



# Rule of Law in the Modern Institutional System for the Development of the State and Law in the Russian Federation

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## Abstract

**Purpose** The purpose of this research is to establish elements of a modern determinational set of negative phenomena in law-making, law enforcement, and judicial practice related to the effectiveness of compliance with legislation in the Russian Federation on the basis of a systematic analysis of factors affecting the maintenance of the rule of law. **Design/Methodology/Approach** The methodological basis of the research was made up of general scientific and private-scientific methods, such as historical-legal, comparative legal, systemic-structural, statistical, sociological, questionnaire and expert assessment method. **Findings** Today, in Russia, in the context of state-political transformations, the main functional burden on their successful implementation lies with the rule of law as the main socializing regulatory institution. The legality of the problem in law-making and enforcement is severely affected. The modern “vulnerable spot” of the state of law is the professional disorientation of the state mechanism, which entails the formation and dissemination in society of anti-legal stereotypes of behavior, the dominance of criminal structures in resolving important political and economic issues. In order to understand the essence of these problems and minimize their consequences, the authors justify the need to study the indicated problem within the concept of legal dementia. Legal dementia is a state of compliance of legal entities with the provisions of the law, which is characterized by the failure of public authorities to perform not only their functions, but also by the inability to respond to factors that weaken the effectiveness of legal guarantees due to the low level of competence and professionalism. **Originality/Value** The research made it

possible to come to qualitatively new conclusions justifying dominance in the impact on the state of law in modern society of legal dementia. In order to improve the effectiveness of guarantees of legality, it is proposed to create a State Commission for the codification of legislation; develop and implement the concept for the Rule of Law in the Russian Federation, which provides for a set of measures aimed at the uniformity of judicial practice.

## Keywords

State of law • Law-making • Law enforcement • Legal institutions • Public administration mechanism • Legal dementia • K38 • K42

## JEL Classification

K38 • K42

## 1 Introduction

The current period of development of public relations in the Russian Federation is complex and contradictory due to the absence of a unified legal doctrine that prioritizes systematic compliance with legislation, and it is characterized by the strategic need to bring the domestic legal system into line with economic and social formations.

The legal imbalance that has reached a critical point, weighed down by a vast array of outdated legislation, does not allow the state system to form a single vector of law enforcement, which often seeks to defend public interests with erroneous populist methods of implementing long-term programs. In such conditions, the loss of life prospects by a significant part of Russian society will contribute to the formation and dissemination of anti-legal stereotypes of behavior, the dominance of criminal structures in resolving

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important political and economic issues (Alekseev et al., 2006).

Therefore, it is important to rethink the set of factors that determine the modern variability of behavioral legal stereotypes, the motivational mechanism of manifestations of unprofessionalism and incompetence of officials, the relationship of imperative attitudes of professional activity with respect for the requirements of legality.

The issue of predicting trends in the expansion of the boundaries of the criminalization of public relations requires multifactorial analysis, an objective assessment of various phenomena and processes that have been transformed from a transitional period into a qualitatively new phenomenon—a pseudo-legal superstructure that replaces the role of a legitimate regulator of public relations.

The most indicative in this regard are the results of a research conducted by the Federal Security Service in May 2020, according to which the level of respondents who noted distrust of law enforcement agencies increased from 45% in 2017 to 66.7% in 2019. Most of the respondents noted a lack of confidence in the judiciary (55%), while two-thirds (66.9%) are not sure about the independence and objectivity of the judicial system (RBC, 2020).

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## 2 Materials and Methods

In the course of the application of comparative legal, statistical, and sociological methods, as well as questionnaire methods and expert assessments, the following were carried out: the study of public opinion on the perception and reproduction of regulatory attitudes in modern conditions, the analysis of sentences handed down by the courts of the Rostov region, and the synthesis of data on the processes of law-making and enforcement in the Russian Federation.

It should be noted that the legal benefits of a civilizational society find their effective application under the main condition—the legal space of the application process, based on the principles of legality and justice. Examining the essence of law and the conditions for the effectiveness of its legal regulation, the famous Russian jurist of the late nineteenth century N. M. Korkunov noted that the essence of law is not reduced to the presence of a positive right, the expression of its role as a social regulator is the existence of legal relations expressed in the enshrined rights and obligations (Rybakov, 2015).

Today, in Russia, in the context of radical state-political transformations, the main functional burden on their successful implementation lies with the rule of law as the main socializing regulatory institution. Being a special transforming legal regime, only the rule of law has a unique regulatory tool that can ensure the implementation of the principles of individualization and differentiation, the

effective use of those benefits and opportunities that are aimed at providing a genetic domestic fund.

Revealing the state of legality, one of the leading domestic legal scholars (Drobyshevsky, 2015; Kudryavtsev & Eminov, 2006; Volenko, 2006) notes that the indicator of the studied institute is indicators of legal psychology, among which the main place is occupied by the expectations of society related to the procedure for the administration of justice, the effectiveness of the activities of the authorities and management, with the established prestige of law in the processes of its implementation.

