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Doctrinal (Conceptual) Errors: General Theoretical Aspect

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Abstract:

This scientific article examines the problem of the relationship between doctrinal (conceptual) and law-making legal errors. The concept of legal error is considered and its symptoms are analyzed. Attention is paid to the characteristics of doctrinal errors, their characteristics, among which the most important is their political and ideological nature. Analysis of the legal literature made it possible to identify two approaches to solving the problem posed. Proponents of the first approach, both representatives of the general theory of law and branch sciences, believe that doctrinal errors are types of law-making errors. Being embodied in a normative legal act, they are also law-making errors. The author supports the more substantiated position of supporters of the second approach, who, distinguishing between doctrinal and law-making errors, believe that the first can arise at the stage of the process of cognition of objective laws that lie outside the law-making process; that doctrinal errors are a prerequisite for law-making errors. In conclusion, attention is drawn to the important role of legal science in preventing doctrinal errors.

Keywords:

Legal error, bona fide error, erroneous legal activity, conceptual errors, law-making errors.

I. Introduction

The main objective of this scientific study was to clarify the issue of the relationship between doctrinal (conceptual) and law-making legal errors, various versions of which exist in domestic legal literature, both general and sectoral.

II. Research Methods

2.1 general philosophical (dialectical-materialistic), which is used in all social sciences;

a. general scientific (analysis and synthesis, logical and historical, comparisons, abstractions, etc.), which are used not only by the theory of state and law, but also by other social sciences;
b. special methods (philological, cybernetic, psychological, etc.), developed by special sciences and widely used for the knowledge of state and legal phenomena;
c. Private scientific (formal legal, interpretation of law, etc.), which are developed by the theory of state and law.

III. Result and Discussion

3.1 The concept of legal error

Sergei Ivanovich Ozhegov believed that an error is "an incorrectness in actions and thoughts" [30]. Vladimir Ivanovich Dal believed that an error is an incorrectness, a mistake, a blunder, an unintentional act, an involuntary distortion of something [11]. The concept under consideration is often revealed from the point of view of formal logic. In this case, attention was focused on the fact that errors are in judgments and conclusions. Alexandra Denisovna Getmanova, considering logical errors, wrote that "a person who has mastered logic thinks more clearly, his arguments are more convincing than someone who does not know logic. He makes

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mistakes and is mistaken much less often" [9]. By the way, paralogism (Greek paralogismos - incorrect reasoning) in the Philosophical Dictionary is understood as an unintentional violation of the laws and rules of logic, depriving reasoning of evidentiary force and usually leading to false conclusions" [42].

Unfortunately, in jurisprudence there is no single concept of understanding the legal significance of error.

In legal literature, legal error is interpreted ambiguously. For example, Vladimir Nikolaevich Kartashov and Andrey Anatolyevich Toropov believe that legal error is "such a negative and harmful socio-legal deviation in professional legal activity, which is the result of a conscientious error of its subjects and (or) participants, manifests itself in the form of an error (defect, flaw, etc.) in its content and form at all stages of the legal process and causes corresponding legal consequences" [13].

Alexander Borisovich Lisyutkin believes that a legal error is "an objectively illegal, negative result recognized in accordance with the procedure established by law, which prevents the implementation of the rights, freedoms and interests of an individual protected by the state" [24]. The group of authors believes that a legal error is "a negative result caused by an unintentional incorrect act of subjects of legal activity (honest error)" [33].

Based on this interpretation, the authors consider the following features.

Firstly, the unintentional nature of the error. The subject who made the error proceeded from the assumption of the correctness of his actions. He acted in good faith, i.e. the error arose as a result of an honest error. At the same time, there is no intention, intent to commit an error, neglect of a legal obligation on the part of persons engaged in legal activity.

Secondly, the current legislation does not provide for legal liability for committing a legal error.

Thirdly, it always leads to a negative result. This is manifested in the fact that such errors to a certain extent impede the implementation of rights, freedoms of the individual, interests protected by law, worsen the position of legal entities, impede the state from fulfilling its tasks and goals, and lead to other destructive phenomena.

