

THE LEGAL CONFLICTOLOGY IN CONSTITUTIONAL AND MUNICIPAL LAW

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The subject. The article is devoted to integration of conflictology theory in legal science.

The purpose of the paper is to confirm or disprove hypothesis that theoretical mechanisms of conflictology may be effectively applied into constitutional legal theory to prevent constitutional legal conflicts.

The methodology of the study includes general scientific methods (analysis, synthesis, description) and sociological approach.

The main results and scope of their application. The author describes the genesis of legal conflictology theory in different humanitarian sciences and its periodization, including integration of conflictology theory in legal science. The author substantiates necessity and justification of application of theoretical and methodological bases of science of conflictology in the constitutional and municipal law for the purpose of forecasting, identification and the resolution of the corresponding constitutional and legal conflicts.

Conflictology of constitutional and municipal law is a research level of legal conflictology. The subject of this kind of conflictology are legal conflicts in constitutional and municipal law, their prediction, identification and resolution. It is necessary to take into account the following postulates of the General theory of conflictology in the study of legal conflicts in constitutional and municipal law:

- the conflict is natural, objective and acts as an integral property of social life;
- the social conflict at the same time acts as a stabilizing factor of functioning of social system;
- social conflict is a complex social phenomenon as well as a process having structural, spatial-temporal and dynamic characteristics;
- the organic connection of law conflict with the law. The legal conflict arises about legal phenomena, it is realized under the influence and with the application of legal norms, it is resolved on the basis of legal regulation;
- there is a special kind of political conflict that arises within the existing government, where each of the groups within the ruling class has more private interests and its own vision of the situation.

Conflictology of constitutional and municipal law bases on the general theoretical postulates of the science of social conflicts. Constitutional conflict is a political type of social conflict – a disagreement between the subjects of constitutional and municipal legal relations over constitutional values, which can be transformed into legally significant conflict and generate legal consequences.

Conclusions. The object of scientific knowledge of legal conflictology in constitutional and –municipal law is a constitutional and legal conflict, the study of which should be based on the above postulates of the general theory of conflictology, and can not be limited to purely legal knowledge.

1. Introduction.

The science of conflict management is quite young, including its section such as a legal conflict. In fact, the legal conflict represents in terms of methodology, only the specification of conflictological paradigm in legal theory.

According to some authors, the emergence of the science of conflicts in Russia is due to the acute social, economic and political contradictions that developed in the early 90s of the last century.

Today, conflictology refers to the science of the causes, forms, dynamics of social conflicts and ways to resolve them [1, p. 5]. According to A. Y. Antsupov and A. I. Shipilov, conflictology is an interdisciplinary science that studies the regularities of the emergence, development and completion of conflicts of various levels, as well as the principles, methods and techniques of their prevention and completion [2, p. 202].

At the same time, the sharpness and frequency of emerging problems and the possibility of their impact on the actual Constitution of the country actualize the task of developing and implementing effective mechanisms of managerial influence on conflict-related processes, including through legal mechanisms.

Given that a legal conflict is understood as a political type of social conflict, the study of legal conflicts in constitutional and municipal law would be incomplete without studying the theoretical prerequisites for the emergence of doctrines about social conflicts.

The formation of conflictology occurred simultaneously in several major areas of humanitarian knowledge: philosophy, political science and sociology.

At the same time, Western science had a significant impact on Russian science in the field of conflict research, in particular, the works of M. Weber, G. Simmel, K. Marx, R. Dahrendorf, K. Boulding, L. Kozier, T. Parsons, J. Burton and others.

If we talk about the formation of the science of conflicts in the West, the "theory of conflict" is associated with the works of L. Kozier and R. Dahrendorf, K. Boulding: they justified the natural nature of social conflicts and their positive functions in society [3-5].

In particular, R. Dahrendorf proposed a new theory of power, which was that different positions in society have different amounts of power. In his opinion, the power always assumes superiority or submission, but agents of imperious claims act not all

subjects, and certain positions or structures [6]. R. Dahrendorf proposed a model of conflict, according to which power and authority, representing very scarce resources, are the main sources of conflict interests and changes in society [6, p. 22; 7, p. 12-26]. Modern practice of state and municipal construction, including domestic, fully proved the validity of this hypothesis.

2. Periods of development of scientific ideas about social conflicts.

When considering the periodization of the formation of theoretical and methodological foundations of social conflict in Russian science, it is possible to give the periodization proposed by S. L. Proshanov in his doctoral dissertation [8]:

1 period - until 1924, characterized by the emergence of ideas of conflictology as a set of practical knowledge about the rules and methods of behavior in real conflict situations. At this stage, the first scientific knowledge about conflicts is accumulated and studied in philosophy, law, military Sciences, psychology, art, culture and religious teachings, but not accumulated as an independent and separate subject of research.

