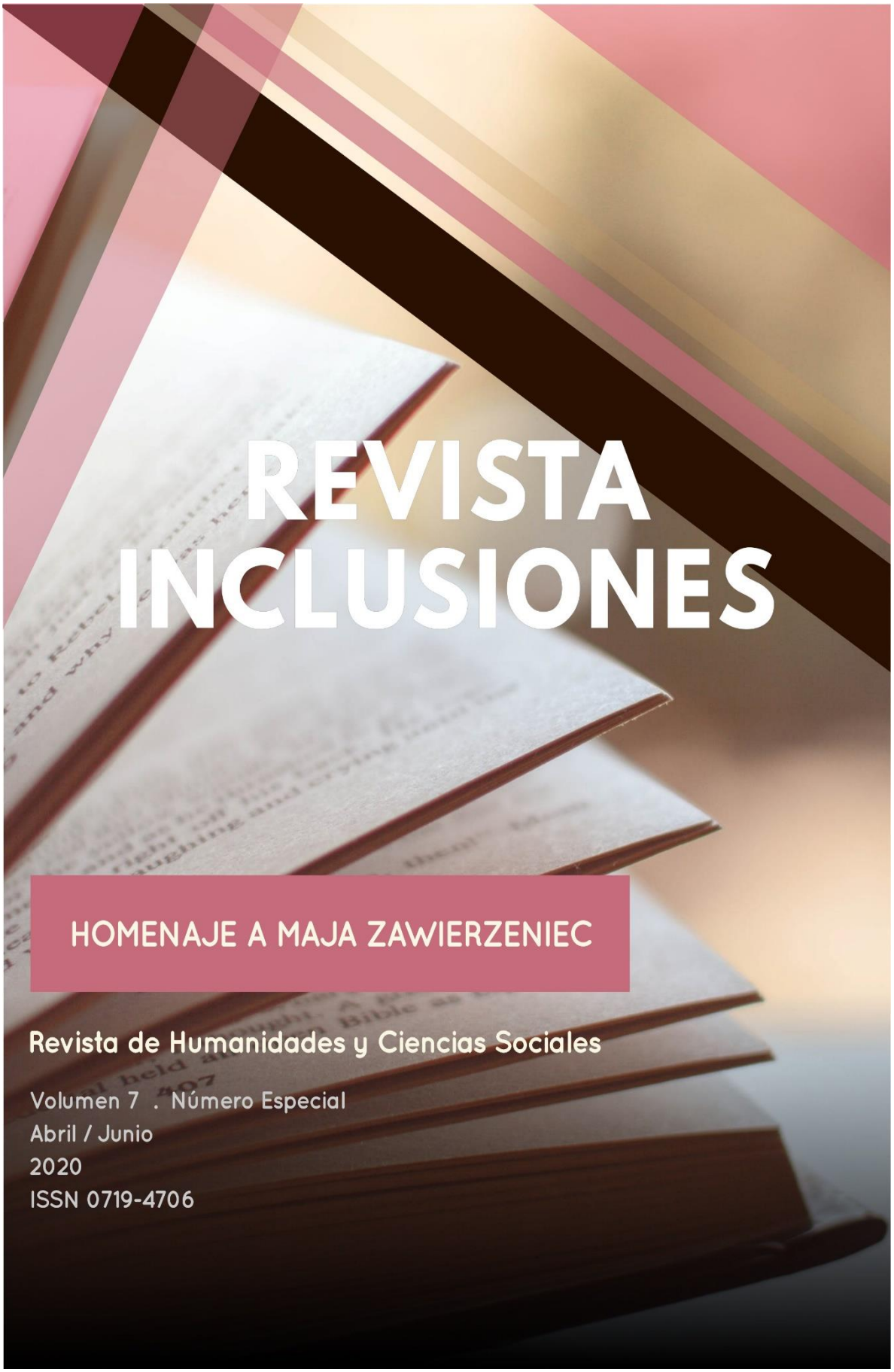

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LEGAL EFFECT OF EXCEPTIONS TO THE RULES

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Abstract

The purpose of the study is to provide a theoretical understanding of the essence of the phenomenon of legal force of exceptions to the rules, to reveal its content and to analyze the value and versatility of existing legal relations in Russian legislation. For the phenomenon of legal force of normative legal acts, the general rule is the hierarchy, as well as features of the acquisition and loss of legal force. The exception to these rules is retroactivity of the law, elimination of the punishability of the act or mitigation of punishment and ultra-activity of the law. The main exceptions to the rules are typical for the validity of a legal act over time. The analysis of exceptions to the rules is necessary because of the versatility and multi-aspect nature of existing legal relations, revealing their complexity, necessity and characteristic exceptions for each branch, both in public law and private legal relations. Conclusion: the principle "the law has no retroactive effect" is not one of the legal axioms.