Fourthly, a legal error must be significant in content and obvious in nature. Technical errors that have no practical significance may in some cases be ignored in the process of implementing a normative legal act.

Fifthly, a legal error is characterized by the fact that it is committed by a body or official who has the right to engage in law-making, law-implementation or interpretation activities.

Sixthly, the procedural nature of their identification and correction.

Seventhly, special legal restoration means are used to correct legal errors, for example, the cancellation of a court decision, recognition of an act as invalid and not subject to application.

Eighthly, a legal error must be officially recognized in an act established by law.

Ninth, legal errors are characterized by causality [33].

In fairness, we note that not all scientists agree that a legal error leads to a negative result. Thus, Vladimir Nikolaevich Kartashov believes that a legal error should not be considered as a

negative result, but as erroneous legal activity itself [14]. In another work, Vladimir Nikolaevich Kartashov, drawing attention to the general shortcoming in the interpretation of legal error, which is that "in all definitions, the emphasis is on the result of incorrect actions, which does not allow for the most complete and comprehensive disclosure of the nature of this legal phenomenon, its structure, internal and external sides (signs), place and role among other socio-legal deviations in the legal anti-culture", replacing the concept of "legal error" with "erroneous legal activity", understands the latter as follows: "this is a specific type of legal anti-culture of bodies, officials, etc., expressed in an unintentional illegal act (action or inaction) and entailing certain legal consequences for people, their teams, organizations, the state and society as a whole" [15].

Legal errors are classified into 4 main groups: law-making, law enforcement, interpretative and doctrinal.

3.2 Legal doctrine

In legal literature, the concept of "legal doctrine" still remains controversial, since the opinions of representatives of different schools regarding this concept differ. In modern dictionaries, the concept of "doctrine" is considered as "a teaching, scientific or philosophical theory, a guiding theoretical or political principle" [4], "a teaching, a scientific or philosophical theory or" [30], "a set of recognized scientific or official views on the goals, objectives, principles and main directions of something" [44], "a systematized teaching, i.e. a set of theoretical provisions on any area of real phenomena, a system of views of any scientist, thinker, a holistic concept, a set of principles used as a basis, a program of action, a system of official provisions on any issue of public life" [36]. Evgeny Grigorievich Andryushchenko characterizes the doctrine as a "fundamental document reflecting the priority in a particular area" [1], and Ali Izmailovich Khalmetov as "… an area or direction of scientific, social, political activity, a set of principles and norms of a particular direction of development, determining the implementation of this development" [43].

In legal literature, the concept of "doctrine" has various meanings.

Ruslan Vladimirovich Puzikov defines legal doctrine as a system of views on the problem of legal regulation of social relations developed by legal practice, expressed in the form of principles, presumptions, axioms and other fundamentals that serve as a regulator of social relations, determine priority directions, patterns and trends in the development of legislation, regardless of whether its provisions are recorded in any document [32].

It should be noted right away that in the Russian Federation the term "doctrine" is enshrined at the legislative level, namely in the decrees of the President of the Russian Federation, which approve systems of official views [40,7, 41]. Tatyana Mikhailovna Pryakhina, pointing out that in order to recognize a particular teaching as a doctrine, it is necessary for it to be officially recognized, believes that "doctrine is a scientific theory enshrined in regulatory legal acts, treaties, political documents and decisions of government bodies" [31]. According to Anton Aleksandrovich Vasiliev, legal doctrine is a system of ideas about law, recognized as mandatory officially by the state or legal practice due to their authority and general acceptance, expressing certain social interests and determining the content and functioning of the legal system and directly influencing the will and consciousness of subjects of law [6]. Evgeny Olegovich Madaev defines doctrine as a relatively independent, complex (multifaceted) element of the legal system of the state, which represents scientifically substantiated, authoritative views and theories regarding other elements of the legal system and legal activity, having a scientific and applied nature and directly regulatory capabilities [26]. Viktor Lavrenevich Kulapov considers legal

doctrine from a different perspective, who understands doctrine as certain principles and norms of behavior recognized by the state as generally binding, set out in the works of scientists and practitioners [20]. Vladik Sumbatovich Nersesyants considered the doctrine of law as a collective concept for designating the entire set of legal and scientific interpretations and judgments about positive law, constituting the dogmas of law [29]. Of interest is the position of the authors, according to which the legal doctrine is defined as a systemically organized set of official views that determine the state policy of the Russian Federation, its strategic goals and main areas of support in relation to a particular significant area (maritime activities, armed defense, food security, national security) [22].

