DOI 10.52468/2542-1514.2021.5(4).20-29

THE IMPORTANCE OF ADDITION, COMPETITION, COLLISIONS OF LAW PRINCIPLES FOR ENFORCEMENT AND OTHER TYPES OF LEGAL ACTIVITIES

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Article info
Received –
2020 November 26
Accepted –
2021 October 10
Available online –
2021 December 24

Keywords
Principle, principles of law, functions of principles of law, system of principles of law, competition of principles of law, collision, contradictions in law, legality, justice, legal monism, legal pluralism

The subject of this research is the problem of combining (interrelation) of various principles of law used in the framework of law enforcement and other types of legal activity.
The purpose of the study is to confirm or refute the hypothesis that the principles of law can not only complement each other, but also "collide" with each other when they are used in the framework of legal activity.
The research methodology includes dialectics, systems approach, specific sociological methods, culturological and theoretical-sociological analysis, formal legal method. The author describes the degree of scientific elaboration of the problem in foreign and Russian studies, including works devoted to such related topics as the functions of the principles of law and the system of principles of law, as well as the opinions directly on the issue of R. Dworkin and A. Barak.
The main results, scope of application. The author substantiates the presence of at least three ways of combining (interconnecting) the principles of law: (1) addition – the concerted action of several principles; (2) competition – limiting the operation of one principle to another; (3) collision – direct contradiction of one principle to another, their mutual exclusion. The definition of factual circumstances, the choice of applicable rules and their interpretation by court or other enforcement official can be influenced by ideology underlying the prevailing practice or the enforcer's own position. The specificity of a particular ideology is correlated by the author with the use of one or another combination of principles of law when making a law enforcement decision. It is shown in the article with specific examples of so-called "complex cases" from the practice of Russian higher courts. Complementing the principles of law is the predominant way of their relationship, used in law enforcement. It contributes to the preservation of the unity of the system of law. At the same time, the consistent implementation of one principle can limit the possibilities for the implementation of others. It leads to the fact in the process of law enforcement that it is often necessary to make a choice in favor of one of the principles within the framework of their competition. This choice is determined by several factors, including not only the established practice (law enforcement customs and precedents), but also the current social context, the position and interests of the law enforcement officer and the participants in the case. Finally, in some cases, situations are possible when the principles of law are mutually exclusive, come into conflict with each other. This, in particular, can occur when the principles of law belong to different systems (subsystems) of law or reflect the peculiarities of the legal ideology of different historical periods. The article identifies certain patterns of combining the principles of law, examines the importance of this topic for studying the issues of legal monism and legal pluralism, shows the importance of complementarity, competition and conflict of principles of law not only for the law enforcement process, but also for the knowledge of law, criticism of law, lawmaking, powerless implementation rights.
Conclusions. Although within the framework of the traditional approach for domestic jurisprudence, the essence of law is associated with the interests and property relations reflected in the law, legal ideology has a relatively independent meaning nevertheless. A certain duality is inherent in legal activity, as a result of which the problems of combining interests are expressed precisely through various options for combining the principles and norms of law. It is proved that the system of principles of law is a complex system in which the same principles can be used in various combinations with each other.

ISSN 2658-4050 (Online)

1. Introduction: formulation and relevance of the problem

One of the features of the law enforcement process in so-called "complex cases" is that the establishment of factual circumstances, the choice of applicable rules and their interpretation may be explicitly or implicitly influenced by the ideology behind the prevailing practice or the law enforcement officer's own position. The specifics of the interpretation of the issues of fact and law can be, in particular, correlated with the use of a particular principle of law when making a decision, the peculiarities of the combination of these principles. This concerns, for example, such principles as legality, justice, humanism, protection of private rights, freedom of contract, the possibility of restricting private rights and freedoms in the name of the common good. Let's consider this feature on the example of judicial activity.

