

LEGAL RELATIONSHIP AND MORALITY: THE MODERN UNDERSTANDING AND NEW APPROACHES

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The subject of the article is the views of prof. P.P. Serkov and other domestic legal scientists on the problems of legal relations and its moral component from the standpoint of a lawyer-researcher. The article considers theoretical and methodological aspects of the doctrine of legal relationships, the content, patterns of the emergence and development of elements of the mechanism of legal relationships, the problems of classification of legal relationships, debatable issues of general regulatory legal relationships. Particular attention is paid to the analysis of approaches and theoretical provisions related to understanding the complex type of complex legal relationship.

The purpose of the study is to confirm the scientific hypothesis of P.P. Serkov about the mechanism of legal relationship from the point of view of its relation with issues of morality, social aspects of subjective and social life, as well as to formulate conceptual ideas and specific proposals for improving the mechanism of complex legal relationship and its part, the mechanism of corporate and ethical legal relationship in the sphere of advocacy.

Methodology and methods. The research methodology is based on the dialectical method, which made it possible to consider the judgments of scientists in development with existing contradictions and relations with new phenomena in law enforcement. The article also uses methods of analysis and synthesis, deduction and induction, modeling and extrapolation, formal legal and comparative legal method.

The main results, scope of the application. The scientific and practical validity of the doctrine of the legal relationship mechanism created by P.P. Serkov is shown in the article. The presence of a moral component in each act of legal regulation, as well as the significance of the scholar's ideas and hypotheses in expanding the possibilities of general theoretical and sectoral research in this area and creating conditions for improving law-making and law enforcement practice are brought into light.

Conclusions. The direction of development of the mechanism of complex legal relationship has been substantiated and specific proposals have been formulated to improve its part - the mechanism of corporate and ethical legal relationship in the field of the legal profession.

1. Introduction

The relevance of the ongoing research into the theory and practice of legal relations is evident. Profound transformations in social, economic and political living conditions of Russian society have motivated legal science to develop the doctrine of legal relations by supplementing its ideas and hypotheses with present-day realities. No doubt, jurisprudence has accumulated and created a holistic system of knowledge. However, in our opinion, current methodological approaches and theoretical provisions in the field of the theory of legal relations do not fully realize the demands of legal regulation, particularly formed by numerous novel phenomena in law enforcement.

A number of works regarding legal relations have been published lately, and the monographs by P. P. Serkov being among thereof [3; 4; 5; 6].

It should be noted that the views of P. P. Serkov, and the opinions of famous legal theorists and historians, philosophers and psychologists, expressed in the prefaces to his works [7; 8; 9; 10], have caused a lively discussion in the scientific community [11; 12; 13; 14; 15; 16; 17]. An analysis of reviews has stimulated the following preliminary methodological comments.

Any discussion is known to be based on certain statements accepted by its participants without arguing. From our viewpoint, the amount of such grounds is decreasing in the scientific legal community. It is generally accepted that the baseline condition for making an approving or critical assessment of any ideas and views is a common sense of the subject of dispute. Actual controversy only occurs if the opponents give different answers to the same question identically understood. Lots of provisions from the published reviews of P. P. Serkov's research turned out to be inconsistent with the genre of scientific criticism criteria. On the one hand, there are theoretical contradictions regarding the content of such basic concepts as law, morality, legal relations, the mechanism of legal relations, revealing the issues under discussion. On the other hand, there are practical contradictions regarding the characteristics of the real mechanism of legal regulation being diversely identified and

formulated with a formally similar idea of the concept nature. No doubt, theory and practice should supplement each other; otherwise, any research raises doubts in terms of methodology, especially in jurisprudence. Unfortunately, it is impossible to achieve a complete sense of the subject of dispute in terms of scientific and practical aspects, while taking into account the researcher's freedom to choose the methodology. However, it is a goal to be striven for.

We consider law and positive law (i.e., law in the common sense) to be different concepts. A law can be legal only if it reflects the principles of social validity, certainty, effectiveness, and formal equality. Law is an imperious rule of the state [18, pp. 252-262], and legal relationship being a key element of legal regulation. There is a constantly evolving universal morality, and any act of legal regulation having a moral component.

Thus, our ideas about the subject of P. P. Serkov's research from the viewpoint of understanding the nature of law, legal relationship and its mechanism coincide if the rules of law established by the state correspond to the objective nature of law expressed in its principles.

