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Некоторые тенденции взаимодействия публичного и частного права в современной России (к вопросу о комплексных образованиях в системе права)

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Цель статьи – систематизировать основные вопросы правоприменения, связанные с появлением и развитием в системе российского права комплексных правовых институтов и отраслей, способствующих нахождению паритета между традиционными отраслями публичного и частного права. В процессе работы были применены общие и специально-научные методы познания: системный, сравнительно-правовой, формально-логический и др. В результате проведенного исследования сделан вывод о том, что развитие в системе современного российского права комплексных образований позволяет, не разделяя отношения на публичные и частные, комплексным образом разрешать новые политические, социальные и экономические вызовы в российском государстве.

Ключевые слова: право, отрасль права, институт права, правовая система, частное право, публичное право, комплексные правовые образования, конституционное законодательство, конституция, структура права

Some trends in the interaction between public and private law in today's Russia (the issues of complex formations in the system of law)

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The subject. Interaction between public and private law in today's Russia and appearance of complex formations in the system of law

The purpose of the article is to examine and justify the presence of new trends between private and public beginnings in the Russian legal system, leading to the emergence of new complex structures in the system of Russian law and legislation.

Characteristic of the problem field. The process of formation of modern Russian legal system and Russian legislation have not only not finished, it is still only in the beginning of his career. In this regard, the question of the Russian law was and will still be the subject of many lengthy scholarly debate, that offers a variety of solutions. Finally this issue can never be closed, because the law – this is phenomenon that is continually evolving. At the present time there are new spheres of activity unknown before (for example, nuclear power, information security, or space exploration), respectively, new relationships arise. Such situation objectively leads to the emergence of new legal norms regulating relationship emerging in a real life. The answer on following questions: will these rules make special branch of law or will they become parts of traditional branches of law (e.g., civil or administrative), - can be established only through specific studies. However, the current trend in constructing the system of modern Russian law and legislation should be noted. The first is the constant (systematic) appearance of normative acts ensuring the legal regulation of new, emerging social relations that inevitably occur in connection with cardinal changes in the economic and political nature, due to the difficult external and internal situation in the country. The second trend is due to the lack of systematic work on the codification of Russian legislation in the conditions of dynamically changing situation often leads to regulations that are

often not only joined to each other, but sometimes contrary to each other. These trends complicate the formation of a unified system of law and law enforcement practice in Russia.

A description of the methods and research methodology. General and specific scientific cognition methods: systematic approach, comparative legal and formal logical methods were used in the research.

Information about the main scientific results. Complex institute as a phenomenon of the legal system and as one of the mechanisms of interaction of private and public law traditionally appears in the process of borrowing of law rules by one branch of law from another. The branch of law, which rules are derived, sometimes loosely called "mother", and the branch of law that produces a comprehensive institute – is called "child". Fixing the rules of "parent" branch of law in the laws and other sources of the "child" branch of law is characteristic external symptom of complex legal institute. However, this feature operates only in conjunction with other features of integrated institute. It is not always entails an appearance of complex legal institute itself. At the same time, complex legal institutions, absorbing the norms of the different branches of public and private law, are formed around the constitutional standards. Such standards play a role of not just constitutional basis, but the main system-forming factor, the role of the maternal branch of the law that is supplemented with norms of other branches of law.

There is a dynamic relationship between the fields of law and complex institutions, so there is a possibility of escalating cross-sectoral institutions into the independent branches of law. This is achieved with the further development of group-specific social relations, forming a complex Institute of law and the gradual transformation of this institute into an independent branch of Russian law. The problem of gaps and conflicts appears more often in complex legal institutions than in traditional branches of law, significant institutions. However, the main way of addressing gaps, conflicts, is common to all separate legal entities as well as to legal system in general. It is the comprehensive and precise systematization of legislation, taking into account the peculiarities of legal regulation in the sphere of public relations.

The existence of complex branches and institutions in law makes highlight complex structure along with traditional structures of law, such as hierarchical (vertical), branch (horizontal) and federative.

The presence of complex branches of law itself does not automatically indicates the presence of the relevant complex branches of law institutions. If we need to justify the allocation of comprehensive formation (industry or institution) in law, it is important always ask yourself the logical question: do special normative means of the system organization of legal material exist in a chosen array of the laws of and what current legal instruments do give us reason to say that we have not simply a normative array, but the integrated interdisciplinary institute or branch of law. Asking these questions and obtaining valid answers on them will allow to avoid the formation of pseudoinstitutions of law and even reduce unwarranted enthusiasm in the search of complex formations instead of traditional selection classic industries and institutions in law with public and private law principles and components of a single system of law.