In some cases, the principles of law are used by the court in concert, in addition to each other. Thus, in the ruling of the Supreme Court of the Russian Federation dated October 29, 2020 in case No. 309-ES20-10004, the position according to which the only habitable premises of a debtor citizen cannot be foreclosed on by the creditor, even if the creditor acquires a smaller living space for the debtor, is justified simultaneously by the principles of legality and humanism ("reasonable restraint")[1].

In other cases, on the contrary, a combination of principles of law is used, in which the value of one principle decreases as a result of the application of another. When checking the constitutionality of the Federal Law "On Compulsory Insurance of Civil Liability of Vehicle Owners", the majority of judges of the Constitutional Court of the Russian Federation (hereinafter referred to as the Constitutional Court of the Russian Federation), who considered the case, considered that in this case the ideas of the validity of restrictions on rights and freedoms in the name of the common good, the public nature of such restrictions are more important than the ideas of inviolability of property and freedom of contract[2].

In addition, judicial activity presupposes a certain variability, manifested in the fact that different judges in the collegial consideration of a case, the same court in the consideration of similar cases at different times, courts of different instances, may differently assess the significance and combination of certain principles of law. Sometimes these discrepancies become widely known and discussed in society and among lawyers.

Thus, in the above-mentioned case, the judge of the Constitutional Court of the Russian Federation A.L. Kononov expressed a dissenting opinion, in which he justified a different correlation of the mentioned principles of law, pointed out the disproportionality of the restriction of private rights and freedoms by the Federal Law "On Compulsory Insurance of Civil Liability of vehicle Owners"[3]. Along the way, it is worth noting that the non-public nature of the issuance of dissenting opinions by judges of the Constitutional Court of the Russian Federation introduced today as part of the amendment of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation"[4] will hide the

[1] The ruling of the Supreme Court of the Russian Federation dated October 29, 2020 in case No. 309-ES20-10004. URL: https://kad.arbitr.ru/Card/fd6509b2-3770-4af7-ab4d-2a2d8d0527c9; date of application: 12.11.2020.

[2] Resolution of the Constitutional Court of the Russian Federation No. 6-p of May 31, 2005 on the case of checking the constitutionality of the Federal Law "On Compulsory Insurance of Civil Liability of Vehicle Owners" in connection with the requests of the State Assembly - El Kurultai of the Altai Republic, the Volgograd Regional Duma, a group of deputies of the State Duma and the complaint of citizen S.N. Shvetsov; Dissenting opinion of the judge of the Constitutional Court of the Russian Federation A.L. Kononov. "Consultant Plus"; accessed on: 12.11.2020.

[3] In the same place.

[4] Paragraph 49 of Article 1 of the draft Federal Law No. 1024643-7 "On Amendments to the Federal Constitutional Law "On the Constitutional Court of the Russian Federation" URL: https://sozd.duma.gov.ru/bill/1024643-7?fbclid=IwAR2Y0TZ0ikp2_UUrkticzZCllo69gwcLy7II4Hy3UO-RqF6Rg0wMwYkVLmU#B818DFB7-5451-420C-8C45-80BBEED0A0E6; accessed on: 12.11.2020.

ISSN 2542-1514 (Print)

corresponding variability in the assessment of law from the general public, but will not change the essence of law enforcement activities in "complex cases".

The well-known resolution of the Constitutional Court of the Russian Federation No. 2-p of January 18, 1996 reflected that the election of the heads of executive bodies of state power of the subjects of the Russian Federation by the legislative (representative) body of the subject of the Russian Federation contradicts the principles of unity of state power, democracy and separation of powers[5]. In Resolution No. 13-p of December 21, 2005, the same court noted that under the conditions of the new federal legal regulation, a similar procedure does not contradict these principles and the Constitution of the Russian Federation, meets "the requirement of a balance of constitutionally protected values and national interests"[6].