It should be noted that in the modern sense, law and morality are different social systems of regulation, which are revealed through the corresponding principles, key categories, functions, means, and procedures. Law and morality, being normative systems, have much in common. In our opinion, the commonality of the origin and development of these phenomena is due to the genesis being conditioned by such objective factors as the unity of human nature and the resulting demand for orders, rules, regulations and values that contribute to the consolidation and survival of developed communities. Regarding the concept of morality, it should be emphasized that, in accordance with the ideas of Kant, its main feature is a special kind of duty, being objectively impersonal and unconditional. It is rightly noted that Kant's definition "limits the possibility of theoretical confusion, mixing of morality with other forms of value consciousness, the actual diversity thereof serves as a source of an erroneous idea of the plurality of morals" [19, p. 12].

We consider the novelty of P. P. Serkov's approach to the problem of understanding the legal relationship and its system to be as follows. First, the theory of legal relations created by the author reflects the real processes of formation and functioning of legal regulation mechanism, in contrast to general and formal constructions prevailing in legal science. Second, being an adherent of legal positivism, the author has successfully combined its foundations with the ideas of materialism, broad legal understanding and the natural law approach. A broad legal understanding, in particular, is manifested in the following reasoning of the scientist: "... the emerging interpersonal relations (the existing real) serve as a catalyst for the adoption of legislative legal norms (a legal virtual space is being created). In the process of these norm enforcement, a new being (new real) is achieved as a feedback" [1, part 1, p. 28]. There is an analogy with the views of Professor Gennady V. Maltsev, being the most prominent representative of a broad legal understanding [20, pp. 3-34]. Third, the author's conclusions, being based on an extensive analysis of the achievements of philosophy, physiology, psychology, anthropology, sociology and other sciences, have endowed the work with an interdisciplinary complex character. Fourth, the author correlates his ideas and hypotheses with actual judicial practice. As mentioned earlier, this is important for theoretical constructions; otherwise, there is a threat of falling into the visibility trap of the conclusions conformity with the studied reality. Finally, the sincerity of the author is evident, and bold and categorical assessments are mainly to draw attention of scientists and practitioners to the contradictions in the modern doctrine of legal relations.

2. Theoretical and Methodological Aspects of the Theory of Legal Relations

Considering the views of P. P. Serkov on the problems of legal relations and morality, one should emphasize the author's position on the exclusive role of the state in the process of emergence and development of the mechanism of legal relations. The scientist is convinced that the state, by accepting the rules of law, is able to

establish a fair materialization of subjective needs-goals and social harmony in society. P. P. Serkov argues that "organization of the well-being of social life is practically impossible without the state and its authorities" [2, p. 177].

P. P. Serkov's views on the "general legal and intersectoral nature of legal relations" [1, part 1, p. 441], on the role of legal relations as "a regulatory center that allows unified operating for both scientific and law enforcement purposes on the same scale" [1, part 1, pp. 43-44], on the failure of scientific views on "the dominant position of legal norms in legal research" [1, part 1, p. 48] are worth supporting.

The scientist has thoroughly argued the position that "the object of legal relationship, reflecting the materialization of subjective needs-goals, is the final result of legal regulation" [1, part 1, p. 423], and "subjective law in itself cannot serve as a basis for the emergence and development of a legal relationship, and, therefore, dominate in the legal analysis of the entire legal regulation" [1, part 1, p. 424].

Based on numerous legal case studies, it has been demonstrated that such elements of the mechanism of legal relations as the objects of legal relations, legal statuses, and subjective rights and obligations are rather interact with each other than being at rest. As stated by P. P. Serkov, such progress "is only feasible in the context of an internally ordered structure, being the mechanism of legal relationship" [1, part 1, p. 427].

Having conducted a detailed analysis of the legal relationship mechanism, the scientist came to the conclusion that its elements "perform the function of a kind of support node that connects the ideological content of legal norms and the subjective aspiration to materialize the corresponding needs-goals" [2, p. 25]. The author has consistently and clearly substantiated the idea that the simplicity of a legal relationship construction is "only external, since both its form and elements should not disorientate, primarily in terms of the content nature. Misunderstanding and actual impossibility of practical application thereof gradually form the syndrome of "fatigue" due to the inability to reflect the legal reality" [2, p. 26]. P. P. Serkov emphasizes that "in the interweaving of a specific situation,

destinies, etc., subjective interests invariably manifest themselves, which objectively cannot be characterized by stable characteristics due to signs, criteria and parameters, and only being transformed into subjective needs-goals they cannot adversely affect interpersonal communication” [1, p. 27]. The scientist claims, “However, the lack of alternative orderliness of the potential chaos of subjective interests undoubtedly implies a decrease in the level of subjectivity, the inability to resist the onslaught of selfishness, hardness of heart, self-interest and other inherent human passions” [2, p. 27]. P. P. Serkov rightly summarizes his reasoning by saying that “high positive results are impossible without personal responsibility of subjects of each emerging and developing mechanism of legal relations” [2, p. 27].

