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ABUSE OF LAW AS A FORM OF OPPOSITION TO THE IMPLEMENTATION OF THE LAW IN THE CONTEXT OF MODERN SCIENTIFIC DISCOURSE AND LAW ENFORCEMENT PRACTICE

Nadezhda I. Sukhova
Saratov State Academy of Law, Saratov, Russia

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The subject of the article is the abuse of law as a phenomenon of legal reality, its definition, the patterns of its arising and developing in legal relations, the consequences of abuse of law established in the prescribed manner.

The purpose of the research is to confirm or refute the theoretical hypothesis about the nature, as well as of the role and the functional load of abuse of law, to obtain the conformation of the theoretical judgment of praxeological nature and the conclusions.

Methodology. In achieving the purpose and the corresponding research tasks the dialectical method's instruments were used, which made it possible to establish the relationships between the formally expressed normative uncertainties and the difficulties of their practical implementation, to find structural and functional conclusions in legal behavior and its consequences. The opportunities provided by comparative legal, formal legal, historical and legal methods of the cognition were widely used.

The main results and the scope. The analysis of the given problems showed that despite of the prevalence in relations regulated by various law branches and the frequent reference to it among scholars, it was not possible to develop the unanimous approach to understanding of the abuse of law. This is partly due to the two main factors: (a) the uncertainty and evaluativeness of this phenomenon; (b) the desire to develop a unique interpretation of the right's abuse by an individual researcher.

Thus, the unique and extraordinary options of understanding of abuse of law have been developed. Often they do not correspond to the practice of its application and not fit the legal science system's categories and its knowledge.

The current situation leads to the confusion in the research and ideas blurring of established legal constructions. In addition, theoretical knowledge that has no outlet to practice loses their importance and does not contribute the simplification of practical activities to imple- menting the law.

The main conclusions of the research are expressed in the provisions that the abuse of law plays the role of legal fact, associated with the onset of harmful consequences or the threat of their occurrence. It demonstrates the desire of the abuser to obtain benefits of different nature by leveling legal requirements, in their complex misconduct. The abuse of law either acts as a way of committing an offense and constitutes the objective side of the act, or has an independent meaning, causes the application of legal responsibility, if it acts as a method of committing an offense, and measures of legal protection, if it has an independent mean- ing, the legal structure of law abuse does not include a duty and looks like this: *subjective law – the exercise of subjective right – the limits of the exercise of subjective right – illegal act – the onset of harmful consequences or the threat of their occurrence – measures of responsibility or protection measures.*

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1. Statement of the problem.

Abuse of law is a widespread phenomenon both in the area of academic study and in the sphere of implementation of rules which formalize the phenomenon being referred to.

However, both spheres of its wide presence do not fill the vacuum caused by the lack of a clear understanding of the abuse of law, its nature, forms and consequences.

Borrowed by Russian jurisprudence constructions of Roman law, presented in it in rough terms and not reached a high degree of scientific synthesis, apparently not causing any difficulties among lawyers of Justinian, Gaia, Ulpian times, including abuse of law, have brought into domestic legal science and practice a lot of discussions and disputes, primarily among representatives of civil law [1-7], but not limited to it. It is reasonable to state that the abuse of law has acquired cross-sectoral status, being an element of the real content of relations regulated by various branches of law: constitutional [8; 9], criminal procedural [10-13], civil procedural [14-16], tax [17-19] and others.

At the moment several positions have been developed in science on the understanding of the abuse of law - from its recognition as a special type of legal behavior to its listing among the offenses. Some rather creative approaches can be found between these opposing ones, for example, taking it beyond the law and not admitting link of the abuse of law with a subjective right. At the same time the lack of connection between theoretical hypotheses and legal practice data is evident, sometimes less, sometimes more.

2. Theoretical and praxiological study of the phenomenon of "abuse of law". Correlation of theoretical constructions and legal practice algorithms.

The analysis of available approaches to the interpretation of abuse of law, judicial practice, making the abuse a separate subject of consideration or accompanying the process of trial, made it possible both to critically assess them, to identify not quite substantiated aspects, but also to form our own perspective of the problem.

