Problems of the Legal Process Form within the Framework of the Contemporary Legal Reality

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Abstract

The nature of the legal process is one of the classic sources of legal philosophy, which has a valuable place among judges. This work should be considered in line with the efforts of legal realists in exposing the shortcomings of the formalist view. For this purpose, they tried to show that considering law as something completely independent, logically consistent and predetermined is not correct, and accordingly, considering the judge as a person who derives legal rules from the body of the legal system in a completely deductive manner cannot be correct either. There are many gaps in law that cannot be filled by law, and existing legal principles and rules can provide various solutions. Within the framework of the contemporary legal reality, the problems of the legal process form, which received extensive coverage in legal science, arouse a new wave of scientific interest among theorists and practicing lawyers. Investigation of this problem, which is of practical importance, is one of the most important tasks of theory of law. This research considers one of the basic theoretical problems, which is the problem of the form of action essence definition and its requirements. Within the framework of the research, the authors provide insights into the philosophic meaning of the undefined concept "form", give the definition of legal process, provide the correlation of such concepts as "form of legal process" and "legal process form", and look at the essence and main requirements of the legal process form. It is necessary to study this problem to improve procedural legislation and the practice of its implementation by the parties of procedural legal arrangements, as well as for the development of legal culture in the sphere of legal process.

Keywords: legal process, law-enforcement process, law-making process, jurisdictional process, legal process form.

Introduction

It is necessary to determine the philosophic meaning of the undefined concept "form", give the definition of legal process, and provide the correlation of such concepts as "form of legal process and legal process form".

In philosophy, the category of "form" as the category of "matter", takes fundamental place. From the point of view of philosophical thought, form is considered as a mode of arrangement and a mode of existence of a thing, a process, a phenomenon.

In the years since Plato and Aristotle, ancient philosophy underlined the stability and integrity of form, compared to substance, and its activity. According to Plato, form is perfect and is a model for the creation of material things, idea (form) is opposed to matter.

In his turn, Aristotle, Plato's disciple, provides his own view of the definition of form and matter. In contradistinction to Plato, he insists that these categories, on the contrary, are interrelated. According to his doctrine, form determines matter, and matter is determined by form.

In New Age philosophy, Kant, in particular, defined not only ontological but also gnoseological meaning of the category of form as a cognition process arrangement factor. Hegel noted the difference of outer and inner form.

Contemporary philosophy, regarding its correlation with substance, considers form as order of substance, i.e. its internal connections and order. With regard to the correlation with substance, form is understood as essence, knowledge about things existent [1, p. 223-226; 2, p. 273-274].
According to our understanding based on the study of philosophic doctrines on form and matter, the category of form should be considered as the unity of its outer and inner sides. The inner form should be understood as the mode of the object content arrangement, and the outer one – as the mode of the outside expression of the object. Inner and outer forms are not two different forms, but two closely interrelated aspects of one and the same object's characteristics.
Consequently, legal process, which is a strict legal (procedural) activity of the subjects stated in regulatory legal acts in establishing norms of law or in the enforcement of the existing norms of substantive law [See: 3, p. 47], should be considered with regard of both its outer and inner form.
It is likewise important to consider the introduction of unfamiliar researchers about the legitimate
process. To begin with, you really want to allude to English-Russian word references to lay out the right setting for this term. In the word reference "process" from Russian to English, it is deciphered as cycle, in legitimate significance - preliminary, legitimate activity, official procedures, claim (Oxford Russian Word reference, 2007). In another word reference, "lawful activity" or "judicial procedures" is in a real sense deciphered as a movement for the use of the overall set of laws for settling contrasts [See: 20]. The interaction is likewise viewed as a preliminary [See: 21]. The word references predominantly mirror a limited way to deal with the understanding of the legitimate interaction; the law-production process is disregarded.
The external part of legitimate interaction, alluded to as the type of legitimate cycle, comprises of regulation making and policing. In its turn, the internal part of the lawful cycle attributes, that is legitimate cycle structure, comprises of the all out of the primary necessities to the course of action of its substance.