2nd period – 1924-1992.: the period of study of the origin, formation and development of conflict phenomena and processes of various Sciences. Conflict as an independent phenomenon studied in psychology, mathematics, philosophy, pedagogy, historical Sciences, political science, sociobiology, etc. However, independent interdisciplinary research is not conducted at this stage. This period is characterized by the accumulation of significant empirical material, as the formation of the Soviet state and society has generated a variety of conflicts in nature, ranging from class in the Marxist paradigm and ending with economic and political conflicts. Gradually the interest to the conflicts in virtually all Sciences is assuming a steady and stable nature, are formed of a systematic approach to the conflicts [9, p. 19]. In the period of conflictological topics there is interest in the law.

3 period - 1992 - 2000. The first interdisciplinary studies of various social conflicts appear, conflictology begins to stand out as an independent science, its separate directions are formed: the sociology of conflict, legal conflictology, political conflictology and others based on the universal conceptual and categorical apparatus of the new science. In the first half of the 90s of the 20th century the theoretical and methodological foundations of Russian conflictology began to form. Summarizing the scientific approaches to the definition of social conflict in this period, it is necessary to conclude that such was understood as a

dynamic type of social relations associated with the potential or real collision of subjects on the basis of certain contradictory perceived preferences, interests or values, constantly present or not amenable to elimination [10, p. 119].

3. Problems of the modern stage of development of legal conflictology in constitutional and municipal law.

The modern stage of development of conflictology is faced with the task of creating a system of early warning and conflict forecasting, developing the problem of post-conflict in the conditions of its formal resolution.

At the same time, it should be noted that many modern conflictologists are skeptical about the possibility and the need to propose a unified universal theory of conflict that claims to describe heterogeneous phenomena [11, p. 137-138].

It is necessary to agree with A. V. Rogovoy in the fact that at the present stage of formation of conflict resolution one of the problems is the presence of a weak nutritional and interdisciplinary connections of the Sciences studying social conflict, which prevents to a certain extent to check the validity of knowledge about the legal conflicts obtained in the course of purely legal research.

Moreover, the analysis carried out by A. Ya. Antsupov and A. I. Shipilov in 2001 showed that interdisciplinary connections of branches of conflictology for the last 10 years weaken [6, p. 44] that does not allow to speak today about formation of the uniform theory of the conflict applicable as well as in jurisprudence, and in sociology, psychology and philosophy [8, p. 4].

However, this does not mean that conflictological knowledge should not be applied not only in legal science as a whole, but also in some branch of legal Sciences. On the contrary, the use of conflictological knowledge is necessary and justified when it comes to such an important type of social conflict as constitutional and legal.

According to E. G. Morozova, the legal component of the theory of conflict, as a rule, is not presented in a "pure" form, and therefore the General theories of the conflict should be considered as a General methodological basis for the legal interpretation of the political conflict, and to identify in these theories approaches, elements and subjects of a legal nature [12, p. 15].

Taking into account the current stage of development of conflictology, due to the lack of a unified theory of social conflict and the presence of

exclusively theoretical and methodological foundations, it is necessary and relevant to form the last of the five (according to the classification of S. L. Proshanov) levels of knowledge about social conflict - the so-called sectoral theory of conflict (research level) [8].

The research level is essentially an empirical operationalization of the categories and concepts of the General philosophical level, the General sociological level and branch conflictology, the main content of which is the description and logical analysis of the basic concepts of the studied type of conflicts, its empirical identification, and the system analysis of the identified set of conflicts.

Thus, the conflictology of constitutional and municipal law is a research level of legal conflictology, the subject of which are legal conflicts in constitutional and municipal law, their prediction, identification and resolution, based on the General theoretical postulates of the science of social conflicts.

At the same time, as the first and priority task of the modern stage of development of the sociology of the conflict, sociologists emphasize the building up of fundamental, theoretical and methodological knowledge about social conflicts, overcoming the discrepancy between the insufficiently developed theoretical level of the Russian sociology of the conflict and its held and dynamically developing practice [13, p. 286].

Accordingly, the study of legal conflicts in constitutional and municipal law should take into account the following postulates of the General theory of conflictology in order to obtain reliable scientific knowledge:

- the conflict is natural, objective and acts as an integral property of social life in the form of certain social relations, the pattern of social development, its source and attribute;

- changing and transforming social structures, social conflict at the same time acts as a stabilizing factor in the functioning of the social system. The conflict is functional, contains a constructive and destructive component;

- social conflict is a complex social phenomenon and process having structural, spatial-temporal and dynamic characteristics [8, p. 44; 6, p. 46];

- there is a special kind of political conflict that arises within the existing government, where, on the one hand, each of the groups within the ruling class has more private interests and its own vision of the situation, which it seeks to impose on the whole class and to lay the basis for decision-making. On the other hand, the internal political conflict is associated with

intra-group struggle for the distribution of power and related positions [13, c. 262-263];

- the organic connection of law conflict with the law. The legal conflict arises about legal phenomena, is realized under the influence and with the application of legal norms, is resolved on the basis of legal regulation [14].

