of the term “legal regime”, it makes sense to choose and consider S. S. Alekseev’s definition, as he is one of the main theorists in legal regimes.

S. S. Alekseev understands “legal regime” as a regulation procedure, expressed in a complex of means, characterizing special combination of interacting authorizations, as well as positive obligations, and creating special regulation targeting. “Legal regime” is considered

by S. S. Alekseev “as a kind of an enlarged block in the general fleet of legal instruments, a certain complex of legal means connecting into a single structure. And from this point of view, the effective use of legal means in accomplishing particular tasks or other special tasks mostly involves selecting the best legal regime for a relevant task to be solved, as well as skillful practicing according to the specifics of this task and the content of social relations regulated” [3, 243; 4].

According to I. O. Sokolova, different scholars disagree on an issue of the concept “regime”, because some of them believe that it as a method or an approach, or their combination, others take it for a system of general principles and rules, others suppose it is a complex of legal rules, others understand it as a strictly prescribed or specified procedure, others define it as a system of means, and still others think it is a certain complex of features, etc. [5, 10].

The concept “legal regime” is one of the attributes of authority, structure, etc., i.e. it intersects with the term definition. Therefore, it is the integral part of state and political regimes, transformed into a legal form, practically established and actually implemented through legal regimes [5, 10].

It can be noted that the legal regime is a part of the legal regulation system, as one of its main features is the level of favorability or unfavorability to legal entities’ interests. But it should be noted, that the category “legal regime” cannot be compared with the concept “legal regulation mechanism”, because the legal regulation mechanism, including the procedure for implementation of the very legal regime, is a key feature itself for all related elements.

The legal regime is an attribute of legality at the highest level, since it is intended for handling various social processes and provides statutory regulation in various areas of social relations.

Currently, the category “legal regime” has a special status in the system of regulation of social relations. Nowadays, both theorists and practitioners consider the legal regime as a legal category. A quite challenging issue in the modern science is establishment, application and functioning of legal regimes for the regulation of social relations, and there are some reasons for that. First, there is a necessity for creation of regime operating rules, because new facilities and areas cannot be operated without them, as they create the environment for continuous operation. Second, special legal regimes are an adequate administrative form of activity in non-standard conditions, which makes it possible to apply extraordinary measures on the one hand, and to ensure their conformity with the constitutional status on the other hand. Third, regimes enable to combine and distribute legal measures depending on the nature of regulated social relations, the aims and tasks, that a rules administrator face, naturally consolidate them with other political, economic and information measures, etc. [2]. Highlighting of particular features and their practical analysis can contribute to the improved efficiency of statutory regulation.

In identifying the main features of the legal regime there are some problems, among which the most essential one is that this term is used in different areas of law: administrative, financial, family, land, etc., each one of which provides rather ambiguous understanding of “legal regime”, and the respective definitions have different meanings.

From the above mentioned we can see that the category “legal regime” is distinguished by a specific structure. Many scholars offer a structure of the legal regime that in many aspects matches the elements of the legal regulation mechanism. Thus L. V. Tomash, stated that the structure of the legal regime includes: rules of law, legal facts, legal relations, rights & obligations implementation acts, law enforcement, subjects of law, their legal statuses, objects of law, methods of correlation between certain types of subjects and objects, system of warranties (mainly, legal responsibility for the regime violation) [6].

Scholar B. Y. Bliakhman distinguishes the following components in the legal regime structure: rules of law, laws and regulations, legal facts, legal relations, acts of implementation, interpretation and application of rules of law, legal consciousness, legal culture, etc. [7].

The specified elements confirm the necessity of the legal regime in various areas of society's legal life. Nowadays, dividing of the legal regime in terms of levels is a quite relevant issue, because it allows defining its content for the legal science and the legislative process.

A scientist Isakov V. B. defines "legal regime" through a notion "social regime", set forth in legal rules and provided by a complex of legal means, and he offers to highlight its structure, consisting of three elements, namely an object – a regime carrier, environment, and content:

The first element is a regime carrier, i.e. an object that can be different social units – subjects of law, social institutions, social processes, subjects, territories, namely legislation, etc. The task of the social regime is to ensure the best functioning of an object – a regime carrier in the system of social relations.

Another element of the social regime is the environment, in which an object – a regime carrier exists, and in respect of which this regime is established, because the social regime equally depends on carrier's own properties, as well as on its performance environment. Thus, in this case an object can be a part of several systems of relations, with its own regime established in each one.

