PROBLEMS OF THE FORM OF LAW: THE CURRENT STATE

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Abstract: The forms of law constitute a harmonious part of the general legal culture, and in this connection, it is important to develop them in the general cultural stream. The Kazakh society, after having gone through decades of difficult search and reforms, has not yet reached stability in the new environment. Fundamental changes affected the system of forms of law. The intensification of local and customary legal regulation, as well as the expansion of contractual forms, have become modern trends, as a result of which the determination of the place of these phenomena in the system of forms of the law becomes a relevant scientific problem.

Keywords: Republic of Kazakhstan, legal act, law, legality, method of legal regulation.

1 Introduction

The relevance of the study of forms of law is to a large extent predetermined by the fact that the legislation system, when increasing in volume, enters into conflict with itself, becomes cumbersome, and loses its integrity and unity. Under the rule of regulatory legal acts, the role of other forms of law has become controversial but has not been completely lost. They replaced auxiliary forms of law.

The purpose of the article is to explore the interaction between elements of the system of forms of law, to develop recommendations for improving lawmaking, for enhancing the effectiveness of legislation, for organizing the interaction of regulatory legal acts with other forms of law.

The methodological basis of the research is a set of basic methods of knowledge such as the system-functional, sociological, comparative legal, cultural, formal legal, historical logical ones. The main method is system-functional one. The systematicness of forms of law implies the existence of links between its elements and their interaction. The system of forms of law interacts with macrostructures, primarily with the legal system of the state. The study of the problems of lawmaking requires, in addition to the formal legal methods of cognition, the application of methods of sociological analysis.

The need for the development of forms of law in the modern environment is predetermined by changes in legal thinking. The emerging legal system of the modern Kazakh state, which is striving to become legal, social and democratic, cannot be based solely on positivist principles. The basis of legal statehood is a fair law that implies referring to the sources of law. Legal reform has affected the whole mechanism of legal regulation, the deep layers of legal consciousness. At present, a change in the type of legal regulation is occurring. A dispositive and permissive model replaces the imperative and authorizing mechanism. The dispositive method of legal regulation opens up a broad road to various forms of law that, in the recent past, have essentially been supplanted by normative legal acts. The legal state implies the implementation of the thesis on the objectivity of lawmaking. The world of forms of law is extremely diverse, and it could be fully developed if such forgotten forms as “bookish”, local, and religious laws were returned to scientific use. For these purposes, it becomes necessary to study the links between various forms of law that ensure effective legal regulation.

The development of business relations and the formation of local self-government have actualized the problem of local corporate law. Although this phenomenon occurred in the history of law, the relevance of the issue of the legal status of local acts today is that they actively claim the status of a form of law. The lawmaking practice of the last decade of the twentieth century and the beginning of the twenty-first century is characterized by the weakening of such features of a normative act as normativity, duration of existence, and universality. The development of a scientifically based approach to the essence of a normative legal act and its place in the system of forms of law seems to be relevant for lawmaking.

The current problem is the quantitative and qualitative correlation of legal acts and by-laws. It is necessary to develop correlation criteria for regulations both vertically and horizontally. If for vertical links the decisive importance belongs to the legal force of acts, then horizontal links require an analysis of their content. In the absence of a law on regulatory legal acts, the development of such definitions as “decree,” “resolution,” “order,” “instruction,” “provision,” and “rules” becomes an urgent problem. Of great importance is a systematic approach to the forms of law, with which all elements find their place in a hierarchical organization, and the forms of law are considered as a diverse complex.

From the point of view of philosophical science, the form of law is its external expression, the image in which law exists and operates. The most appropriate form of external expression is the word. However, the types of these forms of expression are not limited to this. It can be assumed that the path to formulating the definition of the forms of law is advisable to begin with an assessment of its characteristics. In scientific literature, the following features of the form of law are distinguished: compulsion, normativity, certainty, stability, well-knownness, and government support. In addition to the above features, the sources of law must have another external feature - the legality of the source of law, i.e. the legitimacy of its occurrence and functioning. (1)

In general, the author agrees that legality (legitimacy) is most often inherent in the forms of law. However, this feature cannot be absolutized for the following reasons. The issue of legitimacy is relevant only for regulatory legal acts. Indeed, for them, the procedure of creation, the competence of the legislating body is an incomplete list of requirements for legitimacy. The absence of this feature for a regulatory legal act implies the possibility of its abolition.