It is possible to recall here cases when the decisions of Russian courts, including the same Constitutional Court of the Russian Federation, were negatively evaluated in the rulings of the European Court of Human Rights (hereinafter – the ECHR). The divergence of the legal positions of domestic and international judicial bodies is due to the fact that the principles enshrined in the legislation of the Russian Federation and in the Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950, are subject to different interpretations and relate to each other in different ways. For example, in the case of Konstantin Markin, the Constitutional Court of the Russian Federation pointed to the validity of restrictions on rights and freedoms in the name of the common good (protection of national security), the ECHR pointed to the existence of a common standard of equality between men and women and the need to take into account proportionality when restricting rights and freedoms[7].

It is clear that courts do not always directly assess the significance and combination of the principles of law when justifying complex decisions, that lower courts often use references only to specific rules. At the same time, it seems to us that even in these cases, competent judges, when choosing and interpreting applicable norms, assessing factual circumstances, cannot but proceed from a conscious or intuitive idea of a reasonable combination of the principles of law in resolving a particular issue.

All of the above testifies to the relevance of theoretical research on the issues of combining the principles of law, identifying individual patterns of such a combination.

2. The degree of scientific elaboration of the problem

For domestic legal scholars, the importance of the principles of law for the implementation of various types of legal activity is indisputable. It is usually studied by highlighting the functions of the principles of law. In the modern literature devoted to this issue, two main approaches can be distinguished.

Firstly, there are works, in particular, textbooks on the general theory of state and law, which note, first of all, the regulatory function of principles in the framework of law-making activities and the law-restoring function in the implementation of law enforcement in the conditions of gaps in law [for example: 1; 2, p. 264; 3, p. 75]. It can be assumed that for their authors, legal reality is seen as the implementation of specific norms of legislation and other forms of law, and general provisions (principles) are in demand only when suitable norms and rules have not yet been created.

Secondly, in other works, mostly specifically devoted to the study of the principles of law, it is

[5] Resolution of the Constitutional Court of the Russian Federation No. 2-p of January 18, 1996 on the case of checking the constitutionality of a number of provisions of the Charter (Basic Law) of the Altai Territory. "Consultant Plus"; accessed on: 12.11.2020.

[6] Resolution of the Constitutional Court of the Russian Federation No. 13-p of December 21, 2005 on the case of checking the constitutionality of Certain Provisions of the Federal Law "On General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation" in connection with complaints of a number of citizens. "Consultant Plus"; accessed on: 12.11.2020.

[7] The decision of the European Court of Human Rights in the case "Konstantin Markin (Konstantin Markin) v. the Russian Federation" (complaint No. 30078/06). "Consultant Plus"; accessed on: 12.11.2020.

ISSN 2658-4050 (Online)

pointed out the determining importance of the principles of law within any type of legal activity. Thus, V.N. Kartashov emphasizes "the creatively transformative role of the principles of law in legal regulation, various types of legal practice and the legal system as a whole" [4, p. 166]. D.I. Dedov actually defines the principles of law as a method of legal regulation and protection of law, as a kind of "matrix of law", regardless of its fixation in legislation [5, p. 11, 19, 25, 26, 28]. These statements, in particular, mean that for their authors the principles of law are of great importance within the framework of legal activity and when they coexist with specific norms of legislation. In this regard, we pay special attention to publications that directly emphasize the importance of the principles of law for the interpretation of rules [for example: 6, p. 11] and (or) give examples of the collision of norms with the principles of law and discuss the possibility of courts to prefer the principle to the norm [for example: 7].

Another important aspect of the doctrine of the principles of law for us is the assertion that the principles of law form not a simple set, but a system and, therefore, interact with each other. V.N. Kartashov, for example, writes about the system of principles of law, about their interaction with each other and the external environment [4, p. 161]. R.L. Ivanov points out that various types of principles of law (general social and special legal) can act effectively only in interaction with each other [8, p. 116]. A.M. Pechenkina, L.I. Lavdarenko, S.N. Rudykh devoted their works to the study of various aspects of the system of principles [9, 10]. Finally, within the framework of branch legal sciences, it is regularly indicated that the principles of law of various branches and institutions of law also form systems [for example: 11, 12, 13, 14, 15].

