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LEGAL NATURE OF PLANNING ACTS[1]

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Leaving the question on the diversity of forms of plans outside the research, the author poses and answers the question of whether a plan can be an normative act, that is, whether setting goals, scheme, set of numbers, standards can be the content of a norm and whether can such a content of a norm change the rights and responsibilities of the parties of legal relations?

The author notes that the feature of a plan as a norm derives from the feature of planning as a method of management – close connection with the future.

Keywords: plans, planning acts, types of planning, planning norms, legal value of a plan.

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Legal nature of plans seems to be one of the most difficult questions for the legal science. The difficulty lies in the diversity of plans' content (plans may consist of verbally expressed goals and objectives, schemes, sets of numbers and indicators and so on), in the variety of types of planning, in the variety of plan forms, and so on. However, the issue of legal nature of planning acts is of essential significance for rule-making, management and judicial practice. In this article, leaving outside the issue of diversity of plans' forms (laws, subordinate acts, etc.), we will concentrate our attention on the substantive aspects and answer the question whether can a plan actually constitute a normative act.

First of all, we take as the basis of our arguments a previously expressed by theorists of law thought about that the issue of legal nature – is, first, the question of whether does one or another prescription have legal value, and second, whether is this prescription normative (norm of law) or individual [11, 185]. Thus, we agree that "the value of an act and its legal nature are different things" [11, 185]. The first part of the question about the legal nature of plan – it is a question about a possible legal value of plans, that is, whether can the setting of goals, scheme, set of numbers and standards be the content of norm, and whether can such a content of norm change the rights and duties of participants of legal relations. If the first part of the question is solved positively, and we can say that the scheme, set of numbers, and so on can be legally significant, then we must decide whether can a plan be a norm or it remains an individual act (set of individual directions).

A detailed analysis of the discussion of Soviet scientists on the legal nature of plans in economic management has been made, for example, by A. S. Matnenko. In his analysis the views of Soviet scientists are divided into four groups. The first group denied the fact that there was any legal content of planning acts. Plan was considered as a form of new, extremely concretized technical regulation of public relations. The second group of scientists, on the contrary, was of the view that planning acts – it is a kind of normative legal acts, and planning norms are, accordingly, norms of law. The third view was that planning acts were acts of application of law. Finally, according to the fourth view, plans had a legal nature, but were legal acts of a special kind: they were neither normative acts nor acts of application of law [8, 118-120]. A. S. Matnenko himself joined those who believed that a planning norm was an especial norm specifying the provisions "unscheduled" norms of legislation.

We will not repeat the analysis of discussions about the planning norm, we add just a few considerations.

Regarding the first position that plan is not a norm, but a form of new technical regulation it is necessary to add the following. This position echoes with the debate in legal science regarding technical norms and their value for law. This is about the rules of operation, standards, etc. Some authors believed that technical norms along with legal ones were of social nature and themselves had a legal value [9, 13]. However, these authors remained in minority, and it was recognized that technical norms themselves did not have legal value. "Technical norms govern not relations between people, but determine how we handle the instruments and means of production" [1, 59]. As a result of scientific discussion about technical norms, several scientists formulated a number of differences of technical norms from social norms [3; 10]. A. S. Sirotin [10, 152-159] singles out the following signs that distinguish technical and social norms,

Norms of law are always abstract, as opposed to technical norms that contain precise instructions on the parameters of the products of labor, conditions of production, operation and storage (temperature, humidity, etc.).

The scope of legal norms is reduced to the interaction of people. Technical norms apply to the relationship between man and nature (objects of the material world, etc.) "Legal norms, as well as other social norms can only function in society. Technical norms can also operate out of society. If an individual has been temporarily isolated from others, even in these circumstances it would have to comply with the technical norms, for example, when working with tools. Legal norms regulate the behavior of people in their social relations, technical ones -human behavior in their attitude to nature" (see footnote 38, Sirotin A. S. "Interaction of Legal and Technical Norms in the Socialist Society" [10, 159]).