On the other hand, it is difficult to raise the question of the legitimacy of other forms of law. For example, it is impossible to reveal the legitimacy of creating a custom since it arises directly from social practice, without special procedural rules.

2 Materials and Methods

It is possible to assess the legitimacy of custom in the sense of its compliance with regulatory acts. Such an approach seems correct under the rule of etatical positivism. Nevertheless, with other approaches to law, this obviousness disappears, moreover, it easily turns into its opposite. For customary-religious systems, the priority of custom and the doctrine over the state is also correct.

The characteristics of the form of law should be, firstly, precise and should clearly formulate the rights and obligations of possible participants of possible legal relations. Secondly, they must have a generally binding and protected possibility of state coercion for those who will evade its prescriptions. Thirdly, they should be well known to the addressees of the legal norm; therefore, there should be a special procedure for publishing regulatory acts and putting them into effect. (2)

Tsarist lawyers offered fairly well-developed concepts discussed in the article. Sources of law should be clearly distinguished from “sources of jurisprudence” or sources of one’s knowledge about the law. In Kazakhstan, a legal act is binding not because it is placed in the Code of Laws but because it is issued by the legislature. Therefore, the Code of Laws is in no case the source of law but only the source of one’s knowledge about law, i.e. the source of jurisprudence. (3)

3 Results and Discussion

The preciseness of the external expression seems to be fundamental. It seems that the form of law certainly has a stable outer shell and often has a linguistic form. The enshrinement of the forms of law on sustainable materials (such as rock, paper and other storage media) contributes to the stability of the language form. For regulatory legal acts, this feature is traditionally called formal certainty. Its content comes down to the requirements of the language, i.e. of the style of regulations. Unwritten legal norms achieve the preciseness of external expression in other ways. Their preciseness is sufficient if legal persons understand the rules and consistently respect them. Of course, the unwritten rules elude but do not disappear, they reproduce themselves.

Another important characteristic of the form of law is the certainty of its content, that is, the form of law should contain provisions uniformly understood by legal persons, i.e. the addressees of the norms. The relevance of the issue of legal technique is obvious and is not in doubt. If we simplify the relevant definitions and emphasize the edges that are important for the present research, then we can say that the legal technique is a set of methods and rules for achieving the certainty of the content of legal regulations. The methods and rules themselves concern language means of presentation, choice of act type and its structure. In this variant, the certainty of the content of only one form of law is achieved, that of a regulatory legal act. This is its simplicity, as it is created as a result of a targeted and effective procedure. This cannot be said about almost all other forms of law. However, it does not mean that they lack certainty of content. This characteristic will look different for different forms. It presents the greatest complexity for legal customs. The certainty of the content of this form of law consists in the presence of a uniform understanding of the legal requirement in society. (4)

Another important feature of the form of law is the duration of existence. From the point of view of certainty of the manifestation of this feature, the leading place belongs to legal customs. Their form is crystallized for a long time and acquires a certain conservatism. It can even be assumed that the stability of law in the universal sense exists thanks to customs that give the necessary stability to social relations. Doctrinal forms of law are also valid for a long time.

With regard to regulatory legal acts, this feature is most vulnerable, since this form is characterized by variability.

Publicity is very important as a characteristic of the form of law. Due to this characteristic, a legal person gets the opportunity for conscious behavior within the legal norms. The manifestations of this characteristic are different for different forms of law. The familiarity with a custom has no procedural forms. Legal custom is recognized as a form of law because every member of society inevitably faces its norms in its social practice; it “is everywhere” and is completely naturally perceived by members of society.

For some forms of law, general awareness is a qualifying attribute, i.e. their recognition depends crucially on the availability of such an attribute. Therefore, the degree of awareness and prevalence affects the usual forms, i.e. local customs, trade customs, and business customs should be known to participants in business relationships. Doctrines influence social relations because of their popularity, prevalence, and recognition.

The general awareness about a regulatory legal act means the creation of the possibility of acquaintance with it. This is usually done via publication. However, there were other examples on the historical path of this modern mechanism such as announcement and disclosure. Legal states pay great attention to the openness of regulations and allow only some explainable exceptions.