2.1 On the legal nature of the abuse of law

We cannot but respond to the statement concerning the exclusion of abuse of law from the legal sphere and its non-coupling with the realization of a subjective right, putting it beyond the scope of the law. We believe that such a view does not correspond to the practice of normative regulation of relations associated with abuse of law, as well as the practice of its assessment and qualification during the implementation of legal prescriptions.

The phenomena reflected in positive law acquire legal nature. Legislator expresses his attitude to the facts, objects and behavior that are, in his opinion, of legal significance and subject to legal regulation. These can be both positive and negative situations and circumstances, but affecting the evolution of public relations, the state of order and security. Abuse of law - an element of legal reality, which can manifest itself in several of its cut-offs: affect the progress of a particular legal relations, become a law-transforming and law-generating fact, affect the safety of rights and interests of the subjects of legal relations, indicate the level of legal awareness and legal culture of society, etc. - not just connects the examined phenomenon with the legal in its nature phenomena, but has the same nature, and its importance to the general legal order forces the lawmaker to incorporate the abuse-of-right construction into the current legislation.

In addition to law-making reflection of abuse of law, legal practice also confirms its legal nature, emphasizing it in guiding explanations, acts of interpretation and generalization of judicial practice. With that, these acts indicate the role of abuse of law both for participants of a disputable legal relation and for the court considering it, for which it becomes a circumstance subject to proving, and the attitude to it on the part of the court predetermines the progress of a case in this and other instances. If the court ignores a statement of one of the parties about the abuse

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of law by the counterparty in the proceedings, it is the ground for sending the case for a new hearing. Thus, the Arbitration Court of the West Siberian District by its ruling of September 22, 2017 cancelled the decision and the ruling of the Court of Appeal of May 12, 2017 for failure to consider issues of importance for the proper resolution of the dispute on whether the actions of one of the disputing parties contain elements of abuse of law when submitting the disputed claim for payment under the bank guarantee and reduction of the penalty and sent the case for a new consideration.

The Court for Intellectual Rights by its resolution of January 22, 2015 sent the case for consideration pursuant to the jurisdiction because the plaintiff abused his procedural rights and falsely changed the jurisdiction determined by him according to the residence of one of the defendants, while he had no correlated grounds for claims and evidence, which were provided in the case.

These examples confirm that abuse of law has the status of a legal fact therein, which, as we know, has a legal nature and is among the legal phenomena. Moreover, it does not matter at all whether the fact in question is legitimate or wrongful. All of them are involved in the sphere of legal regulation of public relations.

2.2 On the nature of the abuse of law.

Discussion on the nature of the abuse of law that we have just referred to the legal sphere, in particular the search for an answer to the question of its lawfulness and wrongfulness, is to be a logical continuation of the above-mentioned deduction. We have disagreed with the position that abuse of law is a special type of legal behavior that is neither lawful nor wrongful. However, the proposal to distinguish between wrongful and lawful abuse of law is not supported either [20, p. 13].

As a starting point of our disagreement let us consider abuse of law as a phenomenon of legal sphere, represented in committing by participants of legal relations acts of behavior that are inconsistent with the relevant understanding of lawful one based on the sense of law or the purpose of subjective right.

Public relations regulation involves the establishment of permissible and acceptable behavior and impermissible, undesirable behavior, by using a certain combination of rights and obligations. Legislator, while shaping a normative construction of legal relations, works out, with varying degrees of specificity, mechanisms of exercising subjective right and legal obligation. Simultaneously with this process schemes corresponding neither to the construction of legal relations, nor to subjective right, nor to positive law are enshrined. The abuse of law is among the latter.

It would be completely incomprehensible and would undermine the authority of the lawmaker if he unambiguously identified the lawful way of exercising the right in the manner that it would meet the legal ideals and requirements on some occasions, and would not meet them on the others. The law enforcement bodies would also find themselves in a difficult situation, being required always both to answer the question about the fact of an abuse of laws and to determine its nature. It would look like this: there is an abuse of law - there are consequences, there is an abuse of law - there are no consequences.

Attributing the characteristics of lawfulness and wrongfulness to the abuse of the right looks harmful and false. Harmful, because it complicates practical qualification of abuse of law due to the multitude of evaluation criteria, uncertainty of the limits of subjective rights, lack of uniform practice of trials related to abuse of law.