Prior to the analysis of the moral aspect of legal regulation, P. P. Serkov has investigated the meaning of generally accepted norms of behavior and morality. The scientist states that “... the time to write a code of generally accepted morality has come, and the only generally accepted Russian text, which contains universal rules, should serve as the basis for such a code ...” [2, p. 32]. This judgment testifies to his recognition of the existence of a unified common morality.

P. P. Serkov argues that “morality and ethics are “present” somehow in the dynamics of each act of legal regulation” [2, p. 69] and specifies that “the ratio of reciprocity and parity of subjective rights and obligations used to materialize subjective needs-goals as a legal notion and an object of legal relations, shows its construction to be permeated with moral principles” [2, p. 33]. These ideas of the author underlie his decision to continue identifying the specifics of the mechanism of legal relations in the context of morality [2, p. 33].

Based on an interdisciplinary and integrated approach considering the achievements of philosophers, psychologists, anthropologists, physiologists, etc., P. P. Serkov argues that “a human has entered the “realm of freedom” due to morality, gaining the ability to consciously choose a model of subjective behavior in terms of the surrounding reality in general, and interpersonal communication in particular. Thus, each person

decides for himself how to use this freedom. Alternatively, a person returns to the “realm of necessity” invisibly, but really (there is no paradox here) [2, p. 160].

We agree with the following conclusions of the author on the mechanism of individual constitutional legal relations: “... the morality of reciprocity and parity of rights and obligations closely correlates with modern legal regulation, primarily through the three segments of the mechanism of constitutional legal relations”; “... it seems necessary to talk about the lack of awareness of the methods of moral impact on the subjects of the mechanisms of constitutional legal relations”; comprehensive research is needed to clarify “... whether society and the state should always only rely on legal regulation, or rather, on state coercion of the authorities” [2, p. 389].

Having agreed with the positions of the author, we cannot help but emphasize the views of Professor Evgeny I. Kolyushin on the problems under consideration. The scientist writes that P. P. Serkov “trying to comprehend the “invisible mechanism of legal relations” [1, part 1, p. 344] seems to ignore the unconditional positivism and, to a large extent, the legal formalism of judicial practice, which recognizes neither the search for the ideological content of each rule of law, nor breakthroughs from the limits of the sectoral approach to the level of integrative legal understanding and law enforcement” [11, p. 35]. In his another review article, debating with P. P. Serkov on that subjective freedoms are not protected in the judicial segment, but the facts of violation of reciprocity and parity in all manifestations of interpersonal communication are established, E. I. Kolyushin argues, “This approach raises the question of why the courts do not establish some facts but evaluate thereof, and determine the measures of responsibility. Article 3 of the Code of Administrative Judicial Procedure of the Russian Federation specifies “protection ... of the rights, freedoms and legitimate interests of citizens” along with the objectives of administrative proceedings (subjective rights of specific citizens are meant here)” [12, pp. 73-74].

In the above opinions of scientists, there are alternate ideas about the concept of legal relationship mechanism, the relationship between

the rule of law and legal relationship, and the reasons for the latter emergence.

Being lawyers participating in adversarial trials, we adhere to the position of P. P. Serkov for a number of reasons.

Firstly, the key point in understanding the research concepts under discussion is the author's sound statements that "ideological filling up of elements of the legal relationship mechanism occurs according to the principle of "open architecture" [1, part 1, p. 344], rather than a well-known positivism and legal formalism of judicial practice. P. P. Serkov reports, "The materialization of subjective needs-goals or their modification via using the content of the related set of legal norms ideologically fills up the whole substance of each element of the legal relationship or modifies this content". Further the author argues that "in this way, the system of legal norms appears in the form of a specific "bench", when legal norms having principal ideological content for a particular case are "invited" to the "playing field" "on the site" of legal relations whenever required" [1, part 1, p. 344]. Having explored the content of the legal relationship mechanism, the author proved the rules of law to be not included therein [1, part 1, pp. 424-445].