It is obvious that since the conflict is an integral attribute of social life, respectively, its existence is objectively natural in constitutional and municipal legal relations. After all, any conflict social relation can be considered a conflict legal relation in the part in which it covers a public relation having a legal form or capable of having such [15, c. 22]. Thus, in one way or another, any social conflict can take legal form at certain stages of its development.

Legal conflict can often reflect the deformation of legal reality, point to defects in the legal system, imperfection of legislation and judicial practice, to identify imbalances in the organization and functioning of state legal institutions [15, p. 38]. The reverse process is also natural, when the imperfection of legislation and law enforcement practice are the causes of constitutional conflicts.

Modern legal conflicts are defined by researchers as internal conflicts "concerning the power in the state", "conflicts concerning control over a certain territory of the state", - that is the conflict, first of all, the state, power and political orientation.

It is in this form that legal conflicts are the subject of research in constitutional and municipal law, since it is on the levers of interaction between different levels of public power or individual branches of state power that the contradiction between the subjects of constitutional and municipal law in matters of competence, their financial and legal support is manifested. Constitutional and municipal law are considered in this case together, since these branches of law study and regulate legal relations on the formation of public power in the Russian Federation.

4. Constitutional and legal conflict as a subject of research of legal conflictology in constitutional and municipal law.

One of the main classifications of legal conflicts is their allocation by industry.

In his doctoral dissertation on the problems of legal conflictology, back in 2001, V. S. Zherebin paid attention to constitutional and legal conflicts, pointing out that in domestic law the question of the existence of constitutional and legal conflicts in

Russian society is solved ambiguously, which was clearly found in the discussion in the journal "State and law". In this regard, it clearly identified three main theoretical positions.

The first position strongly denies the fact that the Constitution of the Russian Federation is in a conflict, and even more so in a crisis situation. In Russian society, the constitutional conflict was in the past, but not now, because the Basic law of the state provides a stable public order.

The second position recognizes that there is a constitutional and legal conflict in Russian society.

In the third position, and does sound arguments about the crisis of the Russian Constitution [16, c. 8-13; 17].

At the same time, V. S. Zherebin does not directly define the constitutional conflict, pointing only to its subjects, object, subject, ideological and legal component.

However, during the extrapolation of T. M. Pryakhina's theory V. N. Kudryavtseva on legal conflictology [18, c. 243] constitutional conflicts, which are understood by the author as having a political and legal nature of the forms of interaction of the subjects of constitutional relations, due to the need to resolve differences on the recognition, implementation, protection of the interests of subjects of value in terms of their social significance [19], have been investigated. T. M. Pryakhin identifies the following signs of constitutional conflict:

- the conflicting parties are the subjects of constitutional relations, and one of the participants must necessarily be endowed with power;

- the object of the constitutional conflict in any case to some extent will be associated with the possession, redistribution, participation in the organization of state power;

- motivation of the parties' behavior always has a legal justification: each of the parties to the conflict justifies the chosen variant of behavior by the need to achieve or protect constitutional values [19, p. 20-21].

As E. G. Morozova notes, in one of the most substantiated typologies of political conflicts, identified on the basis of political approach to the analysis of such conflicts, one of the typological groups (conflicts arising in the system of state power) is characterized as state-legal conflicts. These conflicts are institutionalized, mostly rational, public, in the course of their deployment, the struggle is conducted around the functioning of old and the emergence of new state institutions, the scope of their powers, constitutional provisions governing these powers, resources, power, etc. [12, p. 130-131] [20, c. 134].

In view of the above, it is proposed to understand the constitutional conflict as a political type of social conflict, which is a disagreement between the subjects of constitutional and municipal legal relations over constitutional values that can be transformed into legally significant and generating legal consequences.

5. Conclusions.

Since it is impossible to understand the meaning and significance of the constitutional conflict without taking into account the theoretical and methodological knowledge of the social conflicts to which it relates, it is necessary and justified to talk about the existence of legal conflictology in constitutional and municipal law as a research level of a more General section - legal conflictology, which focuses on scientific ideas about the constitutional conflict and the ways of its prevention and resolution by special legal means provided by the constitutional and municipal law.

At the same time, the object of scientific knowledge of legal conflictology in constitutional and municipal law is the constitutional and legal conflict, the study of which should be based on the above postulates of the General theory of conflictology, not limited to purely legal knowledge, which does not allow to understand not only the essence of this social phenomenon, but also the mechanisms for resolving the constitutional and legal conflict.

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