It is easy to find evidence indicating the absence of the quality of lawfulness in the abuse of law.

Many branches of law and legislation show a formally expressed position of varying degrees of abstractness and concreteness about the abuse of the right as harmful behavior with negative consequences.

For example, part 3 of Article 17 of the Constitution of the Russian Federation sets forth general principles for the exercise of rights of

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citizens in ways that don't allow abuse of laws that would result in the violation of rights, freedoms and interests of other people. This constitutional provision is developed by the rules of various branches of legislation.

Article 10 of the Civil Code serves as the classic example, contributing to the realization of the principle of execution of rights enshrined in Article 17 of the Constitution, as it has been repeatedly pointed out by the Constitutional Court in its rulings.

Similar provisions are found not only in Russia's "economic constitution," but in other laws as well. Part 2 of Article 56 of the Family Code of the Russian Federation contains a construction of the child's right to protection, which defines grounds and procedures for exercising this right, including abuse of laws by parents. At the same time, Article 69 of this Code instructs the legislator to perceive the abuse of parental rights as one of the grounds for depriving parents of their rights.

The content of Article 244.22 of the Code of Civil Procedure also has a negative attitude toward the abuse of laws. It provides for the right of the court to impose a judicial penalty on a person who conducts a case in the interests of a group of individuals in case of his/her abuse of procedural rights or failure to perform his/her procedural duties.

The exercise of procedural rights by individuals involved in a case as part of the proceedings regulated by the Arbitration Procedure Code of the Russian Federation has to be governed by the principles of good faith. Abuse of procedural rights by the specified persons entails unfavorable consequences provided for them by this Code, in particular, the imposition of all court costs in the case on the person abusing their procedural rights or not performing their procedural obligations (Articles 110, 111), the denial of application or petition (Article 159), the imposition of a fine (Article 225.10-1). Linguistic analysis of these articles of the Code makes it clear that abuse of law, misconduct of persons involved in a case, including parties, entails or may entail harmful consequences both for the interests of the other party and for the justice as a whole, namely disruption of a court session, delaying the trial, impeding the consideration of the case and adoption of a legal and valid judicial act.

A similar approach to the regulation of abuse of law is given in the Code of Administrative Proceedings of the Russian Federation, article 45 of which states that a bad faith statement of an unjustified administrative claim, counteraction, including a systematic one, of persons involved in a case to the correct and timely consideration and resolving an administrative case, as well as abuse of procedural rights in other modes entails the occurrence of negative consequences for these persons.

The given non-exhaustive list of normative legal acts confirms our thesis about the abuse of law as a phenomenon contrary to the meaning and purpose of law. The attitude to the abuse of law at the level of international law is articulated in the conventional acts, as it was already mentioned before, and has negative connotations.

The position on the abuse of law expressed in the current legislation probably could not be different due to the continuity and use of constructions, axioms and achievements of Roman law. The ancient Roman jurists formulated the principle qui jure suoutitur, neminem laedit (He who exercises his legal right inflicts upon no one any injury). The Digests of Justinian established the limits of cruelty of masters towards slaves according to the rule "no one should abuse the right granted" [21, p. 159, 166, 172]. It defines malice and distinguishes it from good intent and describes its characteristics [22, p. 8288, 432452]. Malice in Roman law - behavior that does not correspond to the law being the embodiment of justice and truth, is directed against it and for the evil of others. Such an understanding of malice reflects the modern interpretation of the abuse of law. Notably, behavior for evil was not considered lawful in Roman jurisprudence. It would have been difficult for a Roman jurist to imagine an abuse of law as lawful. Malice and acts for evil were specified in Roman law in the well-known principles and axioms, which are still used in the practice of

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jurisdictional bodies nowadays. For example, the European Court of Human Rights in its judgment of December 19, 2017 in the case "Lopes de Sousa Fernandes v. Portugal" actively applies the axiom bonus pater familias, referring to the diligence, foresight, reasonableness of man as a participant of legal relations and bearer of subjective rights and legal duties.

Moreover, the Russian verb "abuse" describes actions that are not socially useful or indifferent from the point of view of social norms [23, p. 685].

