PRIVATE LAW PRINCIPLES IN SOCIAL PROCESSES: PROBLEM STATEMENT

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ABSTRACT

This scientific work researches the private law principles proceeding from essence of private law and its ratio with the public law. The analysis of scientific thought classics analysis in the specified sphere allows to reflect a scientific view point of authors in the matter as the category "legal principle" takes the important place in law system, and the importance of the private-law relations for the state activity in economic area determines a research as necessary for studying, both by lawyers-theorists, and experts lawyers. The considered problem reflecting essence of private law through a prism of its legal principles shall be the base for the solution of the question connected with methodological and uniform approach to determination of a subject, the place, an essence of the private law principles in the general law theory. The annotated scientific work discloses characteristic features of the private law principles, emphasizing their close connection and inherence from the principles of the public law and its principles in particular. This work represents the balanced scientific work exerting impact on development of the delivered problem that is useful to the students studying in "Law" and also for court practice.

Keywords: *Social processes, sociology, law, private law, legal marketing, principle of law, public law.*

INTRODUCTION

At approbation of a subject of the private law principles relations and definition of need of the given research for the general law theory (Livshits R.Z., 1994), an indispensable condition is specification of the categorial device and the main signs of private law. The specified definition not little-known category for jurisprudence, nevertheless, still is absent widespread and significant interpretation of essence, to a perspective, the principles, methodology of private law.

Taking in attention that the fact that criteria of division of law for private and public aren't always similar in the legal doctrine (Vagina N. M., 2004), it is enough to note that most of modern Russian jurists adhere to the so-called "theory of interests", going back to Ulpian's thesis: publicum jus est, quod ad statum Romanae spectat, privatum quod ad singulorum utilitatem (1.i §2, Dig. de just. et jure, i, i) - "public law this that which belongs to advantage (interests) of the Roman state private – which [treats] advantage (interests) of hotel persons" (B. Novitsky and I. S. Peretersky, 1996), though recognize her shortcomings and to some extent inconsistency. It is possible to carry modern Russian jurists to supporters of this theory N. P. Aslanyan, V. A. Bublika, A. E. Zhalinsky, A. V. Kryazhkov, V. V. Kudashkin, A. Ya. Kurbatov, V. V. Lazarev, A. L. Makovsky, A. V. Malko, N. I. Matuzov, V. S. Nersesyantsa, E. V. Novikova, V. F. Popondopulo, E. A. Sukhanov, Y. A. Tikhomirov, A. F. Cherdantsev and others.

Dividing law on private and public, it is necessary to consider not only their own features, but also their various components relating both to private and to the public sphere,

besides a measure of their existence: by the criterion carrying elements to this or that area on the basis of their bigger prevalence in this or that branch of law, and respectively and in the field of law private and public (Popov A.N., 1993). I have begun to put to separation of one branch of law from another it is necessary, in our opinion, not from "large" or patrimonial branches, and from a position of the analysis and a research of "bricks" thanks to which this or that branch of law in the field of the legal relationship which are specifically established by her subject works. Such initial, starting element, certainly, - precept of law (Cherdantsev A. F., 2001). law, not important, public it or private, initially represents norms which analysis allows to unite them on specific groups of the legal relationship which are rather regulated by them that in the subsequent develops into independent branch of law (Fatkullin F. N., 1987).

Still M. M. Agarkov wrote that not branches, subjective, inherent in a certain category of persons in legal relationship, but laws which are subdivided into norms are divided into the public and private laws (Agarkov M. M., 1992). L. B. Tiunova believes that, despite the settled views, at differentiation of law on spheres there is no uniform, recognized by the world theoretical doctrine criterion affecting rules of law, and also norms adjacent to him. Stable, close and permanent components are the norms which are in autonomy from "the" branch of law (Tiunova L. B., 1987).

So, the structure of norm allows defining character of private or public law at once she carries. Therefore, the legislator, by drawing up a definition of norms initially defines to what legal relationship this or that norm will be applied. Thus, considering and agreeing with the theory of absence of "pure" branches of law, it should be noted that to give an assessment to that to what sphere the norm belongs it is worth proceeding from the principle of that what character she has – publicly or private-law, but not from this to what it is carried "on paper"

Differentiation of law, respectively, and consistently in process of the analysis differentiates, and in some cases and will define similarities of structural elements were also legal principles enter. The principle of law as the fundamental element of any branch of law characterizing it a subject, a method, features is the necessary ideological beginning which has to and is exposed to intelligent studying and the consecutive analysis.

DATA AND METHODS

Use of general scientific methods of a research I have allowed to allocate the factors influencing a ratio of private law and its ratio with public law in social process.

Special and legal methods have allowed investigating practical aspects of the studied perspective.

In particular, use of a comparative and legal method has allowed carrying out external processing of legal material, and formalistic approach has provided generalization.

RESULTS

Researching "legal principles" from the scientific and doctrinal point of view and concerning the sphere of their deep application, there is a number of practical, and also theoretical problems without which solution the further analysis of the delivered problem is inconceivable. The specified hitches are caused, first, with lack of single theory-and-legal approaches to determination of the categorical device of the theory of the principles of law, but also with problems of legislative and practical activities on their establishment and application respectively.