From the position of Dmitry Yuryevich Lyubitenko, a special place in the legal system is occupied by dominant (or prevailing) doctrines, which become generally recognized by the overwhelming majority of lawyers and legal practice. According to the author, "the existence of a dominant (prevailing) doctrine seems to be an important condition for the formation of an effective regulatory system" [25].

Often, the concept of legal doctrine is mentioned in connection with certain aspects of lawmaking policy. Thus, Alexandra Petrovna Korobova believes that the goals of legal policy in the sphere of private law can be achieved through the formulation and consistent solution of the following tasks: "it is necessary to strengthen the legislative basis of private law relations in accordance with the developed concept of the development of private law..."[18].

3.3 Doctrinal errors as a type of law-making errors

Erroneous doctrines, generating legal regulation that is inadequate to the social needs of society, reduce the effectiveness of the state's legal policy. Timely detection and correction of such errors is the task of legal science, since the focus on finding and correcting erroneous provisions is characteristic of scientific discussion. It is through the "millstones" of science that many doctrines are tested for erroneousness. Doctrines that do not withstand scientific criticism most often do not find their embodiment in legal life [25]. As Nikolai Nikolaevich Voplenko notes, erroneous law-making activity "is often carried out with the involvement of scientific language and jurisprudence" and appears "as a rule, legally reasoned" [8]. The team of authors, stating that doctrinal errors have been little studied in legal literature, emphasizes that their main feature is that they are not only a consequence of error in science, but are also closely related to state policy. Being embodied in a normative legal act, a doctrinal error is at the same time a law-making error, the negative consequences of which are the most widespread [33].

The same researchers, noting that doctrinal errors are not as obvious as other types of legal errors, although they can lead to a serious deformation of the law, they cannot be eliminated by means of legal technique due to their political nature, highlight some of their distinctive features: 1) they are a consequence of the misconception of the developers of a general or specific doctrine regarding the true properties, theoretical or practical significance of the scientific research, generalizations and conclusions; 2) their political, ideological nature; 3) the result of a dialectical search for truth in the process of cognition of state and legal reality, therefore, these are errors in mental activity; 4) the unintentional introduction into the practice of law formation of untested techniques, methods and methods of legal regulation, which results in the wrong orientation of the subjects of legal activity [33]. Evgeny Olegovich Madaev believes that legal doctrine "is an integral part of ideology (as a structural element of legal consciousness), and in some respects plays the role of a scientific foundation of the legal ideology existing in the state" [26]. Oleg Anatolyevich Latynin, specifying, believes that "… legal doctrine is part of that legal

ideology that arises from scientific research and is recognized by the state and society as mandatory" [22].

In legal literature, it was noted that ideology influences the behavior of all subjects of legal life, and ideological assessments and criteria penetrate the system of politics and law, becoming their organic part, a value element of their essence [27]. "Whatever component of the legal system we take," wrote Vladimir Aleksandrovich Tumanov, "each of them (and the whole of it) is subject to the influence of the ideology dominant in society and actively interacts with it" [39].

Lyudmila Aleksandrovna Morozova also emphasizes that "doctrinal errors are also dangerous because they can cause substantive contradictions between the legal concept of state policy and its strategic programs, and an inadequate assessment of the social consequences of introducing defective theoretical provisions into legal practice" [28]. An analysis of legal literature shows that scholars often unreasonably equate conceptual and law-making errors [16]. Thus, Alexander Sergeevich Lashkov believes that "a law-making error is a result of the official promulgation of a legal norm or legal institution that is inadequate (lags behind or is ahead of the achieved level of maturity of regulated relations) to economic, political, psychological, organizational goals, logical and epistemological laws of law-making, which, due to a conscientious error or a culpable unlawful act, violates the general principles of law or specific rules of law-making, entails or is capable of causing negative social and legal consequences and serves as the basis for demanding that the obligated party eliminate the error made and compensate for the damage caused"[23].