From reading the relevant works, it can be seen that for their authors a systematic approach to the principles of law means, first of all, the mutual connection of the principles of law and their complementarity.

The indicated interpretation of the system approach is clear: if each principle is the basic principle (fundamental requirement) of law and legal regulation, then their connection is necessary; for the appearance of a law that meets the principles, all of them must be implemented in one way or another, just as for V.S. Nersesyants, the essence of law is born only at the intersection of the ideas of formal equality, freedom and justice [16, pp. 17-31]. It is no coincidence that almost any resolution of the same Constitutional Court of the Russian Federation in its motivational part contains references to several principles of law at once.

This is typical not only for general legal principles, but also for industry principles. It is clear, for example, that within the framework of the criminal process, the ideas of legality, the administration of justice only by the court, the independence of judges, the protection of human and civil rights and freedoms (Chapter 2 of the Criminal Procedure Code of the Russian Federation) complement each other, that the same can be said about the recognition of equality of participants in regulated relations, the inviolability of property, freedom of contract, the inadmissibility of arbitrary interference of anyone in private affairs, the need for unhindered exercise of civil rights, ensuring the restoration of violated rights in civil law (Article 1 of the Civil Code of the Russian Federation).

At the same time, some foreign and domestic scientists note that specific principles of law may come into conflict with each other.

The most well-known in this regard is the legal doctrine of R. Dvorkin. For example, he writes: "Principles have a feature that norms lack – they can be more or less weighty or important. When two principles come into collision (for example, when a strategy to protect buyers ... comes into collision with the principle of freedom to conclude contracts), those who have to resolve this conflict should take into account the relative weight of each of these principles." [17, p. 51]. At the same time, each principle "provides a basis in favor of a certain solution, but does not prescribe it", "the person who must solve this problem is required to evaluate all competing and inconsistent principles relevant to the case and resolve the conflict between them, and not single out any of them as "valid" [17, p. 109]. This, however, does not mean that p. Dvorkin recognizes the validity of making different decisions on the same disputes, that different law enforcement officers may give preference to

ISSN 2542-1514 (Print)

different principles of law in similar cases. The teaching of R. Dvorkin is far from a sociological approach and is rather attached to the school of natural law. To top off his logic, he introduces the figure of a "legal Hercules", a judge with unlimited knowledge of the institutional history of the legal system and the principles of law, who will be infallible and will be able to find the only correct weight ratio of specific principles for each case [See: 17, pp. 152 - 184; 18, pp. 450 - 473].

A. Barak in his famous work notes that the principles "tend to form pairs of opposites," but defends at the same time, unlike R. Dvorkin, the inevitability of the existence of a limited judicial discretion [19, pp. 45-46].

In modern Russian literature, you can also find individual publications that emphasize that the principles of law may conflict. The author knows few such works. A.V. Demin, justifying the existence of the phenomenon of "soft law", speaks about the comparison of various principles of law, referring to R. Dvorkin [See: 20]. The fact that contradictions of the principles of law are inevitable and their optimal resolution contributes to the development and improvement of the legal system is written with reference to the well-known work of S.G. Kelina and V.N. Kudryavtsev [21, p. 18] A.M. Pechenkina [9, p. 56].

3. Methodological basis for studying the problem

Dialectics, as is known, involves the consideration of society and law in development through the emergence and resolution of contradictions, as well as the use of a dialogical method of argumentation within the framework of rational thinking. It is clear that various social contradictions in the material and spiritual spheres, legal contradictions proper, the presence of different points of view on social and legal issues cannot but manifest themselves in such an important element of socio-legal culture as the principles of law. Ideas about the basic ideas of legal regulation cannot but be developing and heterogeneous, sometimes coming to a single synthesis, then competing with each other again.