The formation of complex branches and institutions of law is a new, promising form of interaction between public and private law. It is caused by an objective need for effective regulation of the current complicated social relations. The regulatory potential of all the structural units of law increases through this integrated approach to regulation, and the emphasis is made not on self-sustaining capacity of a particular branch of law, but on more effective regulation of social relations. The presence of complex formations in the system of Russian law provides systematization of regulations in the relevant field of public relations, that generally has a positive effect on the systematization of the Russian legislation.

Keywords: *law, branch of law, Institute of law, the legal system, private law, public law, a complex legal formation, constitutional law, Constitution, the structure of law*

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Introduction. The process of formation of the modern Russian legal system and of the Russian legislation has not been completed, but in our opinion, it is quite possible to say that it is only at the beginning of his journey. In this regard, the survey of the Russian legal system will be the subject of many long-standing scientific disputes for a long time, during which various solutions are offered: from recognition of only two main branches of law – the private and the public one [1, p. 85, 96] to the identification of a number of industries, and in this connection, witty critics of such a position have said that there is still a lack of grocery, gastronomy and bath-laundry law [2, p. 112].

Finally, this issue can never be closed, because law is a phenomenon that is constantly developing. At the present stage there are new areas of activity, which were previously unknown (e.g, nuclear power, information security or space exploration). This objectively leads to the emergence of new legal norms regulating new relations. These rules will constitute a special branch of law, become only a branch of legislation or will be the part of traditional branches of law (for example, civil or administrative law), can be clarified only as a result of specific studies. At the same time, it is necessary to note the existing tendencies in the construction of the system of modern Russian law and legislation. The first is the constant (systematic) emergence of normative acts that ensure the legal regulation of new, newly emerging social relations that inevitably arise in connection with cardinal economic and political changes caused by the difficult external and internal situation in the country. The second trend is caused by the lack of systematic work on the codification of Russian legislation, which, under the conditions of a dynamically changing environment, often leads to the existence of norms that often not only do not fit together, but contradict each other. These tendencies complicate the formation of a unified system of legality and law enforcement practice in the Russian Federation. The purpose of this article, based on the analysis of traditional views on the division of the system of rights into public and private law, is to consider and justify the existence of new tendencies in the interaction of private and public principles in the Russian legal system, leading to the emergence of new complex designs in the structure of Russian law and legislation. In the process of work, general and special methods of scientific knowledge were used: system, comparative-legal, formal-logical, etc.

To the history of the allocation of public and private in the system of law. There is no doubt that the division of the law to private and public one is not some kind of innovation, and the foundations of such a division were laid back in ancient times. The first tendencies of separation of public and private law were noted already in ancient Rome of the republican period in the Laws of 12 tables (451-450 B.C.). The legal norms were grouped on boards depending on the regulation of similar relations, including expressing private or public interests. Thus, Table IX contained the norms of public law on public affairs; Table VI reflected the private interests of ownership and tenure, as well as the rules for the conclusion of contracts, including the sale, purchase and loss of movable and immovable property. Some of the provisions of these tables, subsequently passed from the category of public law to private law and vice versa. For example, theft in Roman law was considered a private offense, whereas in all subsequent systems, theft is recognized as a criminal offense, i.e. refers to public law. The differentiation of public and private law was first officially held by the Roman lawyer Ulpian whose writings got binding legal force in 426. Ulpian publicly called the act a law, in case it referred to the status and welfare of the Roman state as a whole, while private law accumulated the interests of individual (private) persons.

The final result of the legal impact of norms and the focus of legal interest as one of the criteria for dividing the right to private and public as the source of the formation of complex principles and institutions found its expression in the separation of legal entities even in Roman law, where legal entities were divided into unions and institutions. I.A. Pokrovsky noted that various trade and industrial enterprises, as well as all kinds of alliances with non-property goals, could take the form of an alliance-religious, scientific, artistic, sports, etc. unions [3, p. 146]. But some of the

revealed goals (charity of the poor, planting of enlightenment, etc.) demanded the separation of service from these goals from a particular physical entity, which was accomplished by assigning property and determining those bodies that would be operated according to its purpose [3, p. 146]. Thus, even in the Roman law of distinction, the foundations of the division of legal entities were laid, depending on the purposes of creation, one of the legal entities is created only to meet the needs of the founders, others - to achieve certain socially useful, altruistic goals [4, p. 38].

The Russian experience of dividing the system of law into public and private law. The identification of interest in the division of the system of law into public and private law is a traditional approach of Russian law from the Soviet period to the present. Thus, according to the traditional (generally accepted) provisions of the theory of state and law, a set of norms designed primarily to provide public, public general interest forms the basis of public law, which includes norms relating to the constitutional, criminal, administrative, financial and other branches of law, but if in the basis of regulatory regulation lies the interests of individuals, we refer the complex of these norms to private law, the basis of which is civil, family and other branches of law.