Keywords

Exceptions to the established rules – Legal force of a normative legal act – Loss of legal force

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Introduction

The appearance of various kinds of exceptions to the established rules is caused by a variety of life situations. Such exceptions are typical for law in general and the legal force as a general legal phenomenon in particular. However, one cannot say that such exceptions violate the rules (of course, given the fact that they do not contribute to the infringement of rights, freedoms and legitimate interests of subjects, social degradation and other negative factors). They only serve as an expression of the flexibility of legal regulation. Almost all legal acts contain, in one way or another, variations of the term "exception".

Legal force (especially the legal force of normative legal acts) is a category that is simply riddled with exceptions to the rules. These exceptions are sometimes not so unambiguous, giving rise to certain difficulties in law enforcement practice.

Legal norms, contained in a legal act, operate in three main forms:

1. in time;

2. in space;

3. in a circle of persons.

These three components determine the hierarchy of the legal framework (laws to be applied) concerning a particular legal relationship, subject, etc. Exceptions to the rules make a particular existing norm or a legal act as a whole invalid. At the same time, the legal act or norm does not lose its legal force in principle. For other persons, they are valid while to some entities that fall under the exception to the rules, the legal force of such legal acts does not apply (as if it did not exist), as it does not extend its effect. However, such an action (or rather lack of it) of legal force is very conditional.

Methods

The basis comprised a set of methods:

- general scientific methods: dialectical, comparison, logical, analysis, synthesis;

- special scientific methods: comparative-legal, analogy.

The fundamental method of the research was the theory of dialectical materialism since laws, principles and methods of dialectical logic allow one to fully understand the nature of the phenomenon of exceptions to the rules, to realize their universality, objectivity and interdependence of the presence in law as one of the forms of human existence. The formal-legal and probabilistic methods were used in the work as well.

Results

Following the criteria of "law action in space" and "law action in a circle of persons", we can give the following example. Heads of states and governments, as well as members of diplomatic and consular missions, enjoy diplomatic immunity. At the same time, the Criminal Code of the Russian Federation and the Code of Administrative Offences of the

Russian Federation establish certain measures of responsibility and state coercion that cannot be applied to these persons. These persons are granted this right by the Vienna Convention on diplomatic relations. In this case, the rule of hierarchy operates since the Vienna Convention is an international act of higher legal force than the Criminal Code and Administrative Code. Although the Constitution of the Russian Federation (as defined at the time by the Constitutional Court of the Russian Federation) has more legal force than international law. At the same time, the Constitution of the Russian Federation establishes state protection of human and civil rights and freedoms, including through criminal and administrative liability. Part 1 of Article 19 of the Constitution of the Russian Federation says that all are equal before the law and the court[1].

For the phenomenon of legal force of legal acts, the general rule will be, first, hierarchy (the higher the legal act in the hierarchy, the higher its legal force) and, second, the features of the acquisition and loss of legal force. Exceptions to these rules will be the following:

- direct reference in the law to the retroactive force application of the law (retroactivity of the law);

- the law eliminates the punishability of the act or reduces the punishment or otherwise improves the situation of the person;

- ultra-activity of the law.

There are cases when those legal acts that are repealed by the procedure established by law (and if they are repealed, then their legal force is lost) continue to regulate existing relations since a certain period is needed to bring them into compliance with the new legislation. This phenomenon is called "experiencing the law" or "ultra-activity of the law". It is most typical for the field of civil law, in particular, as well as for legal relations that are of a continuing nature, in general.

However, it should be taken into account that such a phenomenon as "experiencing the law" does not arise by itself, even if in practice, gaps are identified in the new law regulating the same legal relations. Most often, the new law should reflect the fact that certain provisions of the legal act that has lost its legal force apply to such legal relations.

There are several ways to lose legal force:

1. expiration of the period, for which the act was adopted;

2. direct cancellation;

3. adoption of a new act by the same body for the same regulated legal relations (which in turn cancels the effect of the old act, i.e. its legal force is lost. The new act that gives some of the provisions of the invalid act a kind of legal force. This, in turn, is a

[1] The Constitution of the Russian Federation (adopted by popular vote 12.12.1993, considering the amendments introduced by Laws of the Russian Federation about amendments to the Constitution of the Russian Federation from 30.12.2008 No. 6-FKZ, from 30.12.2008 № 7-FKZ, from 05.02.2014 No. 2-FKZ, from 21.07.2014 No. 11-FKZ). Collected legislation of the Russian Federation, 04.08.2014, No. 31, art. 4398.

special feature, since, under the general rules, the acquisition of legal force takes place in a slightly different order. Accordingly, if the old law and its provisions are no longer needed, the new law completely cancels its effect (by making appropriate changes).