The system approach includes, in particular, such moments as the interrelation of elements within the system [22, pp. 7-23], mutual limitation of elements [23], the possibility of internal and external contradictions between them [24], their alternation (rhythm) [25], adaptation of a complex system to the external environment through internal changes [26], etc. All this can be applied to the consideration of law and its principles.

Such specific sociological methods as observation, analysis of documents (judicial and other law enforcement acts) confirm the existence of a problem of combining the principles of law in the implementation of legal activities.

With the help of cultural and theoretical-sociological analysis, the issues of combining the principles of law can be considered through the prism of the interaction of cultures and social groups, the presence of sub- and countercultures, conflicts of cultures, law in legal and general social senses, legal monism and legal pluralism, etc.

The formal legal method can be used in terms of taking into account the concept and functions of the principles of law, terminology used in jurisprudence to characterize various ways of combining the norms of law, etc. [See: 27].

4. Some assumptions about the significance of the question of combining the principles of law for law enforcement

Based on these methods , we will make the following assumptions:

1. There are three possible ways to combine (interrelate) the principles of law:

1) supplement – the coordinated action of several principles;

2) competition - limitation of one principle to another;

3) a collision is a direct contradiction of one principle to another, their mutual exclusion.

2. The system of principles of law, as well as the system of law as a whole, is a so-called complex system within which the same principles can be found in various combinations. In particular, the principles can simultaneously complement each other and compete with each other. Sometimes it is impossible to predict unambiguously which combination of principles of law will be optimal in resolving a particular "complex case".

3. The addition of the principles of law is obviously the predominant way of their interrelation used in law enforcement. It contributes to the

ISSN 2658-4050 (Online)

preservation of the unity of the legal system, contributes to the formation of legal monism (universalism). In our opinion, this is one of the reasons for the stable ideas about the existence of a single basic norm, the primary rules of recognition as a criterion of law (J. Austin, G. Kelsen, G. Hart, etc.). If the principles of law only complement each other, they are easy to fit into the hierarchy of legal norms starting with Grundnorm.

4. At the same time, the consistent implementation of one principle may limit the possibilities of implementing others. In the process of law enforcement, this leads to the fact that it is often necessary to make a choice in favor of one of the principles within the framework of their competition. This choice is determined by several factors, including not only the established practice (law enforcement customs and precedents), but also the current social context, the position and interests of the law enforcement officer and the participants in the case.

If the appropriate choice is completely predetermined by legislation and established practice, the competition of the principles of law does not prevent the existence of legal monism (universalism).

The absence of such certainty may indicate the existence of a dispute about law in society, in which case the competition of principles is a manifestation of the so-called weak legal pluralism.

The choice in favor of a certain principle of law in the conditions of their competition in a particular case does not mean the exclusion of other basic principles of legal regulation from the system of principles of law. When considering a new dispute with different factual circumstances, the same principles may be used in a different combination.

5. One of the features of legal activity is that in the competition of general social and special legal principles of law, preference is most often given to the latter, in particular, the principle of legality (rule of law).

6. Another general pattern of choosing applicable principles in their competition obviously lies in the fact that the choice between public law and private law principles often depends on the combination of private and public principles in society as a whole, on the political regime existing in the state.

7. In some cases, there may be situations when the principles of law are mutually exclusive, come into conflict with each other. This, in particular, can occur when the principles of law belong to different systems (subsystems) of law or reflect the peculiarities of the legal ideology of different historical periods. In this case, the law enforcement officer recognizes the legal significance of only one of the relevant principles.

The Court, for example, may recognize the principle of unity and indivisibility of State sovereignty as applicable and reject the principle of sovereignty of the subjects of the federation, prefer the constitutional principle to the principle reflected in an international act, or vice versa, approve formal equality instead of class or class preferences.