Methods

The fundamental finishes of the examination were made come about because of the execution of general logical and explicit logical strategies. Accordingly, general logical techniques (examination and union, methodical, reflection strategies) permitted the creators find the embodiment of the type of activity and recognize its necessities. A review article is a type of article that reviews the background of a scientific topic. In review articles, the results presented in scientific writings about a specific topic are summarized and evaluated. This type of article may examine anything, it is designed to summarize, analyze and evaluate information that has already been published. In such articles, experimental and new findings are rarely reported. Review articles have a well-defined narrative, are usually critical, and should provide theoretical and emerging interpretations. The important role of review articles is to guide original scientific writings. For this reason, it is essential that the citations provided are accurate and complete. In light of the particular logical strategies (near lawful, specialized legitimate, strategy for lawful translation) similar examination of different parts of procedural regulation was finished, the internal and external parts of lawful cycle were thought of, the type of legitimate cycle and lawful cycle structure were separated, and the experiences into the substance of the fundamental necessities of lawful cycle structure were given.

Results and Discussion

In procedural regulation and policing the idea of type of activity is frequently utilized. Be that as it may, there is no authoritative meaning of it. For instance, Article 126 of the Constitution of the Russian Alliance demonstrates that the High Court of the Russian Organization will accommodate the legal survey of these courts' movement in the process structure specified by the Government Regulation and will give explanations on the issues connected with legal practices. Moreover, condition 50 of Article 5 of the Criminal Technique Code of the Russian League alludes to a court meeting as a cycle type of organization of equity during the time spent pre-preliminary and preliminary procedures on a lawbreaker case. Likewise, the idea of the cycle structure can be found in various substatutory administrative legitimate demonstrations [See 4; 5]. The shortfall of authoritative meaning of type of activity bedims lawful standard, which goes against general legitimate rule of lawful sureness. In regard thereof, there is a need of correcting the procedural regulation. Scientific doctrine also lacks the unity of views on the definition of form of action and its correlation with legal process. This issue is mainly considered within branch sciences: law of criminal procedure, law of civil procedure, law of arbitral procedure, law of administrative procedure.
Some scientists believe that there is no need in using the term "**process form**" and highlight the acceptability of using the term "legal process". They do not distinguish these concepts considering them identical [See 6, p. 18; 7, p. 63 - 64]. However, it is hard to agree with the point of view which simplifies the understanding of legal process which is a rather complicated legal phenomenon by its nature.
Branch sciences pay much attention to the interpretation of the process form. For example, in the science of criminal procedure, criminal **process form** is defined as "general procedure of procedural actions during criminal investigation and trial". There are forms of proceeding for one investigation or court action, one stage

of the process, and the entire criminal process. Observation of the process form means meeting all the requirements established by law. Scientists note that the failure to observe these requirements results in imposition of sanctions in the form of reversal of relative act or suppression the evidence received in such way [See 8].

The science of civil procedure uses the term “form of law protection” which is understood as “certain procedure of law protection by one or another authority with jurisdiction (an authority resolving civil cases)” [See 9, p. 6].

In arbitrary procedure, the process form is defined as a system of successively (stagewise) performed procedural actions during handling and resolution of a certain case [See 10, p. 11]. Scientists researching arbitrary procedure note that arbitrary process form is characterized by legislative regulatedness and imperativeness of legal norm, obligatory participation of arbitrary court as a party, predetermination of procedural actions by the provisions of law and the actions of legal character [See 11, p. 13-14].

In the theory of law there is an intense debate on the issues of **process form** with different approaches to its understanding.

According to V.M. Gorshenev and P.E. Nedbailo, the process form should be understood as “the total of homogeneous procedural requirements to the actions of the participants of the process and aimed at the achievement of a certain substantive result”. According to the scientists, the main requirements of process form include: a) obligation to observe consecutive exercise of authority, and b) known professional awareness [See 12, p. 13, 16 – 17.].

I.A. Galagan, representing a broadside approach to the definition of process form, notes that the concept of form of action can be defined only in the system of elements characterizing inner content of procedural activities and outer form of its manifestation [13, p. 59 – 60.]. R.D. Rakhunov also views process form as a certain set of elements [See 14, p.84].

On the contrary, Lukyanova E.G. believes that the expansion of the concept of the process form is unjustified and defines it as “procedural rules established by procedural legislation (law), based on the principles of procedural law, abidance to which leads to the most precise and rational achievement of the goals of procedural activities (procedural law)”. In addition, the scientist specifies the concept of procedure defining it as “a sequence of certain activities, in the aspect under consideration it has a normative model of its development and is aimed at the achievement of certain goals (the goals of procedural law)”. Lukyanova E.G. distinguishes the following features of process form: conformity with the principles of procedural law; goal-oriented nature [See 15, p. 96 – 99, 102]. Legal science states other features, such as expediency and the necessity of making a decision according to law requirements based on facts and in the manner established by law [See 16, p. 120]; rationality [See 17, p. 66-67]; flexibility [See 18, p. 32] and other.