Feature and the importance of the principle of law for the law theory and practice, is caused by the fact that the principle is a starting point of any scientific knowledge (Gubayeva T. V. Krasnov A. V., 2014). The principle is that phenomenon thanks to which there are law provisions, laws (codified and not codified), agreements and international agreements are constituted. Generality of a concept the principle consists in its use by all scientists in case of a research of industry sciences that also speaks about stability of the principles and the principles of law in particular (Zakharov A. L., 2005).

The principle of law "envelops" all regulations of this or that industry of law and becomes their integral part. Any changes in political, social, economic fields of the state activity will be reflected in regulations in laws of this state that respectively, will be reflected also in the principles, and will be initially affect them if to consider the matter from the legal equipment. Thus, in case of assessment of the legislation of any state and speed of development of conditions for life and activities of his citizens it is possible to address that not only as the principles are established, but also that as they work at practice.

In view of the fact that the system of private law has universal character, and the private law principles are regulated by allied industries of law (the civil law, law of domestic relations). In this case It should be noted that the private law and the principles are considered or in law system in general, or in the ratio with the public law, certainly, where the object of research isn't limited only to the principles.

In the analysis of the cross-industry principles of law it should be noted that there is a group of the principles having a sign of stability and stability in the legal framework whereas there are also those principles which as it was already told, are subject to deformations in view of political, social, economic and other changes in the state.

CONCLUSIONS

Conclusion that uniformity of the private law principles - is possible follows from the fact that by an inductive method, in the analysis and studying of separate precepts of law and institutes allocation of some of them which will be carried to private law is possible. It is necessary to carry to those:

1. agreement liberty principle;
2. principle of dispositivity;
3. liberty principle of the competition and anti-monopoly regulation;
4. principle of non-admission by abuse of the subjective laws, their reasonable and fair implementation
5. principle of subjects equality of the private-law relations;
6. principle of recognition and protection similarly all patterns of ownership;
7. liberty principle and protection labor and other economic, first of all - entrepreneurial, activities;

It should be noted that each of the listed principles contains an element of protection and dispositivity that allows protecting with own hand laws not only in claim, but also a legal process. This thought can and be developed further on the sphere of law of public nature, however it is necessary to make a reservation that paramount function of the public law is protection of interests and law of citizens, society and the state.

The decree principles, it is those elements of system of private law which are not only in close interrelation, but also determine a vector of development of essence and problems in the sphere of private law that is very important in the conditions of modern political and economic life of the majority of the countries of Europe and the world.

It is necessary to note that the most important prerequisite of allocation of private law – private interest will be implemented, according to bases of the theory of private law in that case when the specific instructions establishing responsibility for the specific actions or failure to act violating the private interest of persons are established. So, the importance is purchased by the private law principles (Farber I.E., 1963).

It is necessary to note that the form of fixing of the private law principles is similar with their fixing in other industries of law (Kerimov D.A., 1986). Their expression is caused by a specific regulation (Kuznetsova O.A., 2006), or a logical interpretation of separate provisions of the law. Nevertheless, in our opinion, action of a certain principle of law isn't caused only by a specific regulation, and extends to the whole legal institution, the section or the head.

M. G. Avdyukov believed that determination of the principle of law is difficult the "construction" consisting from legal the doctrine, definitions of regulations and practice application of the legislation in a certain sphere is structural (Avdyukov M. G., 1970).

In our opinion, in the analysis of legal principle it is worth recognizing, first of all, that the principle is the unshakable rule of conduct for the participant of specific legal relationship to which its action extends. The principle along with the fact that it is fixed by rules of law it also is a regulation. In our opinion, for the person breaking the principle of law understood as the ideological beginning of an industry of this or that law more severe responsibility unlike responsibility for violation of any other regulation shall be established. Certainly, legal relationship will never be settled only by the legal idea, that legal idea that is the principle shall be followed by the due mechanism of establishment of responsibility for neglect in their observance.

It should be noted that the private law principles are the legal ideas which are the cornerstone of legal relationship of citizens and legal entities on exchange of goods, their purchases and rendering services. In the Russian Federation private laws gains the increasing development thanks to growth of subjects of economic activity and growth of persons to them addressing.

Opening content of the private law principles, it is necessary to stipulate separately their ratio with the constitutional principles (Chernov K.A., 2003) concerning bases of economic space of the Russian Federation in particular with established in Art. 8 of the Constitution of the Russian Federation by unity of economic space, it should be noted that this principle concerns to group of the provisions establishing bases of a state system, but not to private-law activities of persons of law, and in this regard it can't be considered as the principle of private law though, certainly, it is reflected also in the considered legal sphere. It is obvious that not all provisions which concern the economic public relations can be settled by private law. Find the embodiment in economy both private (individual), and corporate, and public interests.

At the same time the Constitution sets not specific category of the principles which if to follow logic of separation of industries of law on private and public, should be referred to the public principles, and the most important, main beginnings which can be both public, and private. The fundamental law has universal and extra industry character that emphasizes that circumstance that the Constitution is a source of law for any industry. In this regard it is inexpedient to allocate separately the level of the constitutional principles (law-prescribed) and contradicts systematics of law.