8. Within the framework of the approach providing for the possibility of coexistence in society of legal law and law in the general social sense, it should also be recognized that the principles corresponding to different systems of law (systems of social regulation) may conflict with each other. The law enforcement officer must use the principles of legal law, which, however, may lead to a negative assessment of the decision made by public opinion (a separate social group).

9. The existence and overcoming of conflicts of principles of law indicates, on the one hand, the desire to preserve the autonomy and unity of the legal system within which law enforcement decisions are made, on the other hand, confirms the fundamental pluralism of law.

5. The importance of complementarity, competition and conflict of principles of law for other types of legal activity

It is clear that the problem of combining the principles of law is important for other types of legal activity.

Within the framework of knowledge of law, legal understanding, one or another view of law is often justified by reference to various principles of law (their combination). For example, a "pure" legal positivist like G. Kelsen can rely, first of all, on the idea of legality, a naturalist – on the idea of justice, and a supporter of the integrative approach – on a

ISSN 2542-1514 (Print)

well-known combination of them.

When criticizing the existing law, one or another principle of law is usually brought to the fore, from the position of which the assessment of legislation or law enforcement practice takes place. As a result, for example, in principle fair, but illegal legal acts can be defined as null and void or disputed [for example: 28], and lawful, but unfair (obviously unfair) as non-legal laws (by-laws) [for example: 29].

In lawmaking, one or another combination of the principles of law is one of the factors that determine the appearance of specific norms-rules, legal institutions. Thus, the institutionalization of amnesty or pardon in the criminal law is based on the addition of the principle of humanism to the principle of legality, and at the same time, on the choice between the principles of humanism and justice in favor of the former. A similar conclusion can be drawn when analyzing the norms providing for the possibility of invalidating transactions of a bonded nature (concluded on extremely unfavorable terms). In this case, we also see humanism reflected in the law, and such humanism, which is preferred over the ideas of obligation and freedom of contract.

In the framework of the use, observance and enforcement of law by non-governmental entities, a special role, in our opinion, is played by the problem of combining principles characteristic of legal law and law in the general social sense (other systems of social regulation). Actually, many features of the realization of the right, revealed within the framework of the sociological approach, can be explained precisely through the prism of dialogue and conflict of cultures (subcultures), and, consequently, various principles of rationing.

On the one hand, the complementarity of the principles of various social regulators clearly contributes to the implementation of legal law, even in the case of weak knowledge of specific legal norms in society. On the other hand, there are cases of their competition and collisions. In this regard, we can recall G. Radbukh, who wrote that a layman is more focused on justice, and a professional lawyer is more focused on legal stability (and, we will add, formal equality); the first is rather a "legal idealist", the second is a "legal formalist" [30].

The nuances of assessing the problem of combining the principles of law are also characteristic of various legal professions (such as a prosecutor or a lawyer). In a broader sense, the exchange of legal information between various professionals and ordinary people, the meaning of which is considered within the framework of a communicative approach to law, involves a dispute about law and finding a common denominator in it based on a combination of principles of law.

6. Conclusions

The author of this article does not wear rose-colored glasses and is far from thinking that it is the combination of the principles of law that is always the primary factor determining the content of laws, judicial acts, legal views of people. The true motives of power decisions and private opinions may be related to a specific goal, such as private or public benefit, budget savings, and obtaining public support by the authorities. The essence of law according to the national tradition can be reduced to the interests and property relations that a particular right expresses. Nevertheless, firstly, legal culture and ideology often have a relatively independent meaning; secondly, legal activity is characterized by a certain duality, as a result of which the problems of combining different interests are expressed precisely through various combinations of principles and norms of law.

ISSN 2658-4050 (Online)

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BIBLIOGRAPHIC DESCRIPTION

Biryukov S.V. The importance of addition, competition, collisions of law principles for enforcement and other types of legal activities. *Pravoprimenenie = Law Enforcement Review*, 2021, vol. 5, no. 4, pp. 20–29. DOI: 10.52468/2542-1514.2021.5(4).20-29. (In Russ.).