The most typical examples of the application of ultra-activity of laws are situations when a state system, a form of government, etc. is replaced. Based on the example of Russia, we can say that the peak of ultra-activity of laws occurred:

First, in the first years of the Soviet Union. Many of the tsarist laws were still in effect since most industries had not yet created full-fledged legislation. For example, for some time, church marriage was recognized, although the new government declared the abolition of all church legislation.

Second, after the collapse of the USSR, the legislation of the USSR continued to operate for some time since the new legislation had not yet been adopted considering the changed state system and political regime.

Currently, ultra-activity of laws can be observed less often. However, as an example of this phenomenon, we can cite Articles 166-176 and 178-181 of the Civil Code of the Russian Federation, regulating the features of invalid transactions. These provisions were amended by the Federal Law of 2013[2]. At the same time, the wording of these articles of the Civil Code continues to apply to such transactions made before the introduction of these changes on September 1, 2013.

A.D. Zavyalov, exploring the features of ultra-activity of laws, uses such terms as "prolongation". In relation to the phenomenon under consideration, prolongation should be understood as an extension of the validity of the norm, consequently, giving it legal force for a new period. At the same time, prolongation also consists in expanding the temporary scope of the rule of law by extending its effect to those facts and relations that are outside the period from the moment the rule enters into force until the moment of termination of its validity or its cancellation[3]. In general, considering such phenomena as the retroactivity of the law and the ultra-activity of the law, it should be noted that the possibility of their existence is established by the relevant law. The Constitutional Court of the Russian Federation has repeatedly drawn attention to this, noting that the law applies to relations, rights and obligations that arise after its introduction into force. Only the legislator has the right to extend the new rules to facts and legal consequences generated by them that arise before the introduction of the relevant rules into effect, i.e. to give the law retroactive effect (retroactivity), or, on the contrary, to allow, in certain cases, the possibility of applying invalid rules (ultra-activity)[4]. For example, in Article 4 of the Civil Code of the Russian Federation, the legislator establishes that the law applies to relations that arose before its introduction only in cases where it is expressly provided by law[5].

[2] Federal law No. 100-FZ of 07.05.2013 "on amendments to subsections 4 and 5 of section I of part one and article 1153 of part three of the Civil Code of the Russian Federation" (ed. of 28.12.2016). Assembly of legislation of the Russian Federation, 13.05.2013, No. 19, article 2327.

[3] A. D. Zavyalov, “Prolongacija i ee vidy v pravovom regulirovanii obshhestvennyh otnoshenij”, Vestnik Vladimirskogo juridicheskogo instituta num 2 Vol: 35 (2015): 139.

[4] Resolution of the Constitutional Court of the Russian Federation of 22.04.2014 No. 12-P. Available at: https://legalacts.ru/doc/postanovlenie-konstitutsionnogo-suda-rf-ot-22042014-n-12-p-po/

[5] Part 1 of the Civil code of the Russian Federation of 30.11.1994 No. 51-FZ (ed. of 16.12.2019). Assembly of legislation of the Russian Federation, 05.12.1994, No. 32, article 3301.

In contrast to ultra-activity, the retroactivity of the law, most commonly known as "the retroactive force of the law", is a more common phenomenon that prevails in public acts. However, for example, in the Russian Civil Code, regulating mostly private relations, enshrines a provision stating that to the acts of civil law the phenomenon of retroactivity is not applicable, unlike the Criminal Code, which enshrines in Article 10 the conditions of application of the retroactive force of the law. The retroactive force of the law is a phenomenon, in which the law extends its force to those legal relations that arose before its adoption. Thus, the retroactive force of the law is the opposite of the ultra-activity of the law.

There are many examples of applying the retroactive force of the law. Thus, in criminal law, this phenomenon falls under:

- change of the category of crime;

- reduction of the terms of criminal records;

- mitigation of the provisions on recidivism;

- elimination of criminal acts, etc.

Professor S.S. Alekseev identifies two types of the retroactive force of the law:

1) simple, which involves the extension of the new law to the facts that occurred in the past, for which the final legal consequences have not yet occurred;

2) revision retroactivity, according to which, facts and their consequences have already occurred. Concerning this type, there is a revision of previously occurred legal consequences, which are determined "anew" under the new law[6].

The so-called interim criminal law deserves special attention. An interim law is a law that first mitigated or completely excluded criminal liability for a crime and then after a short period criminalized or strengthened responsibility again, i.e. it entered into force after a person committed the crime but lost its force at the time of investigation of the case or at the time of its consideration in court. A classic example of an interim law is the decriminalization of libel in 2011; in 2012, libel was again criminalized.