Secondly, a deep interdisciplinary and complex analysis of the emergence stage of the legal relationship mechanism throughout the work and especially within the fourth paragraph of the second monograph [2, pp. 104-136] leaves no doubt about the primacy of the needs, feelings, emotions and motives of the participants in legal relations regarding their subjective rights. Our agreement with the position of P. P. Serkov is also grounded on the analysis of the following legal case studies:

1. An open joint stock company (hereinafter referred to as the organization, company, plaintiff) has filed a lawsuit with the Arbitration Court of the Penza Region (Penza, Russia) against the former General Director K. (hereinafter referred to as the defendant) with a claim for the recovery of damages, referring to the unfair and unreasonable performance by the defendant of his official duties during the conclusion supply contracts. The defendant is a

highly qualified specialist with extensive life and professional experience. The defendant has served as the sole executive body in the company for more than 20 years, prior to resigning for health reasons at the age of 56. The capitalization of the company has grown more than 100 times within the employment of the defendant. The Arbitration Court of the Penza Region satisfied the claim in full, but the Appeals Instance reversed the decision, having declared it illegal and unreasonable, and adopted a new judicial act. The Court of Cassation upheld the decision made by the Court of Appeal.

A criminal case was initiated at the request of the defendant on the fact of falsification of evidence by the plaintiff in this civil case.

2. The Investigative Department of the Investigative Committee of the Russian Federation for the Penza Region has initiated a criminal case against N. (hereinafter referred to as the suspect) and other unidentified officials of the municipal state institution on the grounds of a crime under Part 1 of Article 286 of the Criminal Code of the Russian Federation. As a result of the investigation against the suspect, the case was stopped due to the absence of corpus delicti in accordance with paragraph 2 of Part 1 of Article 24 of the Criminal Procedure Code of the Russian Federation. The suspect is a qualified 36-year-old head of an institution with an impeccable reputation¹.

These legal case studies include essential general legal elements that testify to the patterns of emergence and development of the legal relationship mechanism. A lawsuit against the defendant has caused the latter a lot of emotional experiences to seriously complicate the adoption of rational decisions. These emotions are due to resentment, an unfair attitude towards a person, being a conscientious leader, who has done a great deal for the organization at the cost of health. The defendant has consistently inquired on why society treated him so disrespectfully and unreasonably. The moral and legal awareness of the facts of reciprocity and parity of interpersonal communication violation of the defendant and the shareholder of the

¹ Commentaries on the circumstances of civil and criminal cases are imposed by the urgency to analyze the emergence and development of the legal relationship mechanism.

decision-making company comes to the fore. The motives (goals) of the defendant's behavior are formed mainly on the basis of the needs for justice, recognition and respect, order and freedom from anxiety. As for the subjective rights of the defendant, the awareness and choice of means and methods of their protection are in the background and depend mainly on the degree of trust in the lawyer, who persistently acts as a psychotherapist in performing duties under the agreement. The strain of these feelings and emotions in the defendant decreases, and the motives are rationalized as fair court decisions and adequate protective measures are taken, and the initiation of a criminal case on the fact of falsification of evidence being the one.

There is another combination of the suspect's needs, feelings, emotions, and motives in the second case influenced by age, male gender, mental and physical health, education, outlook, business communication skills, attitude towards a career, etc. The suspect was especially worried by the behavior of his authorities to demonstrate the awareness of the judicial prospect of the case. The motivation of the suspect was also predetermined by a sense of injustice, anxiety for his future and his children, which determined the choice of means and methods of legal protection, namely, the implementation of subjective rights.

The circumstances of the emergence and development of the legal relationship mechanism in the above case studies confirm: a) the primacy of needs and motives (goals) as their subjects, caused by a lawsuit and initiation of a criminal case; b) the emergence of legal relations on the basis of needs and motives or needs-goals, rather than due to the realization of subjective rights; c) the diversity and unpredictability of the needs-goals embodied in the objects of legal relations; d) the sustained demand of the defendant and the suspect for the restoration of justice as the principal requirement to seek protection from the state and for assistance from a lawyer.

It should be noted that the need for justice, having come to the fore in the considered case studies as the initial form of activity, is based on the increased societal demand for this social benefit, as confirmed by the Chairman of the

Constitutional Court of the Russian Federation Valery D. Zorkin².