The obligation of the form of law means the need to conform to one’s behavior with legal regulations. The manifestation of obligation depends on the type of legal norm. For example, it may be an obligation to commit an action or to refrain from it. The state plays a great role in the implementation of this feature, regardless of the type of form of law. The state guarantees the implementation of legal norms through the establishment of sanctions, legal liability and other power tools.

The obligation of other forms of law is supported by measures of public influence, authority, and confidence in their correctness. The listed methods vary as a function of the forms of law. For example, custom is supported by public condemnation, exclusion from any environment, and a refusal of trust. Doctrinal forms of law are bound by their authority. What has been said, however, does not exclude state guarantees of various forms of law.

A characteristic of universality is directly related to the above. This characteristic plays an extremely important role in the concept of law. Law, when being expressed in appropriate forms, acquires social value and can be equal to freedom. Law is a measure of the behavior of different individuals. It should erase the boundaries between people that are not important for given relationships. If a prescription is addressed to a narrow circle of persons, then it cannot be law. Non-personification is a permanent property of law, it is it that is taken as the basis for understanding the property of the normativity of law.

Normativity is a general characteristic of the form of law. The presence or absence of this particular feature resolves the issue of recognizing a phenomenon as a form of law. Normativity is manifested in the fact that acts:

1) are designed for an indefinite type of public relations (registration as an entrepreneur, the procedure for paying taxes, receiving benefits, etc.), that is, they contain the rules of conduct typical of the majority of persons;
2) are valid for an indefinite number of times. The implementation of the rules contained in them in a specific legal relationship does not terminate their validity. They extend their effect to any persons who act or may enter into legal relations on their basis. (5)

It seems that the property of normativity is the absence of a specific addressee (a person with individual signs that identify him/her). Moreover, this identification enables the selection of a given entity among entities of the same type. For example, for a person his/her individualization is determined by the surname, given name, date of birth and place of residence. For a legal entity, it is be the name, legal form and location. For the state authority and other public entities, it is the name. Therefore, the act loses its normative, if you can specify the exact person to whom it is addressed. However, this does not apply to territorial boundaries. It is also impossible to characterize the norm quantitatively according to the circle of persons. The standard is present in the act addressed to judges, prosecutors, all citizens of the Republic of Kazakhstan.

Reasonableness and justice can be a sign of the form of law. As for the issue of rationality of legal custom (sometimes interpreted so widely that some other requirements are imposed on it) and the formulas for the non-contradiction of customary law to state policy (in a number of countries, natural justice and morality or good conscience), they, like with the issue of the rationality of legal custom in England, are matters of law and not of fact.

In the Romano-Germanic legal system, it is customary to proceed from the presumption of rationality and fairness of a regulatory legal act. This is a consequence of the absolute merits and undeniable legitimacy of the state and, accordingly, lawmaking. This presumption adversely affects the regulatory properties of state forms in comparison with others. Indeed, self-admiration and self-sufficiency of regulatory legal acts in comparison with other forms that must constantly prove their viability, contribute to reducing the effectiveness of the former. A normative act claims to be self-sufficient due to the fact that it is recognized as mandatory by virtue of its connection with the

state and coercion. This form of law tries to declare itself correct, reasonable, fair, and dedicated to unanimous recognition. The isobedience to the legal act is an offense - this formula makes the regulatory act virtually invulnerable to criticism.

The form of law is a properly objectified legal institution consistent with the rational and fair ideas in a given society, non-personalized, long-term and uniformly embodied in the behavior of legal entities, guaranteed to be enforced by the power of authority and (or) government coercion, recognized by legal entities as a regulator of public relations. The source of law can be both relationships and methods of their regulation. The right absorbs the properties of its sources, acquires special features. It does not merge with them but it should not be torn off from them. These are the roots of law, the life-giving force of law, its effectiveness, public recognition, and the condition of its effectiveness. The source of law is always available, if law enshrines new relationships. In this understanding of the term “source,” it can be replaced by the word “basis” of law.

Forms of modern law can be obtained as a result of multi-stage classifications with several bases.

Therefore, it seems permissible to use the force generating legal prescriptions as a basis:

1) state will (regulatory legal acts, precedents);
2) public experience (customs);
3) coordination of the wills of several parties to the relationship (contract, autonomous law);
4) authority of various origins (religion, doctrinal forms).