There is no clear position in the doctrine regarding the application of retroactive force to the interim criminal law.

There are three main opinions:

1) such a law is not retroactive;

2) it has no retroactive effect, but it has an impact on the previously valid law of the moment of the crime;

[6] S. S. Alekseev, Sobranie sochinenij. V 10 t. Tom 3 Problemy teorii prava: Kurs lekcij (Moscow: Statut, 2010).

3) it is retroactive in the sense that it is more lenient than the law that was in force at the time of the crime.

In our opinion, the third point of view is more correct in this case, since the Constitution of the Russian Federation itself is an act of supreme legal force, which tells us that individuals cannot be held responsible for an act that was not recognized as an offence at the time of its commission. Another question is which of the two milder criminal laws should be applied. Some scholars point out that the law that reduces the lower limit of punishment in sanctions is more lenient while the court, applying the new law that establishes a sanction with a lower minimum limit of punishment in respect of acts committed before its entry into force, does not have the right to go beyond the maximum punishment provided for by the sanction of the old law[7]. Other scholars disagree with this conclusion, pointing out that the law with a lower minimum provides the court with the opportunity to impose a more severe punishment[8].

In terms of choosing a milder form of punishment for committing an offence, there are other difficulties. As a general rule, the provisions of a legal act that are recognized as unconstitutional lose their legal force in the manner prescribed by law (and not from the moment of recognition of unconstitutionality). In this regard, the following question arises: should a provision be applied that mitigates or excludes liability for an offence in this case if it is recognized as unconstitutional? This issue was considered by the Constitutional Court of the Russian Federation in 2019.

The essence of the case: a legal entity was recognized as a victim in a criminal case. The guilty persons were convicted of fraud on a particularly large scale involving deliberate non-fulfilment of contractual obligations in the sphere of business activities under Article 159.4 of the Criminal Code of the Russian Federation. Subsequently, they were released from criminal punishment due to the expiration of the terms of criminal prosecution. In this regard, the legal entity appealed to the Constitutional Court of the Russian Federation to recognize unconstitutional part 1 of Article 10 and part 3 of Article 159.4 of the Criminal Code. Article 159.4 of the Criminal Code of the Russian Federation was recognized as such. The applicant believed that if the rule was found unconstitutional, it meant that it should not be applied, even if it mitigated or excluded the criminality of the act. However, the Constitutional Court of the Russian Federation did not agree with this argument, referring to the established principle "the law that mitigates or eliminates the crime of an act is applied". At the time of the crime, this rule still had legal force[9].

There is a situation where an unconstitutional norm that has formally lost its legal force is applied in the part that mitigates the liability of fraudulent entrepreneurs, i.e. the loss of this norm's legal force is not absolute. Recognizing Article 159.4, the Constitutional Court had to indicate the establishment by the legislator of the mechanism of restoration of violated rights of victims of such crimes that were at a disadvantage with the victims of this crime after the recognition of norms unconstitutional.

[7] M. I. Blum y A. A. Tille, Obratnaja sila zakona (Moscow, 1969=.

[8] O. F. Aitova, Nekotorye aspekty problemy obratnoj sily promezhutochnogo zakona i bolee mjagkogo iz dvuh ugolovnyh zakonov. Vektor nauki TGU. Serija: Juridicheskie nauki, num 8 (2012).

[9] Definition of the Constitutional Court of the Russian Federation from 18.07.2019 No. 1912-O. Available at: https://legalacts.ru/sud/opredelenie-konstitutsionnogo-suda-rf-ot-18072019-n-1912-o/

Conclusions

Thus, the main exceptions to the rules are typical for the validity of a legal act over time. As the analysis of such exceptions to the rules has shown, they are necessary because of the diversity of existing legal relations. At the same time, these examples clearly show that even allowing exceptions to the rules within the framework of the phenomenon of legal force, certain difficulties are observed. Each branch has its most characteristic exception. For example, in the field of public law (criminal, administrative, tax, etc.), the retroactive force of the law is typical. In the field of private legal relations (for example, civil law), the opposite phenomenon is characteristic – "experiencing the law". It can also be concluded that the principle of "the law has no retroactive effect" is not one of the legal axioms (irrefutable rulings).

When an unconstitutional norm that has formally lost its legal force is applied in the part that mitigates the liability of fraudulent entrepreneurs, i.e. the loss of this norm's legal force is not absolute. Recognizing Article 159.4, the Constitutional Court had to indicate the establishment by the legislator of the mechanism of restoration of violated rights of victims of such crimes that were at a disadvantage with the victims of this crime after the recognition of norms unconstitutional.

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