In the USSR, in the conditions of the almost complete absence of private property and the domination of state institutions, the role of public law was overwhelming, and all branches of law had a mono attachment "Soviet". Nevertheless, even in the period of the Soviet Union, the ratio of public and private law was uneven or more precisely unstable. Thus, during the NEP, Khrushchev's "thaw", Brezhnev's "stagnation" and Gorbachev's "perestroika", separate sprouts of entrepreneurial initiative appeared, and even entire oases of private business, legalized by the corresponding normative legal acts. As an example, the Decree of the All-Russian Central Executive Committee of May 22, 1922, "On the main private property rights recognized by the RSFSR, protected by its laws and protected by the RSFSR courts" and the Civil Code of October 31, 1922 adopted on its basis, enshrined such types of property as state, cooperative, private property.

In the Gorbachev period of Soviet history, the USSR Law of November 19, 1986, On Individual Work Activity, was adopted, permitting individual entrepreneurship in the production of consumer goods and consumer services.

The changes in the political and economic situation in the Russian Federation that occurred in the 1990s led to new changes in the content and structure of Russian law. It should be noted that miscalculations in the socio-economic state policy, a sharp shift toward private interests, unreasonable "protrusion" even in public sectors, for example, in the constitutional law of the principles of market economy, freedom of competition, guarantees of private property in the loss of traditional basic values and stability in society, which in turn were accompanied by a significant increase in legal nihilism among citizens, rampant crime made both scientists and practitioners look for new ways and forms of interaction of norms and branches of public and private law in order to preserve the systemic principles in Russian law. These investigations are still taking place, since the issues of correlation, interaction and convergence of public and private law in the current economic conditions not only do not lose their relevance, but they also give a new impetus to development. At the same time, it is quite obvious that initiatives coming from the state and expressing, first of all, public interests inevitably affect private needs, and accordingly private interests in turn influence public, and in some cases condition or restrain them.

On the allocation of public and private industries in the legal systems of the world. It should be noted that the division of law into public and private law is not a sign of world legal systems, it is a distinctive characteristic of the continental (Romano-German) system of law. The separation of public and private law is possible only if there is, on the one hand, public authority in one form or another, on the other hand, private property and freedom of entrepreneurship. The absence of at least one of these elements leads to the impossibility of classifying certain norms of law to a system of public or private law.

At the same time, in other well-known legal systems of the world, for example, the Anglo-Saxon (Anglo-American) legal family, Muslim law, there is no explicit division of law into public and private law or such a "divide" is generally not carried out, which, however, does not prevent

states which have adopted these legal traditions, to achieve a high level of political, legal and socio-economic development (the United States, Great Britain, Canada, Australia, the Arab Emirates, etc.). At the same time, the absence of clear criteria for delimiting private and public law does not at all indicate that in these countries public and private interests are not legally regulated and balanced.

To the selection of complex institutions in the system of Russian law

The combination of private-law and public-law regulation, both in the private sphere and in public relations in modern Russia, leads to the fact that more and more regulatory framework and dynamics of social, economic, industrial relations acquire a multi-component, multi-purpose nature, which leads, individual researchers to the idea that the delineation of the right to exclusively private and public is a dubious axiom for modern Russian law.

The combination of private-law and public-law regulation, both in the private and public relations sphere, is a natural process of legal development that triggered another trend - the formation of complex legal institutions.

Let us note that various interpretations of the institutions of law (legal, legal institutions) are given in the legal literature. According to V.K. Babaev, the rules of law, interrelated on the subject-functional basis and governing specific public relations, form a legal institution [5, p. 389]. O.P. Masyukevich defines the institution of law as an element of the system of law, which is a union of legal norms governing a certain group of social relations [6, p. 201]. According to O.S. Joffe, a legal institution should be considered a group of norms united by a specific way of applying the sectoral method to the type of social relations that it regulates [7, p. 54]. V. S. Yakushev defined the legal institution as a set of norms based on the law, designed to regulate within the subject of this branch of law a certain social relation that has a relative independence, as well as the related derivative relations [8, p. 63]. L. Morozova defines the legal institution as a group law interconnected object-functional constraints governing a particular kind of public relations and acquiring virtue of relative stability and independence of operation [9, p. 230].

Thus, the legal institute is traditionally characterized as an element of differentiation of the industry standard material, presented a set of legal rules governing the homogeneous group of public relations as a system of interrelated rules governing a relatively independent set of social relations, or any of their components, properties [10, p. 180]. The above makes it possible to fully consider the legal institution as the primary structure of the relevant branch of law. A branch of law, as a separate group of norms, has the following main features: high-quality compact unity together internally unified legal norms; integrity and self-regulation clearly defined group relations.