Depending on the force that protects the relevant regulations, such forms are identified:

1) those protected by the state (regulatory act);
2) those protected by the parties (contract, autonomy);
3) those protected by the authority of the creating force (doctrinal sources, customs).

Regulatory agreements constitute an agreement of two or more parties, as a result of which legal norms are established, modified or canceled. They are undoubtedly a form of law. The main characteristic of a normative contract as a form of law constitutes the voluntary will of the parties. Unlike a normative act, which is an act of unilateral will, the contract involves an element of voluntariness in accepting the obligation to follow established legal norms.

The role of treaties in the regulation of international relations is important. An international treaty is a clearly expressed agreement between two or more states regarding the establishment, amendment or termination of their rights and obligations. For example, the Treaty on the Non-Proliferation of Nuclear Weapons or the Treaty on the Commonwealth of Independent States are regulatory treaties.

International treaties are classified for various reasons and are divided into bilateral and multilateral ones, political, economic treaties, as well as treaties on special issues. The role of international treaties and generally accepted principles of international law to resolve civil disputes is quite large. The above said about the types of forms of law leads to the following conclusions. The system of forms of law is diverse; the elements of this system depend on the chosen basis of classification. The study of the essence of various forms will be more effective and deep in the case of referring to their place in the classifications for various reasons. The classification for each of the grounds opens up new issues in the study of the phenomenon. Therefore, for non-traditional doctrinal forms of law, the essential property is authority, which is communicated to the form of law by the force that created them. The multiplicity of creators, the persuasiveness of the content, and the duration of functioning give the doctrinal forms the strength of their regulatory properties. The participation of several parties who have intentionally concluded certain regulatory agreements determine the particularities of contractual and local forms. The central place in the system of forms of domestic law is occupied by acts of unilateral will. The state proclaims that it acts in the interests of the whole society and expresses the will of the whole nation. However, this ideological thesis is not supported by lawmaking practice. The stability of the forms of law of state origin is given in the relevant acts by the established rules of social practice.

There is an interaction between the types of law forms. They transform into each other, which gives stability and unity to the system of forms. Prescriptions may change their place in the system of legal forms if there is no essential contradiction between the content of forms of different types.

In the scientific literature, the following forms of external expression of custom are distinguished: persuasion and practice. At the same time, customary law is denied by the possibility of acquiring a written form as a result of appeal to it by state authorities: sanctioned by long practice. (6)

A proof of customary law can be carried out directly by specifying individual cases of application, and indirectly by asserting the existence of customary law. For a direct evidence, the ordinary conditions of the evidentiary power of various means of evidence are sufficient (the ability to observe and the authenticity of the witness, the authenticity of the act, and so on). The direct evidence is the judgment of the witness or author of the deed of right.

The signs of custom as a form of law are the following:

- the actual implementation for a long time of a certain rule of conduct;
- certainty of the rule of conduct, its formality, giving the opportunity to consistently perceive and reproduce it;
- non-contradiction with regulatory legal acts;
- action in relation to regulatory legal acts is subsidiary, by direct permission (indication);
- rationality of custom, its compliance with the public perception of the decent, sensible, etc .;
- recognition of the rule of conduct as a form of law on the part of the state, implemented in the manner adopted for a given country.

On the one hand, the practice of the implementation of the content custom certainty contributes to its realization in relations. On the other hand, the law enforcement activity of state bodies that give an assessment of the behavior of subjects of law on the basis of custom, testifies to the acceptance of custom by the state and reveals its content.

Therefore, legal custom is inherent in features that reflect its affiliation to the forms of law. These include certainty of content, stability in the regulation of public relations. There are signs of custom, most clearly reflecting the originality of this socio-legal phenomenon. This is its local character and morality of the content. To characterize custom, the activity side is crucial. Practice acts as a permanent reflection of the custom. First, it is public practice, the corresponding popular belief (in the past) that is the source of law. Secondly, practice is a form of objecting customary law. It is a constant, continuous, long-term exercise that is a form of custom. Thirdly, the practice serves as a criterion of custom because the discontinuation of the use of ordinary norms is the termination of the norms themselves.

Judicial precedent is one of the oldest forms of law. Only custom can compete with him. In the scientific literature on the sequence of occurrence of forms of law, various judgments are expressed. While sharing the position on the early occurrence of a precedent, we note the following. Social practice is organically linked to conflicts that are in different directions with the interests of the participants in a particular legal relationship. It is these circumstances that explain the demand for casual regulation. The repetition of a successful solution of an incident, having become a law-enforcement habit, over time acquires certain properties of the form of law. This approach allows us to put a precedent in the first place, even before the legal custom.