3. Challenges of Legal Relation Classification. General Regulatory and Complex Legal Relationship

One can hardly overestimate the importance of a scientifically valid classification of legal relations. Categorization of social phenomena and concepts determined by their common features indicates an understanding the nature thereof, and the scope and multifaceted features underlying such a classification.

In the domestic legal literature, legal relations are distinguished by branch affiliation, and, like the rules of law, they are divided into regulatory and protective ones. There are relative, absolute, and general regulatory legal relations classified by the degree of concretization of the subjects, and active and passive ones distinguished by the nature of legal capacity [21, pp. 352-353].

There are other criteria for classifying legal relations used in the literature: by the duration of action (short-term and long-term); by the degree of certainty (absolute and relative); by genetic and functional connectivity (material – main, procedural – secondary). The latter are subdivided into regulatory procedural and protective procedural; static and dynamic (by the objectives of the impact); simple and complex (by the content and number of participants) [22, pp. 233-234; 23, pp. 296-297; 24, pp. 253-255].

Moreover, some authors identify abstract general and individual legal relations [25, p. 214, pp. 216-217], corporate legal relations [26, pp. 9-12], licensing legal relations [27, pp. 6-8].

Branch legal relations, in particular labor relations, are divided into basic and complementary ones [28, p. 251, pp. 254-255]; criminal legal relations – into general (general regulatory), protective, specific regulatory, and criminal procedural ones [29, pp. 8-10, pp. 51-52, p. 63, p. 102].

² Russian citizens yearn for legal justice and expect the very social benefit from the government: An interview with the Chairman of the Constitutional Court of the Russian Federation V. D. Zorkin. *Sudya = Judge*, 2013, no. 12(36), pp. 4-19.

Having compared the above classifications, we have revealed numerous diverse, often opposing points of view. Each author has identified and described his own position in the legal relationship, distinct from the others.

The concept of “legal relationship” with its external form is considered to be a unifying principle in the above classifications. Thus, it is hard to define the essential property of a legal relationship as a subject of classification based thereon.

P. P. Serkov has declared similar well founded theoretical and practical viewpoints on the research into the problems of classifying legal relations.

Having conducted a detailed analysis of diverse opinions, the scientist concluded that they “are not amenable to systemic typology, since they lack organic internal unity. For this reason, it is impossible to establish logical links between the classification options. It can be affirmed that these scientific standpoints to manifest an inappropriate understanding of the legal relationships have led to the emergence of numerous viewpoints [1, part 2, p. 956]. P. P. Serkov reports, “Albeit a critical number of legal relation classifications have been increasing for decades, they are actually at a discount both by law enforcement practice and by the theory of legal regulation” [1, part 2, p. 957].

The baseline for the classification of legal relations by the scientist is “specific orientation of the legal relationship mechanism”, according to which, there are six main types of legal relations: general regulatory, administrative, procedural, constitutional, legal liability, official [1, part 2, pp. 976-977], and incomplete legal relations [1, part 2, p. 978].

It should be noted that issues regarding general or general regulatory legal relations have been debatable in domestic legal theory.

Those researchers, who deny the existence of general regulatory legal relations, cite the possibility of the functioning of general rights and obligations beyond legal relations as the main argument of their position. For example, having analyzed the norms to establish the status of citizens, state bodies and public organizations, and small social groups, Raisa O. Khalfina argues that

these norms are not implemented directly in legal relations, but only create prerequisites for the emergence of legal relations under certain conditions [30, p. 57].

Those scientists, who acknowledge the status of subjective rights for general rights, admit the existence of general regulatory legal relations that are different from specific (mandatory) ones.

Adherents of general legal relations believe that it is impossible to build a theory of legal relations basing only on a civilistic approach, and disregarding actually existing, although otherwise arising, general legal relations. In particular, Professor Vladimir B. Isakov points out the following features and characteristics of general regulatory legal relations: “They arise “directly from the law”, mediate the most important connections of a state-level society, being representative and binding in nature, alike any other legal relations” [31, pp. 276-277]. According to a similar view of Professor Nikolay I. Matuzov, a refusal of general regulatory legal relations is tantamount to a denial of operation and effectiveness of constitutional norms. He believes that general regulatory or simply general legal relations, in contrast to specific ones, express higher-level connections regarding the guarantee and implementation of fundamental human rights, freedoms and obligations [32, p. 376].