1. Presently we ought to focus on the exploration of unfamiliar researchers on the comprehension of the lawful cycle, among which a unique spot is involved by the logical works of N. Fridd, M.A. Counselor, J.N. Adams, R. Brownsword and others. (See: 23, p. 384; 24, p.335; 25, 26,27,28). In the unfamiliar lawful science, the overall hypothetical part of the legitimate cycle and the interaction structure have not been examined, as a rule, researchers think about individual parts of this legitimate peculiarity. Unfamiliar lawful interaction is broke down just through the crystal of criminal, common or regulatory procedures.
2. Alongside the legitimate cycle, the expression "regulative interaction" [see: 24, 25, etc.] is utilized, simultaneously unfamiliar researchers don't think about the regulative cycle as a sort of lawful cycle (Cox and McCubbins, 2005; Constantin, 2008). Subsequently, unfamiliar lawful science complies to the customary way to deal with grasping the legitimate cycle.
3. Based on the previous we recommend our comprehension own might interpret the cycle structure. Process structure mirrors the internal part of the substance of lawful cycle which should agree with the absolute of the accompanying principal necessities:
4. *Provisionness by procedural law or at least unprohibitedness of a certain action or decision;*

Procedural legislation is a total of regulatory legal acts governing the procedural order of substantive law norm application and the creation of legal norm. It stipulates the procedure and rules of procedural actions by the participants of the procedural interaction, the procedure of rendering, the form, the structure, and the content of a regulatory legal act or administrative enactment.

The wellsprings of procedural regulation overseeing the strategy of procedural activities or the standards of delivering choices by jurisdictional bodies remember the guidelines of methodology for the Sacred Court of the Russian League (area II of the Government Established Regulation as of 21.07.1994 No. 1-FKL "On the Sacred Law of the Russian Organization"); Criminal Strategy Code of the Russian League; Common Method Code of the Russian Alliance, Mediation System Code of the Russian Organization; Code of Managerial Legal Technique of the Russian Organization; Prison Code of the Russian Organization; Government Regulation as of 02.10.2007 No. 229-FL "On authorization continuing"; rules overseeing judicial procedures on managerial infringement (area IV of Authoritative Infringement Code of the Russian Organization) and requirement on regulatory infringement cases (segment V of Authoritative Infringement Code of the Russian League); rules of

mediation procedures (Government Regulation as of 29.12.2015 No. 382-FL "On mediation (discretion procedures) in the Russian Alliance"); rules overseeing the action of the members of financial plan process on spending plan execution, execution control, upkeep of monetary bookkeeping, drafting, outside assessment, survey and endorsement of monetary bookkeeping (segments VIII, VIII.1, IX of the Spending plan Code of the Russian League); rules of electing process (e.g., Government Regulation as of 10.01.2003 No. 19-FL "On the appointment of the Leader of the Russian Alliance", Government Regulation as of 22.02.2014 No. 20-FL "On the appointment of delegates of State Duma of the Government Gathering of the Russian Organization", and other).

Further it is worth focusing on that the guidelines overseeing lawmaking action are contained in different legitimate demonstrations, which makes their execution troublesome. In lawmaking process, the members act and pursue choices utilizing the strategy and rules laid out in the accompanying procedural regulations. They incorporate procedural standards of the Constitution of the Russian Alliance (hereinafter RF Constitution) (Expressions. 105, 108, Section 9), Goal of the RF State Duma as of 22.01.1998 No. 2134-II SD "On the standards of methodology of the State Duma of the Government Get together of the Russian Organization" which manages exhaustively the system of draft regulations thought in the RF State Duma, Rules on draft regulations details sent in the letter from the Focal Office of the RF State Duma as of 18.11.2003 No. вн2-18/490, Remarks to the Rules on draft regulations details created by the Focal Office of the RF State Duma in 2013, areas V-VII part III of the Financial plan Code of the Russian Alliance, the arrangements of the Constitutions of the Republics and Sanctions of domains, locales, government urban communities, independent district, independent provinces, and unique administrative legitimate demonstrations of the elements of the Russian League. In addition, substatutory regulatory legal acts of federal and regional levels are applied which regulate the arrangement of lawmaking activities. Among them at the federal level: RF Government Resolution as of 01.06.2004 No. 260 “On the Regulations of the RF Government and the Provisions on the Central Office of the RF Government” (chapters IV, VI, VII of the Regulations), RF Government Resolution as of 13.08.1997 No. 1009 “On the approval of the rules of the preparation of regulatory legal acts by federal executive authorities and their state registration”, and regulatory legal acts of federal ministries.