Legal norms were generally created for specific cases, i.e. by precedent, which is then fixed by custom. In the full sense of the word, such an incident did not constitute a form of law in the modern sense; it still had a long evolutionary path to the modern doctrine of case law. (7)

In the theory of law, as in the sectoral sciences, the scientific interest in the precedent persists for centuries, experiencing peaks and falls. In X1X and the beginning of the XX century, precedent has developed an extensive scientific theory.

The development of the doctrine of case law in Tsarist jurisprudence was carried out in the context of forms of law, either in the historical aspect or in connection with the observations of the Anglo-Saxon legal system. This tradition has been preserved and continued by modern researchers. Outside of this traditional approach, original ideas of the psychological and historical schools are developed. (8)

Modern researchers turn to the study of judicial precedent in those legal systems that openly recognize the domination of this form of law. (9) International law specialists are also engaged in the development of precedent as a form of law. (9) The concept of judicial precedent in modern conditions has been significantly expanded due to the availability of versatile translated literature, primarily works created in case law.

The nature of the court is such that it is not possible to limit it to ready-made legislative formulas. It stands between the ready law and the subjects, it is in front of it that the pictures of the flaws in the legal regulations are opened. All this, combined with the need to make a decision on the merits dooms the judge to creativity. The thesis that no state, and, accordingly, no legislation, cannot act without the idea of judicial discretion, allows taking into account the peculiarity of life circumstances in the framework of the legal norm.

Special achievements in the development of case law belong to the comparativists. Comparative legal studies allow us to predict and evaluate the prospects of the experience of states. To assess the precedent in Kazakhstan's legal matter, it is necessary to refer to its features in the systems where it exists. In addition, in the Republic of Kazakhstan, it is in effect; it was created by the Constitutional Law on the International Financial Center "Astana."

The following definition is traditional: “A precedent is a court decision of a court (other state body) in a particular case, which is obligatory when similar cases are resolved later by the same court or by courts equal or subordinate to it.

René David notes the following provision that reveals the rule of precedent:

1) Decisions made by the House of Lords constitute mandatory precedents for all courts;
2) Decisions taken by the High Court are binding on lower courts and, not strictly binding, are very important and are usually used as the guidance by the various branches of the High Court and the Crown Court. (10)

The term "precedent" has the following meanings:

1) a case that took place earlier and serves as an example or justification for subsequent cases of this kind;
2) judicial precedent - a decision rendered by a court in a particular case, the justification of which is considered to be the rule binding on other courts when solving similar cases. (11)

A broad approach may not be completely limitless within the practice of all government bodies. The proponents of this approach use the name “judicial (administrative) precedent” described as some result of the activities of non-legislative authorities. The bodies creating precedents do not issue normative legal acts, but individual acts, and the mechanism of their real impact is equal to the normative one. In this case, one should keep in mind the peculiarity that in the domestic doctrine it is not customary to speak of lawmaking in the full sense of the word when presenting a precedent. Administrative precedents are sometimes referred to as the usages of state bodies and institutions. This kind of confession is not traditional due to precedents. It seems that this phenomenon in its characteristics is liable to customary legal forms. The use of organs is most often practical, not written. If these customs are documented, it will have the form of a local act, in which the rules will be formulated not in casual but in abstract wording. Therefore, the practice of others, with the exception of judicial bodies, also does not give us an understanding of the precedent as a form of law. A narrower but still quite broad approach seems to be that only the activities of the courts set precedents. In a narrower sense, not every court decision is sometimes called a judicial precedent but only that which through the publication has become generally known and obligatory for the courts. (12) Case law is a system of legal norms developed by courts in the process of administering justice and binding to apply along with statutory law established by the legislature. Case law is the outcome of justice activities. (13)

In summary, we note that the precedent has two main manifestations. The first is through the types of bodies allowed to create precedents. In this variant, a narrow approach assumes only judicial bodies (or any state bodies, judicial and administrative ones). The second manifestation is depending on the significance of the result. In the broad case, a precedent is any decision of the authorized body. In the narrow sense these are only those of them that can be used in the future as a basis for issuing law enforcement acts.