According to Professor Nikolay A. Pyanov, “the conclusion that there are also general legal relations along with specific ones deserves the closest attention, but requires a slightly different justification” [33, p. 220]. The scientist points out the following features of general legal relations, in comparison with specific ones: “Firstly, they are formed only on the basis of the rule of law, and no legal facts are required for their occurrence. Secondly, the duration of general legal relations is equal to the duration of legal norms that gave rise to these legal relations. Thirdly, the subjects of these legal relations are persons, who are recognized by the state as possible participants in the relevant specific legal relations, i.e., these are potential participants in specific legal relations. Finally, legal rights and obligations (potentially subjective rights and obligations) that make up the content of general legal relations do not belong to specific individuals, but are of a general nature. Any person, being a

subject of law, is a holder of these rights and obligations in specific legal relations (provided neither legal restrictions)” [33, p. 226].

Professor P. P. Serkov possesses opposing views on the considered problems. According to the scientist, “if you try to characterize a legal relationship using the link between the general and the specific, then it is feasible to apply the “general” concept to its mechanism alone. This structure really appears to be universal for all types of legal relations but there are neither grounds for the presence of general legal relations” [1, part 2, p. 960]. P. P. Serkov believes that when considering the mechanism of constitutional legal relations, the point of view on the existence of general legal relations proved to be principally worthless³. The author reports that such a position “has initially created speculative barriers to the research into the specifics of constitutional legal relations. The latter being specific like any other, the research was limited to the assumption on the existence thereof” [1, part 2, p. 960].

Opposed to the above traditional views, P. P. Serkov decisively demonstrates that “the mechanism of constitutional legal relations always mediates the relations of only specific subjects, and the state and a specific individual or legal entity being the ones” [1, part 2, p. 869]. The author believes that the individual emergence of constitutional legal relations always directly affects the legal statuses of citizens, organizations and the state. P. P. Serkov states that “the generic responsibility of the state to ensure societal security and well-being, predetermines that being subjects of the mechanism of constitutional legal relations, the citizens have a primary subjective right” [1, part 2, p. 882], and “the legal relationship between the state and the citizen is due to the factual state formation” [1, part 2, p. 880].

Based on a comprehensive analysis of characteristics, criteria and parameters of the legal relationship mechanism and its constitutional form, P. P. Serkov proved the inconsistency of the

concept of legal relationship stemming from legal regulation. According to the scientist, legal relationship is “a way of legal regulation, and the effectiveness thereof directly depending on society and the state” [2, p. 25].

According to P. P. Serkov, “any mechanism of constitutional legal relationship with a citizen being its subject stems from the ideological content of the totality of constitutional norms as enshrined in the Preamble and Articles 1, 2, 3, 6 of the Constitution of the Russian Federation” [1, part 2, p. 882].

However, there is a contradiction in the system of arguments of the scientist. P. P. Serkov refers to regulating the behavior of pedestrians and car drivers with permissive and prohibitive traffic lights as a proof of the argument that subjective rights and obligations can never be realized beyond the mechanism of constitutional legal relationship [1, part 2, p. 961]. The author seems talking about the mechanism of administrative legal relationship arising from the implementation and personification of the enforcement mechanism of constitutional legal relationship [1, part 2, pp. 119-362, pp. 784-952].

Being vital for the theory and practice of legal regulation, the issues of complex legal relations, in contrast to general regulatory ones, are unexplored in the legal literature. The insight thereof opens up the opportunity to explain the effect of legal methods and forms of harmonizing the interests of legal relation participants on the effectiveness of legal relations and legal regulation in general.

It should be noted that the concepts of “complex legal entities” or “complex legal formations” are used by the domestic general theory of law, the theory of branch legal sciences, and the theory of law enforcement to designate “complex legal institutions”, “complex branches of law” and “complex branches of legislation” [34, pp. 5-13], demonstrating primarily the form of legislative consolidation of public law and private law regulation elements.

Unfortunately, the issues of legal complexity regarding the legal relationship are scarcely considered. The proposals made to introduce the concept of “complex legal relationship” into scientific circulation have not found due recognition

³ It should be noted that the concept of “general regulatory legal relationship” used by P. P. Serkov is symbolic to reflect the “civilistic nature of legal regulation” and “the scope of the tasks to be solved”.

and distribution in the legal literature [35, p. 65; 36, pp. 122-131].

Having analyzed the types of legal relations along with the classification proposed by P. P. Serkov, we found neither complex legal relationship among thereof.