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## 3 Results

An analysis of the consideration of numerous facts of violation of the law, including those that caused a great public outcry against I. Golunov, P. Ustinov, made it possible to conclude that antisocial phenomena are interconnected with both internal and external contradictions of society. The determination of social determinants involves an in-depth analysis of both structural changes in social processes and social patterns with phenomena and processes at various levels. Considering the importance of natural phenomena, including those caused by geographical, demographic, and several other factors, scientists note the dominant role in society of the social and historical foundations themselves, predetermined by the achieved stages of social development and social formations of higher levels.

Obviously, the radical transformations of modern state-legal and socio-economic institutions require not only a systematic study of their content, but also an explanation of the goals of the genesis of such processes, especially in conditions of obvious mimicking influence on normative attitudes, law-making, and law enforcement, attempts to revise doctrinal approaches to legal understanding and the values of legal norms. Examining the mechanism of perception and reproduction of regulatory attitudes in modern conditions, according to the results of the questionnaire of 150 respondents, we came to the conclusion that in the context of globalization, the information flow focused on market values does not contribute to the development of variability in individual behavior, its charge carries adaptive loads focused on the spread of behavioral stamps of an adapting nature. Thus, 90% of respondents justifiably relate to non-payment of credit funds, explaining this by reasons that arose due to the fault of the state and 71% noted readiness if they have the possibility of theft due to the official position of large funds. In such conditions, the individual does not strive to obey the requirements of regulatory guidelines, but is guided by the dominant motivation of the prevalence of millions and billions of thefts.

Disparagement of the importance of principles such as fairness and inescapability of punishment had a very negative impact on the rule of law. Therefore, the Chairman of the Supreme Court of the Russian Federation V. M. Lebedev in September 2019, arguing that judicial legal positions are not sufficiently legitimate, identified the search for legal means to ensure uniformity of judicial practice as a priority task of the highest judicial body. At the same time, it is the uniform application of legal provisions that is an integral sign of legality (Pravo.ru, 2019).

Therefore, a study of 100 sentences handed down by the courts of the Rostov region showed a systematic disregard by judges of the requirements of the law related to the need to reflect a number of provisions in the reasoning part of the sentence. An analysis of the sentences of criminal courts under Part 1 of Art. 105 of the Criminal Code of the Russian Federation in the presence of mitigating circumstances and the absence of aggravating, and in the presence of only aggravating circumstances, showed the absence of gradation when assigning a term of imprisonment to the defendant, indicating a disregard for the criteria of the principle of uniformity of judicial practice, the general idea of ensuring the principle of justice in the proceedings. At the same time, the principle of legal justice consists in the legal formalization of a decision in a case consistent with moral principles. The rule of law regime cannot but contain a fair regulation of public relations, the parameters of which are related to law-making and law enforcement activities.

In such a way, the lack of a unified approach in the implementation of the principles of justice and the inevitability of punishment entails double standards in law enforcement, which ultimately undermines the authority and force of the law and contributes to the spread of legal disorientation in society.

The Chairman of the Constitutional Court V. D. Zorkin noted the updating of issues related to the state of legality in the activities of state authorities, which put the trends in systemic non-compliance with court decisions in a number of factors that undermine the foundations of the constitutional system of Russia. This legal phenomenon cannot but affect the level of legal awareness of citizens, whose defects over the past decades have been associated with legal nihilism. However, today the frightening fact of reality is that the Achilles heel of legality is the professional disorientation of the state mechanism, which contributes to the social disappointment, fear, and indignation of citizens.

It should be noted that while in 2011 a strategic document was adopted in the framework of minimizing the consequences of legal nihilism and improving the legal awareness of the population, today there is a need to develop a concept of ensuring the rule of law, due to the lack of a real ability of a citizen to defend rights due to legal and technical shortcomings, semantic shortcomings and widespread

declarativeness of regulations. This means the development of a rather complex negative process—legal dementia, when there is a weakening of such forms of state influence on law, such as law-making, guarantee, control and supervision, designed to develop, through the state mechanism, models of basic criteria for equity in industries, institutions and legislation.

Legal dementia is a state of compliance of legal entities with the provisions of the law, which is characterized by the failure of public authorities to perform not only their functions, but also by the inability to respond, due to the low level of competence and professionalism, to factors that weaken the effectiveness of legal guarantees.

Experts note that the real state of legality is achieved only if there is a fixed system of guarantees and the existence of monitoring mechanisms for the protection of fundamental human rights and freedoms. Such mechanisms should exist regardless of whether fundamental rights and freedoms are guaranteed by the current Constitution (Baranov & Ovchinnikov, 2007). At the same time, when the basic requirements of legality are dominated by the peremptory imposition on the performance of duties under the threat of State coercion, and not by the guarantee of rights and freedoms, the idea of the rule of law does not determine the prerequisites of lawful behavior, but contributes to the entrenchment of such negative ideas of Etatist understanding as not recognizing the right outside the normative framework, turning the right into an instrument of the state, justifying the arbitr arrogance of the state.