While working with the text and structure of the Civil Code of the Russian Federation in conditions of fundamentally changed social relations, their economic basis, the type of legal regulation in addition to the study and evaluation of the usefulness of domestic experience of legal regulation, the possibility of using foreign practice was also determined. Probably, the abuse of law and options of its formalization in foreign legislation, at least in the countries of the continental legal family, were also subjected to study.

Some foreign literature reveals that after the Roman law the construction of abuse of law got its development only in the second half of the 19th century and is associated with the spread of the legitimate interest concept, which for some reasons became the criterion of lawful and bona fide behavior, for example, in a legal dispute. This construction envisaged the prohibition on the exercise of subjective rights through a variety of civil suits in order to cause harm to other persons [24, p. 236-237].

Moreover, the application of the "abuse of law" construction, in German litigation, for instance, gave "flexibility to the norms of contract law, initially imbued with the spirit of far-reaching individualism" [25, p. 231], while the German Civil Code itself sought to establish legal stability in relations, predictability of judges' decisions and limitation of judicial discretion.

The attitude to the abuse of law in foreign science and practice depends on the peculiarities of the legal system. For example, almost all codified acts of civil law in the continental legal system countries of the post-war period contain rules indicating the impossibility to exercise the right to the detriment of other persons or the public interest. For example, the Spanish Civil Code in Article 7 enshrines the principle of good faith in the exercise of the right, and also contains a negative assessment of the abuse in violation of rights or their anti-social exercise. "Any act or omission which, by intention, purpose or circumstances under which it is committed, clearly exceeds the ordinary limits of the exercise of a right to the detriment of a third party, shall entail appropriate compensation and judicial or administrative measures to prevent the continuation of the abuse."

Exercise of a right with the sole purpose of causing harm to another person (§ 226) is prohibited by one of the first sections of the German Civil Code chapter "Exercise of rights, self-defense, self-help". However, the analysis of the text of this act and the practice of its implementation by German scientists shows that it prohibits not the abuse of law as a whole, but only shikana - the exclusive intention to cause harm while exercising the right, which is as hard to prove as unsuccessful to prohibit [26, s. 12].

In common law countries, the phenomenon of abuse of law has developed primarily within the framework of case law, and in a very controversial manner. For example, Lord Halsbury, participating in the 1895 case of Mayor of Bradford v. Pickles, claimed the legitimacy of actions in the exercise of right, despite the defects in the motives and intentions of the empowered person [27, p. 396].

Currently, the practice of abuse of law in the case law system demonstrates some changes in this approach. English statutes, being given credibility in judicial decisions, rarely enshrine unrestricted and broad rights. When it does happen, however, judges must declare that the legislature not only enunciated the right, but at the same time limited it. As a general rule, the abuse of a right requiring its restriction is determined by the correlation of the meaning of the right, the good faith in its exercise, and the malice of its bearer. Moreover, it is argued that

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the abuse of laws is of limited utility where the rights themselves have been phrased within precise or stipulated limits [27, p. 396].

The common law system shows that the right abuse doctrine is mainly developed with reference to precedent, has not been systematized before and cannot be recognized as such at present with the codified laws, since the latter are usually very mild and have no utility without reference to the case law.

The lawful nature of the abuse of law is not confirmed either by law enforcement practice, particularly by the courts. Justice bodies of all subsystems consistently following the Constitutional Court of the Russian Federation in their decisions take the position on the harmfulness and inadmissibility of abuse of law, the need to respond to each statement about it and ensure the consequences in cases where the facts of abusive behavior of persons are confirmed. It is worth noting that due to the diversity of disputes and categories of cases to be considered in the courts, the case results show the variability of the studied phenomenon - from abuse of law in legal relations before the case comes to court (material abuse) to the abuse of procedural rights during the trial. The literature distinguishes such groups of abuse of laws as abuse of court procedure, allowing a person to obtain any benefits or property (for example, it is unacceptable for an employee to conceal temporary disability during his dismissal from work or the fact that he is a member of a professional union body, when the decision on dismissal should be made in compliance with the procedure in view of the motivated opinion of the elected body of the primary trade union organization, or with the prior consent of the superior elected trade union body respectively); abuse of certain procedural rights.