Direct objective of legal norms is the streamlining of behavior of people in public relations; technical norms streamline the behavior of people in their attitude to nature. Consequences of non-compliance with legal rules are the negative reaction from the State and society. Consequences of non-compliance with technical norms are failure to achieve the desired production and technical result.

Based on the proposed by A. S. Sirotin criteria for comparison of technical and legal norms, we can talk about the fact that those plans that connect people and nature (for example, a map of the area) may be considered as technical norms. Other plans, which streamline the behavior of people in society, are social and in case of giving them legal form – are legal norms. Indeed, the general plan of a city is intended to streamline the living together of the residents of the city, city planning, etc. The Scope of socio-economic development plans, of course, includes social relations.

In Soviet literature, in parallel with the debate about the legal value of plan, was no less lively debate concerning an assumption whether the plans were a norm of law, or they consisted of separate individual directions? Very detailed analysis of normativity has been done for purposes of scientific substantiation of legislation systematization [11, 54-85]. Different authors put different content to the concept of "general direction", "universally binding nature" of norm: the uncertainty of addressee, multiplicity of application. All of these separate components were rejected and scientists agreed on the following: "Norm of law as a regulator of social relations differs from individual directions that also in a certain sense "regulate" public relations by the fact that its object is not an individual-specific relation, but a group of public relations distinguished by one, two or more common signs. The size of this group in each case depends on many circumstances" [11, 60].

The main difference of a norm of law as the regulator of public relations from the directions of individual nature the authors of the scientific work on systematization of legislation perceived in object, namely: the norm of law always focuses not on specific relations, but on "the kind of relations taken from any one party: the subjects of these relations, the social and economic purpose of these relations, the interests of their participants and material and other values and benefits underlying these interests, conduct of subjects required or approved by the State and so on" [11, 59].

The authors of work on systematization of legislation recognized normative – universally binding nature of plans with the following justification. Every separate direction of plan appears to be aimed at individual-specific relations. However, each of these directions apart does not form an independent norm of law. Norm of law consists of a totality of such directions that relate to the same subject matter – including "the scope and qualitative indicators of development of material production. At that, each of the subject matters represents a kind of public relations, and the existence of such complex norms is due to the very nature of relations. National economy plans form complex forms of Soviet law. Plan remains a plan, a guide to action, only when it provides for all the necessary factors [11, 61-62].

We present here a discussion of Swiss scientists (materials in German language that are used in this article were collected by the author with the support of the German Academic Exchange Service (DAAD) and Martin-Luther University Halle-Wittenberg), who argued that potentially any plan (digital expression, scheme and other plans) can be replaced by a verbal description (quoted from Imboden M. Der Plan als Verwaltungsrechtliche institute. / Veröfentlichungen der Vereinigung der Deutschen Staatsrechtslehrer. Heft 18. Berlin: 1960, page 117

[15, 64]). Thus, the verbal expression of plan will not differ from other normative acts and will consist of individual directions. Others disagreed with this statement and insisted that in planning, particularly in the planning of territories, a specific description of boundaries, etc. does not give a complete picture, which is sought to be achieved by a legislator or managing entity presenting its decision in the form of holistic schema, plan as a unity [17, 76-77; 16, 119].

Joining the scientific discussion of scientists from different countries and different eras, first of all we pay attention to the peculiarities of plan addressee: it is either too abstract (plan of socio-economic region) or too specific (budget line for the allocation of funds to a particular person, specific ownership named in scheme, etc.), and sometimes both together.

It seems to us that the legal regulation in this case is focused on holistic object (subject matter). Indeed, the legal effect of norm applied to an individual subject (recipient of funds, owner of a land plot, economic entity, etc.) is different from the legal effect of a planning norm, which is aimed at regulating of budget as a totality of relations of all subjects; a territory as a whole; economy as a totality of economic relations, etc.