The third element of the regime, which is the most complicated for characterizing, is the content. However, there can be distinguished two groups of parameters in the regime content: the first one characterizes initial performance conditions, i.e. those created by the environment for a regime carrier; another one reflects regime carrier's level of requirements, its activity level and the level of responsibility for performance of its functions [8].

Isakov V. B. suggests a conclusion that its structure is confined to regulatory instruments, namely rule of law, legal fact, legal relations, right implementation acts.

From the above stated we can suppose that the category "legal regime" can be defined as a regulatory procedure, implemented by combining instruments required for its implementation and legal regulation methods.

M. I. Matuzov points out that the legal regime is a special regulatory procedure, expressed in a specific combination of legal means and creating a social status and a certain comprehension or miscomprehension level in order to meet interests of subject of law [8].

As noted above, either reforming or implementation of new legal regimes are related to the necessity for changes in the legislation and bringing them in line with the international standards, improvement of the state regulatory system, strengthening of the mechanism of civil rights protection. Thus, development and improvement of legal regimes enhance stability and public order focused on protection of rights and interests of a state and citizens.

Many scholars suppose that the legal regime is a part of state and political regimes. If the state regime is defined as a complex of methods of authority, then the political regime is a functional aspect of society's political system. Political and state regimes, expressing a content-related aspect of administrative decision making and implementing, predetermine political life and directly affect general features, principles and parameters of formation of legal regimes.

At the same time, political and state regimes can be implemented and approved exactly through legal regimes. In this case, legal regimes normally directly reflect important elements of state's legal policy. Therewith the legal regime is an integral attribute of authority, its structure, performance and social orientation [12].

The legal regime can be considered as an element of legal instruments that combines the complex of legal means in a separate structure.

The main aim of legal regimes is statutory regulation of certain areas of social relations. However, for adequate establishment of the political regime actions should be implemented gradually. In case of an error, one can face violation of the procedure for regime application. Inaccurately defined regime will fail to ensure the performance of legal methods at the required level.

Dividing of legal regimes claims attention. Thus, V. V. Sukhonos divides legal regimes into branch and interbranch (institutional) legal regimes with their subtypes according to areas of law. They can be divided into constitutional, administrative, land (according to the scope of legal regulation), currency, customs (depending on the content of legal regulation), refugees, forced migrants and stateless persons regime (according to a subject in respect of which the legal regime is established [9].

Branch regimes are stipulated by a scope of legal regulation and differ in specifics of regulatory techniques, operation of own branch principles, nature of formation, development and implementation of branch rights and freedoms, sanctions specifics, institutional attribute – availability of an area of law together with a codifying statute at the top [10]. The branch regime is expressed through special nature of legal connections throughout the overall structure of legal relations.

Most scientists believe that namely the legal regime stands by a legal regulation method and it is also a criterion for dividing the system of law into areas of law.

An area of law controls a broad area of social relations, but a certain legal regime functions in every regulation area (institution). When establishing the institution regime a dominant factor will no longer be the legal regulation method, but an object it is focused on. In general, the interbranch (institutional) legal regimes match the branch ones. However, the institutional regime a formula is a bit different. Relation of right implementation methods in it differs from the branch one, what creates the possibility of existence of more soft or strict legal regimes within one area [11].

From the above stated it can be concluded that currently there are a lot of approaches to the definition of the legal regime, and in my opinion, attention should be given to the definition by S. S. Alekseev, who believes that the legal regime is a regulatory procedure, expressed through a complex of legal means, characterizing a special combination of interacting permissions, prohibitions and positive obligations, and creating special regulation targeting.

According to I. O. Sokolova, a legal approach to understanding of the legal regime meaning reflects specifics of regulatory impact on social relations subject to legal regulation, particularly by establishing a special procedure for legislative regulation of a certain type of activity of subjects of law by means of various legal techniques. The specifics of the legal regime as a social one is that it is based on the law, i.e. it is established, created, provided for in and regulated by legal provisions. Legality plays a special role in the legal regime mediating all levels of the latter. A broad use of this concept is associated with the fact that it allows considering the legal form in close relation to the content of relations regulated by the law [7, 15].

**Conclusions and further researches directions.** It should be noted that scholars' opinions on the definition of this concept vary, however the key aspect is that in any case the legal regime can be terminated, modified and implemented only by the law. It exists only in the legal system without which it cannot exist.

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