However, P. P. Serkov applies the concept of “complex legal relationship” in relation to the category of procedural legal relations. On the one hand, he supports the views of Victor N. Shcheglov on the presence of a unified complex procedural legal relationship [37, p. 56]. On the other hand, the scientist criticizes the viewpoint of Nikolai G. Eliseev on the nature of procedural legal relationship as a unified form (frame) of judicial proceedings [38, p. 20]. P. P. Serkov denies its unified form, since the number of legal relations is independent of the number of trial participants, each being able to file several petitions [1, part 1, p. 447]. Given this, P. P. Serkov concludes that “when discussing each petition, an independent procedural legal relationship accompanied by individual subjective needs (goals, legal statuses, reciprocity and parity of subjective rights and obligations) will emerge and develop” [1, part 1, p. 447]. We agree with this position but should explicate the concept of “unified complex procedural legal relationship” used by V. N. Shcheglov and P. P. Serkov. As stated in the legal literature, the essential properties of a complex legal relationship are the unity of the target orientation and the combination of its heterogeneous elements [36]. Therefore, we believe the term “unified” to be redundant here.

If we consider the existence of a complex legal relationship as a way of legal regulation in terms of the mechanism of legal relationship, being the most relevant approach, then we can make the following assumptions.

A complex legal relationship should have its own mechanism with its peculiar properties. In our opinion, such properties are inherent in a complex mechanism as a multi-component structure consisting of several heterogeneous and compatible micro-mechanisms, united by a common object and a single target orientation.

The existence of legal relations in real practice of legal regulation has been confirmed by

P. P. Serkov and V. N. Shcheglov regarding the procedural relationship. The property relations are considered complex in the legal literature [36].

It seems that legal relations in the sphere of the practice of law and the legal profession also have features of complex ones that reveal the indicated properties of the complex mechanism of legal relations, including the heterogeneity of the ideological content of the totality of private, public and branch legal norms adopted by the state, and corporate norms of law, in particular professional and ethical ones, and those of state and corporate coercion.

4. Proposals to Improve the Mechanism of Corporate Professional and Ethical Legal Relationships in the Sphere of the Practice of Law and the Legal Profession

Numerous professional, along with legal communities are known to adopt sets of rules that regulate morality of their activities.

In 2003, the 1st All-Russian Congress of Lawyers adopted the Code of Professional Ethics of Lawyers (hereinafter referred to as the Code of Ethics). It is a corporate regulatory legal act verified by the legal position of the Constitutional Court of the Russian Federation⁴. The Code of Ethics amplifies, develops and specifies general prescriptions of morality, embodied in the moral norms, based on the specifics of relations that evolve in the sphere of the practice of law and the legal profession. In this regard, Professor Alexander D. Boikov has rightly emphasized that “long talks led to

⁴Determination of the Constitutional Court of the Russian Federation No. 34-O of January 30, 2020 On the refusal to accept consideration of a complaint of Vitaly A. Burkin and Yury I. Filippikh on violation of their constitutional rights by the provisions of the Federal Law No. 63-FZ of May 31, 2002 *On the Practice of Law and the Legal Profession in the Russian Federation* in conjunction with the provisions of the Code of Professional Ethics of Lawyers and the Rules of the Conduct for Lawyers in the Internet Information and Telecommunication Network. *Moskovskiy Advokat = Moscow Lawyer*, 2020, no. 1, pp. 40-43.

the understanding of professional ethics as neither a kind of corporate ethics that puts one social group over another, protects class privileges, and raises a moral barrier between a representative of one profession and the rest of the world” [37, p. 6]. Ethics of lawyers is a part of judicial ethics defined mainly as a complex moral legal phenomenon in the legal literature [38, pp. 54-61].

It should be noted that the above examples from our own practice of law have enabled us to specify the features of the mechanism of corporate professional and ethical legal relationship being a part of the mechanism of complex legal relationship.

A generalized object of the mechanism of complex legal relationships is the well-being of the subjects thereof. Well-being as a micro-object of the mechanism of corporate professional and ethical legal relationship stems from subjective needs-goals in providing honest, reasonable, conscientious, and qualified legal assistance; observing professional secrecy; caring for the authority of a lawyer and the legal community; respecting the rights, honor and dignity of a client, participants in the trial, an investigator and other officials; assisting the client in implementing measures to protect rights and freedoms provided for by law, including court requirements to refuse satisfying the claim, to terminate the criminal case on rehabilitation grounds, etc.