There is a functional approach to the definition of a precedent, according to which it often represents the essence and significance of a judicial precedent being made dependent on its official recognition. If this condition is met, the judicial precedent becomes “a decision in a particular case, which is obligatory for the courts of the same or lower instance in solving similar cases. (14)

The following definition of case law is not indisputable. It is a legal system, in which judicial precedent is recognized as the main source of law. Case law is the right of precedent, that is, law created by way of precedent and nothing more. Another thing is that case law does not arise as a simple set of actual precedents. It is a hierarchically organized system of mandatory norms, structured for abstract law enforcement purposes. Case law is not an incident, but a model of legal thinking. Judicial precedent as a form of law is a law-enforcement act, which in the future, when similar circumstances arise, is used as the basis for the legal qualification of a case. A precedent is a part of a law enforcement act containing an abstractly formulated rule (position), which in the event of similar life circumstances will be used as a mandatory basis for the legal qualification of the relevant cases.

French jurists stated the great importance in the judicial decision of the motivation part: “From the study of the decision and the motivation it is possible to derive the legal norm, which was applied during this particular process, by inductive reasoning. Therefore, the court decisions provide what the British lawyers call the "decisive basis." This decisive basis often serves as a model for subsequent processes in identical or similar cases. When using this method, lawyers deduce full-fledged norms of law from the content of court decisions. (15)

It should be noted that the basic principle of the legal doctrine of common law countries lies precisely in the fact that a judge does not create law. Justice is living in society, and the judge only formulates the established rules. This doctrine is characterized by a claim to supranational law, which is the embodiment of justice. Therefore, the case law model is adequately perceived by supporters of the natural-legal concept, with the essential proviso that for them justice is nevertheless the supreme legal value. In accordance with this priority, natural-law doctrine allows for deviation from previous precedents if the court finds them wrong, absurd, or unfair. Judges do not create a new law; they simply correct the error of previous courts in the presentation of

legal norms. In this case, it is assumed that the court decision was not a law, i.e. law and positive law do not match. (16)

As for legal positivism, its normative origin inevitably comes into conflict with the essence of case law. However, in the confrontation there is a positive result. The merit of legal positivism is seen in the fact that it developed the ideas of limiting judicial creativity. Judicial discretion within the framework of the law is a model of a positivist understanding of precedent. This design is not stable since its origins does not support each other. The gaps in the legislation, which serve as a pretext for judicial creativity, exclude the steady implementation of laws. The case law in the context of the Romano-Germanic legal system deserves a high positive assessment precisely in connection with its sociological roots. The legislator, in formulating abstract norms, often invents them, and, explaining his/her legislative provisions, tries to substantiate them with demand for wide social strata. However, this evidence is not very obvious and can easily be insinuated.

The lack of positivist law is easily overcome by the very nature of case law. For example, in American sociological jurisprudence, the court is considered as a body that establishes a balance between conflicting interests.

Among the signs of precedent as a form of law, publication is of a particular importance. (17) In general, the problem of objectification and bringing to the attention of participants of legal relations, the content of a legal prescription is equally important for all forms of law without exception.

4 Conclusion

There are no grounds for the absolutization of the publication and, accordingly, of the written form. Indeed, the publication is a way of communicating, not a way of creating a written law. Only the result in the form of a decision can be recorded on paper, whereas the case law itself exists in the form of justice, rationality and other ideas that are of universal ideal character.

Modern civilization is in constant development. The ideas of state building are changing, in accordance with which attempts are being made to improve the state and law. The multidimensionality of the world of law and a modest place of normative acts in this system should set the state into tolerance. It must abandon positivist ambitions. Neither time nor facts give any reason to support the aesthetic ideas. Another pattern is that the development of legislation does not entail the cessation of other forms of law that have arisen outside state institutions. The methodological basis of the modern theory of law is the understanding of the relationship between form and content as philosophical categories and the resulting relationship between form and content as legal concepts. The requirements of compliance with the form and content are necessary for jurisprudence. The division of the source of law in the material and formal sense is the most important provision of the theory of the form of law. The emergence of new statehood, which affected the foundations of the legal system, entered the stage of codification.

The universal source of law is social practice and, first of all, its kind as legal practice. For legal practice, in order to perform the function of the source of law properly, it must be structured into certain forms of its expression.

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