

Customs In the Role of Gaps in The Law

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Abstract

This article devotes the origins of the recognition of customs as sources of law, their legal status and application in the Republic of Uzbekistan both at the legislative level, and provides an analysis from a theoretical point of view.

Keywords: customs, law, entrepreneurship, business customs, local customs and traditions.

INTRODUCTION

Since the time of the institution of Justinian, customs have been part of the law, expressed orally, which were applied when there was neither a single law nor a specific right. When there were only customs and religious regulations. Customs are first reflected in the laws of the XII tables (5th century BC), until this point customs were an unknown law. The publication of the XII tables by the state authorities turned a collection of customs and new orders into a set of laws of civil law (norms that strengthened and covered the fullness of paternal power, regulating relations between spouses, the order of guardianship and inheritance, etc.), which later became the starting point for further development Roman law.

Subsequently, along with previous customs, the introduction of new judicial and judicial practices is observed.

The importance of custom in the era of the principate, as a genuine source of law, was recognized by Julian (Roman emperor for two months in 193), having the same force and foundation as laws. He expressed it as follows: "A custom established from ancient times is deservedly observed as a law, and this is a right that is said to be established by morals. After all, the laws themselves bind us for no other reason than the fact that they were adopted by decision of the people. It is also deservedly observed that the people, without any recording, express their will in reality and with facts. Therefore, it is absolutely correct that even such a rule has been adopted that laws are repealed not only by the decision of the legislator, but also by virtue of the tacit consent of everyone through non-application." - according to the words said, we can conclude that customs have such characteristics as long-standing use and the tacit consent of the people. The tradition of Roman lawyers was to recognize customs as sources of law in cases not regulated by law. There was also a special law, which stated: "In those matters in which we do not use written laws, we must comply with what is indicated by morals and customs."

In the early stages of statehood development, legal customs occupied a dominant role in the regulatory system. They were also the prototype of written law. Without exception, all the most ancient monuments of law were codes of legal customs. As the state develops, it moves on to systematic rule-making activities. Customary law gives way to the law and other acts, i.e., the “product” of this activity.

MATERIALS AND METHODS

Customs are one of the sources of law that has undergone significant evolution since ancient times, and which has been preserved in the legal system to this day. Customs, in turn, can be divided into ordered and unordered, local (at the level of individual communities/communities) and regional, general (at the level of the nation and people) and local, etc.

Initially, the law introduced what was acceptable for all members of society - general social justice, because This particular point is time-tested and justified by norms of behavior. Naturally, the legislator does this in order to give stability to his decisions.

It should also be noted that custom retains its importance as a source of law, primarily in areas where there is not sufficient material for legislative generalizations. Customary rules are presented as “anticipation of statutory law”. The continuity of legal custom reflects its properties as a form of law. It arises from below, gradually, and therefore is able to more fully express the will of the people, their views, and needs than other forms of law. It should also be noted that the custom is conservative in nature, and is not consistent with the prospects for the development of society, but with its past.

The Republic of Uzbekistan divides customs into business customs and local customs (and traditions). The legal status of business customs and local customs and traditions is further established accordingly:

The first ones are recognized as established and widely applicable in any area of business activity, rules of conduct that are not provided for by law, regardless of whether it is recorded in any document.

The second applies to relations regulated by civil law in the absence of relevant norms in it.

It follows from this that customs are given importance as sources of law, from those established in the field of obligation relations and in the field of entrepreneurial activity - for example, in stock trading.

However, if we think from a theoretical point of view, one may wonder about local customs and traditions, their relevance in enshrining them in legislation, because They are most often used at the everyday level, or sometimes in the provision of services that come from a religious, moral, etc. point of view, rather than from a legal one.

RESULTS AND DISCUSSION

Based on a legal point of view, customs can be characterized as those that have developed in property circulation in connection with their repeated and uniform use, valid in the absence of direct instructions in a normative act or in an agreement, not contradicting the law, sanctioned by the state and enshrined by it - legal norms .

E.A. Sukhanov in his works argues that it is necessary to distinguish customs (with the exception of everyday ones) from custom, interpreting the latter as follows: an established rule that acquires mandatory significance only for the parties to a specific agreement due to their direct or implied

consent to be guided by it in their relations, while custom applied subsidiarily regardless of the will of the parties. Thus, custom fills the gap in the contract, being its condition, and custom fills the gap in the law.

CONCLUSION

Summarizing all of the above, we can note that the scientific literature gives reasonable grounds for why customs are classified as sources of civil law, due to the insufficiency of legal regulation of civil relations enshrined in the law by legal norms, their regulation is classified as business customs, and despite the type of custom, their application (business customs, local customs, business customs, in various sectors of the economy), and the form of expression, the latter will fill gaps in the law and be of a legal nature.

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