3.4 Doctrinal error as a prerequisite for a law-making error

Scientists who analyze doctrinal errors see the possibility of their appearance at the stage of the process of cognition of objective laws, which lies beyond the law-making process and is only one of the most important stages in the process of formation of law. As scientists further write, the legislator must certainly strive to ensure that his normative and legal provisions correspond to the objective laws as fully as possible, since this is seen as one of the reliable guarantees of the effective action of the drafted innovations. It is known that the legislator does not directly conduct scientific research to identify the necessary laws. He operates only with the available theoretical knowledge, as well as information on the results of the action of norms and on the law-making practice of foreign countries. By bringing together into a single whole - the concept of a bill, the law-making body can at best correctly understand, assimilate and express in the drafted innovations theoretical knowledge of objective laws. And if the subsequent development of jurisprudence receives convincing evidence of the inadequacy of previous own views, new patterns are revealed that require improvement of certain norms, it will hardly be possible to speak of such norms as law-making errors. Otherwise, it would be nothing more than objective imputation. The law-making body would take on the soul of the "sin" of another department - science, would be responsible for the insufficiently high level of theoretical mastery of legal and social reality. Ineffective legal regulation in this case would be a consequence of a conceptual error caused by the gap or debatable nature of scientific knowledge, and not a law-making error [34]. Indeed, the concept of a bill should be guided by "theoretical knowledge of objective patterns." In this regard, Andrei Nikolaevich Koliev emphasized the following: "The "spirit of the nation" is of decisive importance for filling the meanings of laws - the determination of citizens to comply with the law, which they consider their own, adopted in their name and in their interests. An attempt to present lawmaking as a mechanism for improving social relations is an extremely dangerous undertaking. Legal relations arising from the law are in conflict with life, the power of the state is directed against the viability of itself and society. The law must follow

life, guessing social trends and only formalizing them into uniformly interpreted legal procedures" [17].

Scientists also admit another situation, in which jurisprudence and other sciences contain the necessary level of theoretical knowledge, but the law-making body has failed to assimilate them and correctly reflect them in the concept. As starting points for normative and legal regulation, it has chosen principles and ideas that do not fully correspond to the objective laws, sufficiently fully and reasonably described in science. A concept prepared on such a basis may be erroneous in whole or in part, but these will again be conceptual, not legislative errors, although committed directly by the law-making body [34]. Otherwise, i.e. if we consider conceptual errors as a type of law-making error, then, in the words of Marina Leonidovna Davydova, "some authors seek to shift the blame for any defects or difficulties in the mechanism of legal regulation onto the legislator..."[10].

3.5 Doctrinal (conceptual) and law-making errors

It is easy to understand that these authors, in our opinion, rightly distinguish between doctrinal (conceptual) and law-making errors.

The need to distinguish between conceptual and law-making errors is substantiated by Vladimir Mikhailovich Baranov: "The problem of law-making errors is limited only to the analysis of the quality of the adopted and current law, other normative legal act, i.e. the result of law-making. It is important for the subject of knowledge to establish how well the relevant law has been prepared, what shortcomings and flaws it has. At the same time, the form of guilt of the legislative body is not of decisive importance. Moreover, having only the text of the normative legal act, it is impossible to establish guilt. Accordingly, it is necessary to perceive all its shortcomings as law-making errors. If we consider epistemological errors as legislative ones, this does little to improve normative and legal regulations, but can turn law-making activity into a testing ground for endless disputes and discussions... In the case of conceptual errors, the shortcomings of the law are caused by circumstances that lie beyond the design stage. They are caused by gaps in scientific knowledge, an insufficiently deep level of study of the relevant problems of jurisprudence, and poor preparation of the project concept. Accordingly, the criteria of conceptual errors - objective social and legal patterns - cannot be mechanically used to identify and evaluate legislative errors. The latter arise in the sphere of normative and cognitive activity (at the stage of designing laws) and have a very reliable system of assessments and requirements" [37]. In another work, again distinguishing between conceptual and law-making errors, Vladimir Mikhailovich Baranov draws attention to the fact that an erroneous concept of a bill is a precursor to the most serious law-making errors, since, as a rule, only highly significant laws, from a socio-political point of view, receive conceptual design. Identification of erroneous concepts of a draft law, from the position of a scientist, is a kind of "early diagnostics" and a necessary condition for the timely prevention of law-making errors [3].