We must assume that here we are faced with two levels of regulation, the first one is the regulation of generalized object, and the second one is the regulation of relations of a particular individual within the framework of already established relations of the first level. For example, socio-economic development plan establishes norms on the integrated view on the socio-economic field after a certain period of time, which are then embodied into specific norms on economic promotion of required conduct.

The concept of two levels of legal regulation has a serious impact on the system of institutes within a branch of law. In particular, in the German system of law they distinguish planning law (or the law on planning) and construction law. The first one is a set of norms of the first regulation level – aimed at a generalized object of regulation, and the second one addresses issues of specific construction permits, approvals, etc. At that, all approvals and permits within the framework of construction law should be made on the basis of planning law norms (the law on planning) [14; 20, 942].

Plan as a norm has its own characteristics. Planning norm really does not fit the traditional structure of norm: hypothesis – disposition – sanction. In the studies of the Soviet author S. A. Bertsinskii we find the reasoning about the structure peculiarities of planning norm. In particular, he writes that there is no hypothesis in planning norms, and it is unconditional, there is a disposition, which is the "core"

of such a norm, and he admits the existence of sanction [2, 113-117]. German literature indicates that a planning norm enshrines goals and program [13, 641-647], but, at that, continues to remain a norm.

Legal norms should be distinguished from tips, calls to action, recommendations, address to, etc. [4, 130]. We can read in the Soviet legal literature that address to, calls to action, recommendations relate to some special category – legal rules [12, 145]. There were objections based on the fact that such legal rules were not ensured by state coercion and sanctions, respectively, had no legal value. At the same time, in the Soviet literature was written that the possibility of "application, where necessary, of state coercion was preserved also in respect of these "norms"" [5, 31].

Assertion that the compulsion nature of Soviet law decreased as we moved society towards communism was an argument in favor of including address to, calls to action, recommendations into socialist law. "Address to, calls to action, recommendations are extremely important for understanding by the participants of public relations the meaning and the objectives of appropriate acts or have an important educational and mobilizing value. However, they do not constitute the main content of legal acts, even in those cases where they constitute most of an act. Their role is of service nature, and they serve that in a legal act is the principal, namely: directions that express the mandatory will" [11, 45]. On the basis of this quote we can offer a criterion of separation political calls to action and recommendations from the plans of legal value, namely the mandatory will of the State. The mandatory will of the State, implemented through a holistic mechanism of legal regulation, is formulated in the socio-economic development plans [7].

A feature of plan as a norm also follows from the peculiarity of planning as a method of management – close connection with the future. About the connection of planning norms with the future we can also read in German studies [19, 321-326, 414-420]. Some German scientists even considered plan as "a norm in the future", according to them, the plan transferred a specific solution forward in time [17, 76-77; 14, 117].

At the same time, the defining of plan as conditional norm, which has the structure "if the plan is executed, then..." [19, 321-326, 414-420], had been criticized and scientists agreed that plan was not a conditional norm and had binding force from the moment of its issuance [18, 5].

Being based on the analysis of multiple views of scientists on the problem of the legal nature of plans, we answer in the affirmative to the question – whether can a plan be the content of norm? Plan may be the content of a binding norm, at that, plan is not a technical norm linking the subject of law and the object intangible

world, but it is a full-fledged norm linking the potential participants of legal relations.

We can say that under a general rule plan can be a normative act of universally binding nature. Moreover, the fact that plan contains indications of specific objects or subjects (the location of a particular object on a scheme with indication of its owner, the budget line on the financing of a specific subject, the indication of development of a specific industry branch, etc.) does not affect the normative nature of plan. The legislator does not need to invent new phenomena of legal life, such as "planning documents" [6, 72-77] to indicate plans – a plan can be given legal force and in this case it can be a full-fledged normative act, though it also has a number of features.

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