The materialization of these needs-goals is influenced by the ideological content of such moral and ethical provisions of the Code of Ethics as the Preamble and Articles 1, 4-15.

A representative lawyer, a defense lawyer, legal community, legal community authorities, and a client are the subjects. The Preamble and Articles 6.1, 7-18.2 of the Code of Ethics establish the composition of subjects and supplement their legal statuses.

Subjective rights and obligations, their reciprocity and parity as an element of the mechanism of corporate professional and ethical legal relationship are considered in the Preamble and Articles 4-11 of the Code of Ethics. These provisions specify the subjective legal statuses and the conditions for attaining the object of the legal relationship mechanism.

When analyzing the effectiveness of the considered mechanism, one should focus on some provisions of the Code of Ethics to hinder its object attainment. Thus, the Preamble enshrines moral responsibility of a lawyer towards the public with a view to promote the Russian advocacy traditions alone. Articles 2 and 3 fail to consider neither the status of the Code of Ethics as a corporate regulatory legal act nor the provision to supplement, develop and specify general prescriptions of morality based on the specifics of the practice of law and the legal profession.

Special mention should be paid to the traditions of the legal profession. Evidently, they are a crucial factor for the formation of the mechanism of legal relationships in the sphere of the practice of law and the legal profession as they manifest moral and legal values (positive traditions). In this regard, their impact on the nature and effectiveness of legal regulation can hardly be overestimated. Hence, their timely formation and consolidation in the Code of Ethics is urgent. This is explicitly evidenced by the recent Statement by the Council of the Federal Chamber of Lawyers of the Russian Federation regarding the behavior of lawyers participating in a trial to consider a criminal case against actor Mikhail Efremov⁵. In our opinion, pro bono practice, reasonable and differentiated remuneration, etc. involve corporate regulatory legal formalization [39, pp. 2068-2071; 40, pp. 49-55].

In order to improve the mechanism under consideration, it is proposed to edit the Preamble to the Code of Ethics as follows:

“Pursuant to the requirements set forth in the Federal Law *On the Practice of Law and the Legal Profession in the Russian Federation*, with a view to upholding professional honor, promoting positive Russian advocacy traditions, and recognizing their

⁵Statement by the Council of the Federal Chamber of Lawyers of the Russian Federation regarding the behavior of lawyers who actively speak out in the media referring to a fatal car crash against Mikhail Efremov. URL: <https://fparf.ru/documents/fpa-rf/the-documents-of-the-council/statement-of-the-board-of-the-federal-chamber-of-lawyers-of-the-russian-federation/> (retrieved June 23, 2020).

moral responsibility towards clients, the public and the government, lawyers of the Russian Federation have adopted this Code of Professional Ethics of Lawyers (hereinafter referred to as the Code of Ethics).

Practice of law and legal association cannot exist or function unless lawyers observe corporate discipline and professional ethical rules, uphold their honor and dignity, and maintain the authority of the legal profession”.

It is also suggested to amend the provisions of Articles 1 and 2 of the Code of Ethics by combining and editing thereof as follows:

“1. The Code of Ethics is a normative legal act of the All-Russian Congress of Lawyers being the highest legal self-governing body to establish mandatory rules of conduct for the lawyers to comply with in the course of their professional activities, as well as grounds and procedure for holding a lawyer liable.

2. In executing their professional duties, lawyers and legal association may be guided by the provisions set forth in the Code of Conduct for European Lawyers insofar as such provisions neither contravene the legislation on the practice of law and the legal profession, nor legal acts of legal self-governing bodies, nor the provisions of this Code of Ethics.

3. The Code of Ethics amplifies, develops and specifies general prescriptions of morality based on the specifics of relations that evolve in the sphere of the practice of law in line with the moral criteria and positive traditions of the domestic legal profession and its international standards and rules, as well as the provisions on the grounds and procedure for holding a lawyer liable”.

5. Conclusions

The conducted research has evidenced the current knowledge of the problems of legal relations and morality to be chiefly based on novel approaches and views of P. P. Serkov. A comprehensive and detailed analysis of the mechanism of legal relationship dealing with the issues of morality performed by P. P. Serkov has proven that the universal construction of the mechanism of legal relationship, and the

patterns of its emergence and development incorporate essential original elements of the doctrine of legal relationship and are identified with novel phenomena in legal regulation. The viewpoints and findings of P. P. Serkov have definitely expanded the possibilities of general theoretical and sectoral research and created conditions for improving law-making and law enforcement practice in this area.

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