Scientific understanding of the role of the rule of law in the mechanism of public administration shows that although the State, acting as law-making and enforcement, participates in the realization of the right, it, as a subject of legal relations operating in the legal field, is subject to all the requirements established by law in the framework of ensuring the following guarantees of legality: law-making and law enforcement activities; systematization of law; a formal explanation of the law; interpretation of law (Zelepukin & Tislenko, 2016).

When examining law-making activities in line with the rule of law, it should be noted that this factor is a serious barometer of the effectiveness of future law enforcement. At the same time, already at the initial stage of the emergence of regulatory guidelines, the law-making process is negatively affected, while according to the speaker of the upper house of the Legislative Assembly of Russia V. I. Matvienko, the adopted Forest Code was lobbied by a criminal organization overseeing the forest industry. According to the famous scientist G. V. Maltsev, who studied the laws of the influence of lobbying on the law system, “as for law, apparently lobbying is destined to say the last word when debunking the famous myth—the myth of law as an expression of the general will of citizens” (Rybakov, 2015).

Moreover, legal atavism negatively affects the state of law enforcement. The need for a legal update is that only in 2020 more than 4 thousand normative legal acts of the Russian SFSR and the USSR were canceled. An analysis of the historical and legal aspects of this phenomenon shows that in various periods of historical development of society, naturally, due to evolutionary changes, it was necessary to take measures to systematize and codify law, while creating special commissions, the result of which were updated Codes of Laws (Baranov et al., 2005).

Unfortunately, today the effectiveness of the domestic legislative system is compared with the “machine without wheels” due to the bureaucratic red tape of the adoption of by-laws. The speaker of the upper house of the Legislative Assembly of Russia, V. Matvienko assessed the unacceptable situation with domestic regulatory support, noting that the deadlines for the entry into force of certain laws are postponed from year to year and, as a result, lose their relevance (Kommersant, 2016).

Modern law enforcement also suffers from systemic shortcomings. According to Stepashin (1994), the process of establishing a legal regime of legality is seriously negatively affected by the hypertrophied representation of individual officials of state bodies of pseudo-traditional use of official position to resolve personal issues through influence on power structures; mismanagement of State property under the guise of privatization and corporatization for the benefit of limited groups of the population, with a view to enriching the corrupt State apparatus; the formation of the authoritarian power of the apparatus in the absence of an effective system of control over it and the growth of organized crime.

The research found that it negatively affects the general assessment of the work of state bodies by recognizing the systemic nature of violations in a particular area. In such a way, on a regular basis, the bodies of “Roskachestvo,” created by the Russian government in 2015, publish about massive egregious violations identified as a result of inspections of meat, dairy and other products, thereby stating the inability of regulatory authorities to rectify the situation. Such a practice leads to the spread of stereotypes of permission to violate the legal requirements of not only by-laws, but also legislation without serious consequences (Konev et al., 2019).

When asked whether doing business in Russia can be considered safe, more than 74% of respondents answered in the negative. At the same time, about 94% of entrepreneurs consider doing business in Russia unsafe. In such conditions, citizens form a general idea of the law enforcement system guided by a criminological and psychological portrait of corrupt officials at the highest levels of government. Therefore, according to the survey, 72% of respondents noted the futility of recourse in case of criminal encroachment on law enforcement agencies and the readiness to

independently take action to restore justice. However, the boundaries of self-government are associated with the escalation of illegal behavior; this is especially evident against the background of the spread of criminal practices for resolving economic disputes, domestic conflicts, and clarifying relations with political opponents. It is argued that the dominance of informal relations over formal regulators is the main feature that distinguishes Russia from European countries (Kuzina et al., 2019).

## 4 Results

Therefore, the research showed that ignoring and underestimating the principle of legality at the doctrinal level is closely related to the negative phenomena of law-making and law enforcement. The research made it possible to come to qualitatively new conclusions justifying dominance in the impact on the state of law in modern society of legal dementia. The authors propose to introduce this term in the doctrine of the theory of law and state along with legal nihilism. In order to improve the effectiveness of guarantees of the rule of law, it is proposed:

- Establish a State Commission for the codification of legislation under the State Duma of the Russian Federation;
- To amend the Framework of State Policy of the Russian Federation in the field of legal literacy and legal awareness of citizens, adding to the factors affecting the state of legal literacy and legal awareness of citizens, legal dementia;
- Develop and implement the Concept for the Rule of Law in the Russian Federation, which provides for a set of measures aimed at the uniformity of judicial practice, conducting mandatory inspections by the Prosecutor General’s Office of the Russian Federation on all facts of violation of the law by senior officials consecrated in the media.

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