According to the Art. 7 of the RF Federal Law “On the RF Central Bank”, the Central Bank of the Russian Federation (hereinafter RFCB) is entitled to issue regulatory acts in the form of orders, provisions and instructions.

Procedural actions within municipal legislation and the procedure of the approval and publication of municipal regulatory legal acts are based on parts 3 – 10 of Art. 44, Art. 45-48 of the Federal Law as of 06.10.2003 No. 131-FL “On the general principles of the organization of local government in the Russian Federation”, Letters of the RF State Duma Committee on Federal and Local Government as of 29.04.2016 No. 3.20-20/348 “On the procedure of publication of the municipal legal acts”.

5. *Succession of procedural actions and rendering procedural decisions determined by procedural law;*

According to clause 32 of Art. 5 of the RF Criminal Procedure Code, “procedural action is an investigative, judicial or other action stipulated by the RF Criminal Procedure Code”; according to clause 33 of this article, a procedural decision is a decision made by a court, a prosecutor, an investigator, an investigative authority, the head of an investigative authority, an inquiry officer pursuant to the procedure established by the RF Criminal Procedure Code.

Other procedural laws lack the definition of procedural action. However, the authorities with jurisdiction with regard to the specific character of one or another type of a legal process are entitled to apply the analogy of the law if it is necessary to clarify terminology.

The aim of the legal process can be achieved provided that the participants of procedural relationships observe the sequence of procedural actions and rendering of procedural decision established by the procedural law. The participants of the legal process must act in accordance with the procedural law, otherwise it leads to adverse legal consequences. For instance, according to part 2 of Art. 109 of the RF Civil Procedure Code, a claim or documents submitted after the procedural time limits, unless a request has been filed for the extension of the expired procedural time limits, shall not be considered by the court and shall be returned to the submitter. Moreover, the violation of procedural norm, such as the failure to observe the sequence of procedural actions established by the procedural law, may become the reason to cancel or change the court decision or definition (Art. 389.15 of RF Criminal Procedure Code, Art. 330 of RF Civil Procedure Code, Art. 270 of RF Administrative Procedure Code).

According to the scientists, “the sequence of exercising authority is provided for by the procedural stages and reflects, so to speak, a temporary feature of organized activity”. They note that procedural stages and procedural proceedings take place both in law making and law enforcement and are characterized by different content [See 19, p. 17].

Therefore, the rule of sequence is an important requirement with regard to procedural actions and rendering decisions.

6. *Requirement for appropriate subject;*

The applicable regulatory legal acts strictly determine the appropriate subject of one or another procedural action and rendering a procedural decision. Such are the court, parties to the case, other participants of the process.

7. *Time requirement for a procedural action or rendering a decision;*

The process form provides for the time limits of all actions by each of the participants of the process [See 19, p. 176]. In the procedural legislation there is a principle of trial within a reasonable time, which is a legal guarantee of judiciary tasks achievement.

Time requirements for a procedural action or rendering a decision shall be established by an interbranch institution of procedural law, in particular the institution of procedural time limits. The regulations establishing calculation, expiration, omission consequences, suspension, extension, restoration of procedural time limits are contained in Chapter 8 of the RF Code of Administrative Judicial Procedure, Chapter 9 of the RF Civil Procedure Code, Chapter 9 of the RF Administrative Procedure Code, Chapter 17 of the RF Criminal Procedure Code, etc.

In legislation, there is no concept of "procedural time limits". However, judicial practice defines procedural time limits as "time limits established by laws or prescribed by the court for procedural actions by the court, parties to the case or other participants of the process". It is noted that observing the procedural time limits by the court "is aimed at the provision of stability and certainty both in disputable material legal relationships and procedural relationships related to the judicial dispute, in a fair public trial within a reasonable time by the independent and impartial court".

Indeed, a number of procedural laws determine the tasks of judicial procedure which highlight the importance of observing time limits by the court, such as:

- fair public trial within a reasonable time by the independent and impartial court (clause 3 of Art. 2 of the RF Administrative Procedure Code);
- correct and prompt consideration and resolution of civil cases for the purpose of protection of violated or challenged rights, liberties or legal interests of the citizens, companies, rights and interests of the Russian Federation, entities of the Russian Federation, municipal units, other persons subjects to civil, labor or other legal relationships (para. 1 of Art. 2 of the RF Civil Procedure Code);
- correct and prompt consideration and resolution of administrative cases (clause. 3 para. 1 of Art. 3 of the RF Code of Administrative Judicial Procedure).

