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CRITICISM OF SOCIOLOGICAL THEORY "JURISPRUDENCE OF INTERESTS" BY RUDOLF JÖHRING

A. KOZLOV, E. MELNICHUK, E. ZORCHENKO
Polotsk State University, Belarus

This paper gives criticism of certain provisions of the sociological theory of "jurisprudence of interests" by Rudolf von Jöhring. Based on the examples presented in the article, the inconsistency of these provisions in the framework of this theory is shown.

The theory of "jurisprudence of interests" by Rudolf von Jöhring is one of the first sociological approaches to the concept of law [1-4]. Arose at the end of the XIX century as a kind of protest to the positivist interpretation of law prevailing at that time [5, p. 74-94], which defined the latter as a set of generally binding formally defined norms established and protected by the state that regulate public relations, it sought to "fix" the main drawback of the normative approach to law - the lack of a meaningful side of law in it: the position and degree of freedom of subjects of legal norms, subjective right of personality, morality of legal norms, compliance with the objective needs of social development.

A sociological school defines law as the result of the influence of various social factors on the normative and regulatory system, as well as the response of such a system to the redress of specific, real, social needs of people [5, p. 95-104]. With the sociological approach, there is a set of norms that are generally obligatory for the fulfillment of norms, which define the general relations established by the group for individuals who belong to it at any time. Followers of a sociological approach believe that the right thing to look for in life itself: "life itself is the source of law." Right, - this is the result of non-government activity of the state, in comparison with the standard income, and the result of the compensation of people and the difference in the result of the loss of labor. Here, the role of the state as a translator, in contrast to positivism, is second-rate, is a derivative of empirical processes. It comes down only to an understanding of the legal nature of existing social relations and their consolidation in normative legal acts or judicial precedents. Today, the sociological approach to the concept of law is losing its significance, continuing to play an important role in the development of legal science, while a critical analysis of the theories of its founders allows us to see the possibilities for the further development of modern approaches to law enforcement.

The scientific life of Rudolf von Jöhring (1818–1892) is entirely connected with the creation of a sociological theory of law, new for its time, - "jurisprudence of interests". One of the most important definitions of his theory is the concept of interest expressed in law. Rudolf Jöhring gives this concept a legal meaning. In his opinion, the essence of law is impossible without interest. Real interest is right; it is primary; legal mediation of law in laws, in the norms of objective law is secondary. Thus, in the theory of R. Jöhring, a peculiar identification of law and interest takes place. The founder of "jurisprudence of interests" defines the law "as a protected interest, as a combination of the living conditions of a society, which are ensured by state coercion" [2, p. 315]. The nature of the rule, according to the scientist, stems from the need to publicize and agree on the interests of different social subjects, for which the interest seems to be to a large extent in the form of or benefits.

The works of some representatives of Russian sociological school of law (E.N. Trubetskoy, N.M. Korkunov and others) are devoted to the critical rethinking of R. Jöhring's "jurisprudence of interests" and the identification of its shortcomings. In our opinion, the following question is of equal interest: "If the subjective right is of the same interest, is it preserved in the case of loss of interest?" The example proposed by E.N. Trubetskoy establishes an obvious non-identity of the concepts of "interest" and "law". A heir, inheriting property burdened by debts, has an interest not in preservation, but in termination of ownership. Thus, the right of inheritance, instead of being an expression of the interest of the person concerned, can serve as a motive for its ruin [5, p. 24]. If interest was the essence of law, then the termination of interest would certainly be followed by the termination of the right. But following N.M. Korkunov, "a legal obligation exists as long as there is someone else's interest for the sake of which it is established" [6, p. 61], that is, communication of subjects of social relations on the basis of their common rights and obligations is determined by the presence of interests, and therefore, the lack of interest in only one of the parties does not entail the complete cessation of rights and obligations.

The "idea of law" is also criticized by R. Jöhring [7]. Within the framework of the created theory, the latter strives to "keep up with the rule", proclaimed by him the principle of relativity of law, its time-varying, constantly evolving social conditioning. But at the same time, in the work "The Spirit of Roman Law at the various steps of its

development", R. Jöhring writes that law itself is not only a relative phenomenon, "it is an idea of law" [4, p. 21]. However, the idea initially cannot be relative: the idea must be identical to itself, and this is impossible with its relativity. The idea of law is an ideal image of law, i.e. such as right, which can and should be. The image of the long law, such as this, is already contained in the very idea of the law, which, however, according to R. Jöhring, is committed to a constant revision and solution. The founder of the sociological approach is not able to explain the existence of this contradiction on the basis of logic, since any attempts to rethink the very idea of law together with its nature and identity would lead to the obvious non-compliance with philosophical historicism and the principle of relativity established by it. Jöhring tries to derive an absolute category through relative concepts, which is initially logically unacceptable, and therefore, in his legal views, the "idea of right" is absolute and static, it is an absolute ideal, indicating a way of agreeing to a right, to the content of a right necessary to bring it to a more perfect state; it has a relative, limited by the framework of social relations, dynamic, character. Without finding any options for resolving this contradiction, the founder of the sociological approach of "go to law" contrasts the "living right of reality", metaphorically comparing the two: "the validity of reality casts a shadow in a single case" [4, p. 21].

Despite the shortcomings, the theoretical concept of R. Jöhring's law had a huge impact on the development of legal science in relation to offenders who are not subject to foreclosure with compensation in compensation of the revision of offenders and the opportunity to see the person in the system of public relations.

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