The starting point in understanding the essence of legal institutions as noted by S.S. Alekseev, may be "the subject of legal regulation" [11, p. 140-141]. Before the legal regulation of the task of the impact on the whole complex of social relations. In addition, according to S.A. Avakyan, "political and legal principles are the core around which a certain set of social relations, and, consequently, the set of rules governing them combines" [12, p. 20]. Thus, in the content of the legal institution should always see the embodiment of the legal principles (ideas), according to which there is an influence of the right to an appropriate sphere of public relations.

As already mentioned, the development of economic, social and political relations and scientific-technical progress lead to the emergence of a plurality of integrated acts affecting the whole spheres of social life. These acts are the base of formation of complex structural units (institutions) of legislation which integrates on a particular substantive, thematic and legal purposes for diverse legal material. Complex institutions are one of the forms of cooperation between public and private sectors of law. Thus, S.S. Alekseev stated that integrated institutions are specific secondary legal entities expressing doubling known standard material [11, p. 58]. S.S. Alekseev expressly stipulated that a relatively independent legal education arise only when forming a complex sector legislation associated with the change in the content of the legal regulation, the introduction of his system-specific regulations generalizations [13, p. 179-180].

Thus, the limited interpretation of the institution only as a set of rules of law of a particular branch of law is unlikely appropriate. In connection with the above, we believe that the concept of

the legal institution to be recognized as the most common side branch (unitary), and cross-sectoral institutions.

It should be noted that, to date, on the educational level of legal disciplines, and at the level of practical enforcement, the question of the legal nature of the complex institutions of law remains little studied and debated in many ways. Of course, that complex institutions, first of all, are usually in the scope of the related areas of law; secondly, they do not represent a plurality of mechanical and are inherently harmonious relationship homogeneous alloy constituting unbreakable object regulation institutions data; Third, institutions are several branches of law [14, p. 17-18]. Others believe that the relationship between the rules of "borderline" (complex) institutions is characterized by the fact that for one branch of law imposed by some elements of the method of legal regulation of other industries [15, p. 21].

Comprehensive Institute as a phenomenon of the legal system and as one of the mechanisms of interaction between private and public law is traditionally produced in the process of drawing a branch of law rules of other industries. Branch of law, which rules are adopted, sometimes imprecisely called "mother", and the industry, which produces a complex system of institutions, - "subsidiary". A characteristic feature of the integrated external institution is the fact fix in laws and other sources of law, "a subsidiary of" industry standards "parent" branch. However, this feature works only in conjunction with other signs of a complex institution, and by itself does not always entail the formation of an integrated institution. At the same time, we note that the complex legal Institutions, incorporates rules for the different sectors of public and private law, of course formed around the constitutional norms, which in these institutions play a role not just constitutional framework, and the main system-forming factors, the role of the parent branch of law, supplemented by the norms of other branches, allocated on the subject of methods of legal regulation.

Between the branches of law and complex institutions, there is a dynamic relationship, so many authors recognize the possibility of the inter-branch institutions in the independent branch of law. This is achieved in the further development of a specific social relationships, forming a complex institute of law and the gradual development of the Institute as an independent branch of Russian law. As an example, municipal law, which in the early days of its formation, is the institution of constitutional law, then passed into the category of complex institution of law.

Taking into account the previously given statements by S.S. Alekseev that the presence of complex branches of legislation does not in itself automatically indicates the presence of the corresponding complex of industries, institutions of law, it is important to justify the allocation of integrated education (industry or institute) in the legal system always ask Statement legitimate question of whether there are favorites in the array legislation specific regulatory system means the organization of a standard material and a valid legal instrumentary gives us reason to believe that this is not just as a standard array, namely an integrated interdisciplinary institution.

Summarizing the present study, we would like to note that the classic principles and methods of private or public law, taken separately, can no longer be an effective tool for the regulation of social relations. Formation of complex industries and institutions of law is a new, promising form of interaction between public and private law, and is caused by the objective necessity of the effective regulation of advanced composite lot of public relations. Through this integrated approach in the regulation of enhanced regulatory capacity the right of all structural units, with a focus not on self-potential of the Institute or the second branch of the law, and on the most effective regulation of social relations. The presence of complex formations in the Russian system of law provides and systematization of the array of regulations in the field of public relations, which in general has a positive effect on the systematization of the whole of the Russian legislation.

Formation of basic and comprehensive legal entities is not one, but for different reasons and at different levels. This separation is a testament to the variety of social life and needs that determine the formation of the legal system. However, this may not serve as proof of the absence between major branches of the right and complex formations deep relationship and interpenetration.

It seems reasonable that for the preparation of modern legal personnel in the formation and implementation of the educational process should be studied not only by individual branches of law, but also the complex legal discipline, improving competitiveness and the practical significance of the graduates of law schools at the present stage.

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