In addition, Art.6.1. of the RF Criminal Procedure Code, Art. 6.1. of the RF Civil Procedure Code, Art. 6.1 of the RF Administrative Procedure Code, Art.10 of the RF Code of Administrative Judicial Procedure proclaim the interbranch principle of reasonable time for judicial procedure. When determining the reasonable time, the circumstances provided for by the procedural law shall be taken into account. For example, according to the RF Administrative Procedure Code, such circumstances are: the legal and factual complexity of the case, the behavior of the participants of the arbitration proceedings, sufficiency and effectiveness of the court's actions aimed at the prompt consideration of the case, and the total duration of the trial.

To provide for the principle of reasonable time, the Federal Law as of April 30, 2010 No. 68-FL "On compensation for the violation of the right to judicial procedure within reasonable time or the right for the enforcement of a judicial act within reasonable time" introduces a special remedy in the form of awarding compensation.

5. Place requirement for a procedural action or rendering a decision (territorial and investigative jurisdiction).

An important requirement of the process form, apart from time, is the place of a procedural action or rendering a decision. A place of procedural actions or rendering a decision is the place where jurisdictional bodies and their officials are eligible to take procedural actions and render decisions.

Procedural regulations provide for the rules of territorial and investigative jurisdiction which are directly relevant to the aforementioned requirement.

Thus, investigative jurisdiction is an interbranch institution of procedural law whose norms regulate the relationships between the respective state bodies and officials in relation to the preliminary investigation of a criminal case. Various types are distinguished but within the framework of this article we shall be limited by the definition of investigative jurisdiction. Investigative jurisdiction is the place of investigation (the place where the crime was committed, uncovered, or where the suspect is or most of the witnesses are).

In its turn, based on the analysis of the provisions of branch legal sciences it is possible to define investigative jurisdiction as an interbranch institution of the procedural law whose norms make it possible to determine in which particular court a case shall be heard. The rules of investigative jurisdiction refer to the determination of the court system level (generic) and the territory of a case resolution (territorial). For example, in criminal procedural law, territorial feature means that territorial jurisdiction depends on where a crime was committed (Art. 32 of the RF Criminal Procedure Code). In civil procedural law, there are several types of territorial jurisdiction: general (Art. 28 of the RF Civil Procedure Code), alternative (Art. 29 of the RF Civil Procedure Code), upon the connection of claims (Art. 31 of the RF Civil Procedure Code), treaty jurisdiction (Art. 32 of the RF Civil Procedure Code).

Place requirement of the process form for a procedural action or rendering a decision, as a rule, shall be determined with respect to the convenience and accessibility for the participants of the proceedings to allow for the hearing of the case within reasonable time.

6. Written record of procedural actions and decisions.

In a legal process, obligatory attention is paid to the completion of paperwork, requirements to their drafting and adoption are established. Written record is obligatory even in the cases where the participants of the process (for example, witnesses) show by parol or file unwritten motions. In such cases protocolling takes place. The failure to observe this requirement may affect the result of the case consideration, leads to adverse legal consequences and may become the reason to cancel or change the court decisions, procedural actions may be declared illegal.

For example. According to Chapter 6 of the RF Criminal Procedure Code, requirements to the completion of electronic documents and procedural documents are established. According to Chapter 20 of the RF Code of Administrative Judicial Procedure, during the trials by courts of the first and appeal instances (including the preliminary session of the court) and during an individual procedural action outside the session of the court, audio-protocolling shall take place in addition to the written protocol.

The following procedural acts can be distinguished: protocol, resolutions and other acts. There are special requirements to resolutions: 1) content requirement (legality, reasonability, completeness, certainty, fairness, finality, conclusiveness, lack of alternatives); 2) form requirement (introductory, descriptive, resolutory).

Written record of procedural actions and decisions requirement provides for the openness and publicity of judicial proceedings as well as the availability of the information concerning the activity of jurisdictional bodies.

Conclusion

Thus, the process form, which is the inner aspect of legal process characteristics, consists of the total of the following main requirements to the arrangement of its content:

1. provisionness by procedural law or at least unprohibitedness of a certain action or decision;
2. succession of procedural actions and rendering procedural decisions determined by procedural law;
3. requirement for appropriate subject;
4. time requirement for a procedural action or rendering a decision;
5. place requirement for a procedural action or rendering a decision (territorial and investigative jurisdiction);
6. written record of procedural actions and decisions.

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