Defining the erroneousness of the concept of a draft law as "such a property of a document, which is expressed in inconsistency with the principles, norms and trends of the current Russian legislation, standards of international law", the author analyzes a number of signs of the first: 1) it is a result of completed official actions vested with the powers of state rule-making bodies, officials, public organizations. The erroneousness of the concept of a draft law can be discussed only after its adoption and publication" 2) the basis of the erroneous concept of a draft law are incorrect, negatively deviating actions of the creator of the draft law. This is always a realized delusion of the developer of the concept of the draft law regarding the social and legal properties of the regulated act; 3) the incorrectness of this activity is due to deviations

of law-making bodies from the general principles and specific norms of lawmaking; 4) the final, immediate result of such actions is the adoption of an erroneous concept; 5) the adoption of an erroneous concept of a bill always entails harmful consequences, since, as a rule, it undermines the principles of legality, harms legal consciousness, infringes on the rights and freedoms of citizens, and complicates the law-making process; 6) the adoption of an erroneous concept of a bill must be followed by an adequate measure of legal and moral responsibility [3].

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Yuri Alexandrovich Tikhomirov, noting that both substantive and technical-legal legal errors are an inevitable "companion" of law-making and law enforcement, believed that the former arise as a result of objective and subjective difficulties and contradictions in the processes of law-making and law enforcement as a cognitive process. As the scientist writes, insufficient substantiation of draft laws and other acts, and the weakness of systemic actions for their implementation have a negative impact. The author includes the following among such errors: a) incorrect establishment of the subject of legal regulation; b) arbitrary determination of the methods (methods) of regulation; c) incorrect consolidation of the nature and scope of powers of legal entities; d) imbalance between the norms of public institutions and legal behavior; d) error in calculations and justifications; e) preservation of possible legal gaps; g) underestimation of probable legal collisions; h) admission of corruption and other violations of the law; i) hasty and belated changes to the text of acts; k) violation of the balance of laws and regulations; k) false "legal images" of legal entities [38].

From the position of the scientist, "of particular importance is compliance with the requirements for the preparation of the concept of the law established ... by the Decree of the Government of the Russian Federation of August 2, 2001 No. 576 "On approval of the basic requirements for the concept and development of draft federal laws", since they ensure the correct choice of legal goals and methods for achieving them and the transition to a new "legal state" [38].

IV. Conclusions

In conclusion, we emphasize that, with regard to Russian legislation, scholars provide numerous examples of conceptual errors that can be called legal-ideological, associated with “miscalculations in defining the goals and content of rule-making activities, with the confusion that ... is present in legal policy” [2], and which are not identified with law-making errors [19],

and an important role, and at the same time responsibility for their prevention, is assigned to legal science. We believe that "activating the role of legal scholars in lawmaking is a necessary condition for improving the quality of adopted regulatory legal acts, and a prerequisite for the effectiveness of the norms contained in them" [5], and the scientific validity of the formed rules of conduct is an objective basis for lawmaking [12]. However, the problem of the scientific validity of the adopted law-making decisions requires a more rational approach that takes into account the role of scientists in the law-making process. It may also be insignificant, since the choice of such is entirely entrusted to the subjects of lawmaking inviting them. And scientists involved in the development and examination of normative legal acts are not always specialists in the relevant subject matter[5]. Therefore, the scientific validity of law-making decisions should be based on a more reliable foundation, namely, the general theory of law-making as an independent legal science, the subject of which is law-making decisions and the processes accompanying them, which has its own methods of cognition, goals and objectives and is based on legislation inherent only to it. With this approach, the scientific justification of a law-making decision will be formed on the objective knowledge developed by legal science, and not on a subjective assessment of the quality of the normative legal act being developed, which may be erroneous or even have a corrupt, lobbied background [35].

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