It is necessary to emphasize that distribution of the principles of public and private law has the mutually causing character (Alekseev N.N., 1919). Both spheres of law are dialectically connected, and the principles of the public law influence the organization of the private-law

relations, as well as the private law principles influence system of the public law. There is no clear boundary of "watershed" cutting laws to two mutually exclusive areas. The unity in contrast as the law of dialectics extends also to law system.

As for a ratio of all-legal principles and private law principles, it is necessary to notice that the first represent higher level of the principles of law, and extend to all law system in general. The private law principles are designed to organize the sphere of private law (Smirnov O. V., 1977). They don't exclude, and supplement each other; equally I penetrate a subsystem of private law. At the same time the private law principles don't play paramount value in the sphere of public law where the main beginnings work (Yakovlev V. F., Talapina E. V., 2012).

The dialectics of legal principles is confirmed by that circumstance that the private law principles which are associated, first of all, with substantive law have a certain impact on civil and arbitration process which in law system traditionally belong to branches of public law. In this regard the private law principles are peculiar channels on which the material and procedural branches governing the relations in which private subjects mainly participate communicate. In the sphere of private law the material and procedural relations are represented uniform as realization of private interests serves. Besides, subjects of private law have to be sure that those main beginnings which have penetrated material legal relations will keep relevance and the procedural and legal plane.

CONCLUSION

Summing up the result of the above, it is necessary to allocate basic provisions:

unity of the main private and publicly legal beginnings around which the corresponding elements of law system are coordinated the dialectics of material and procedural rules of law allows to draw a conclusion on allocation of the sphere of private law in which are included the regulations of the substantive law and a regulation of a procedural law which are characterized by an orientation on the private (individually caused) requirements and interests, methods of legal regulation and the sphere of the public law accumulating the relevant standards of material and procedural nature, but already public (public, state) orientations, with own methods of legal regulation; distribution of material and procedural precepts of law on spheres of law (private law and the public law) is performed by criterion of an orientation of the purpose and tasks of law implementation. In it the dialectic interrelation of a statics (structure and system) and loudspeakers (implementation) of law is traced;

the private law principles have certain lines of norm and represent the most general provisions included in content of the main institutes and regulations of private law with high degree of generality, but at the same time in stability and stability in time, space, and in operation around persons which are subject to fluctuations taking into account historical features of development of society. The private law principles show the industry specifics in the corresponding complex formations of law system, remaining at the same time universal cross-industry remedies of consolidation of the private-law sphere;

The specific principles of law very conditionally have character of legal universalia as if we consider them from positivistic view points, filling by a certain content of the main beginnings structuring law system in many respects depends on policy of law of the specific state. Besides, in various legal families of the present a set and hierarchy of the principles of law are caused by specific features of essence and content of legal traditions.

The principles of law shouldn't be perceived as something is unconditional stable. Actually in them there is no stiffness, and, moreover, in the conditions of dynamics of public life

such super-durability is represented harmful. The principles of law are subject to transformation in connection with change of concrete historical conditions.

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REFERENCES

Agarkov M. M. (1992). Value of private law, News of higher educational institutions. *Jurisprudence,* 1, 41.
Alekseev N.N. (19190). The general doctrine about law. Simferopol.
Avdyukov M. G. (1970). The principle of legality in civil legal proceedings. M: Legal literature, 9.
Cherdantsev A. F. (2001). Theory of the state and law. M: Uright, 208.
Chernov K.A. (2003). The principle of equality as legal the principle of the Russian law: Law Cand. Thesis. Kazan.
Farber I.E. (1963). Sense of justice as form of public consciousness. M: 1963.
Fatkullin F. N. (1987). Problems of the theory of the state and law: Education guidance. Kazan: Publishing house of the Kazan university, 216.
Gubayeva T. V. & Krasnov A. V. (2014). Rules of law: theory-and-legal research: Monograph. BRINES.
Kerimov D.A. (1986). The philosophical bases on -political legal researches. M: 1986.
Kuznetsova O.A. (2006). Norms principles of the Russian civil law. M: 2006.
Livshits R.Z. (1994). The theory is law. M: 1994.
Popov A.N. (1993). Printcipe of justice in criminal law: Law Cand. Thesis. SPb.
Roman private law: The textbook, Under the editorship of I. B. Novitsky and I. S. Peretersky. M: Urist', 1996, 4.
Smirnov O. V. (1977). Basic principles of the Soviet labor law. M: 1977.
Tiunova L. B. (1987). System of precepts of law and industry division of law, News of higher educational institutions. *Jurisprudence*, 4, 67.
Vagina N. M. (2004). Principles of public law: Law Cand. Thesis. Kazan.
Yakovlev V. F. & Talapina E. V. (2012) Role of public and private law in regulation of economy, the Magazine of Russian law, 2, 5 - 16.
Zakharov A. L. (2005). Cross-industry principles of law. Samara: Samara department of Litfond, 12.