Judicial acts examination shows that in most cases the judiciary considers the abuse of law as intentional behavior of a holder of right, associated with a violation of the prescribed limits of exercise of civil rights, causing harm to third parties or creating conditions for harm occurrence. In this definition there are several signs of abuse of law, namely: certain behavior of a person, the behavior is carried out by a holder of right, the behavior of an empowered person violates the limits of the exercise of civil rights, the behavior causes harm or creates conditions for its occurrence.

As we may see, the given approach corresponds to the concept of abuse of law, proposed by V. P. Gribanov [4], regarding it as a violation of the limits of subjective right exercise, that appears to be the most logical one, in comparison with others, and fits into the general theory of subjective right and its exercise.

However, there is an even broader understanding of abuse of law, the one that is also articulated in the judiciary acts, which we cannot but cite, firstly, because we will not be impartial, while being aware and silent, and secondly, because it will be referred to further and subjected to our criticism.

So, the judicial board for civil cases of the Supreme Court of the Russian Federation proposes to interpret abuse of law as the exercise of a subjective right in contradiction with its purpose, where the subject acts inconsistently with the rule of law that gives him a certain right; does not correlate his behavior with the interests of society and the state; does not perform a legal obligation correlating to the right. This case does not indicate the intentionality of the behavior of the empowered person, but expands the possibility of causing harm and ways of expressing the abuse of law through the failure to perform the obligation correlating to the right.

A very similar solution in terms of the consequences of the abuse of law was provided by the Supreme Court of Japan in the 1972 case Mitamura v. Suzuki, when it introduced the element of reasonableness with regard to the abuse of laws, measured through the address to the social interest. A right must be exercised in such a way that its result would remain within the scope recognized as reasonable under the prevailing social conscience. When the conduct of the empowered person fails to demonstrate reasonableness, when the consequential harm exceeds the limit normally assumed in social life, the exercise of the right goes beyond the permissible limits [27, p. 393].

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Nevertheless, it seems that the issue on the nature of abuse of law in Russian legislation, science and practice has been resolved unambiguously – that is negative behavior of an empowered person not corresponding to the law, to the purpose of subjective right, causing harm or capable of its causing. Judicial practice results' generalization reveals the absence of any indications and hints of the lawfulness of abuse, which is discussed in scientific publications.

If the statement on the abuse of law has not been confirmed during the trial, if the claimant could not prove it as a legal fact, which he refers to and on which the intermediate or final decision on the case depends, there are no grounds to talk about the abuse at all. This, however, does not rule out some other, non-legal abuse, such as a good attitude of the counterparty or other indicating conduct at the expense of morality. However, such abuse has the character of a violation of moral standards, is in the near-legal, moral, ethic plane and has no relation to the legal sphere.

2.3. On the unlawfulness of the abuse of law

We intentionally did not describe the abuse of law as wrongful behavior when justifying its unlawful nature. From our point of view, its categorization as legal behavior of wrongful focus does not raise any doubts. However, following the idea of lawfulness and unlawfulness, we believe that it is more correct to use the category of "unlawfulness" rather than the category of "wrongfulness" in relation to the phenomenon under analysis, and that is why.

Wrongfulness as a characteristic of the behavior of subjects, whose interests and needs are formed and met in law, is most often referred to as one of the attributes of an offense. At that, it is specified that the behavior of a person violated a legal norm and, as a consequence, legal responsibility measures should be applied to him. However, modern legal reality, which includes also the behavior of subjects, is so complicated that it is not always possible, and should not be, to treat its elements unambiguously, uniformly and simply. The structure of legal behavior distinguishes a type that cannot be unambiguously assigned to a classic offense and, accordingly, to apply measures of responsibility. One can never be sure about the behavior described that it will result in unfavorable legal consequences for counterparties or the interests of third parties, violate the established order in the area under regulation, derogate legal values, and so on. It can merely threaten the occurrence of such consequences. Therefore, the law reacts differently to such behavior and triggers other mechanisms to prevent risks of occurrence of actual consequences, consisting of protection measures. This type of behavior and the protection mechanism against it has been most thoroughly, consistently and comprehensively studied in the civil law, but there are no doubts about the usefulness of these findings and their generalization and implementation should be carried out at the level of theory.

Furthermore, it is not only the violation of a specific rule of law that causes the abuse of law, but also general principles and prohibitions, primarily, good faith, decency and the prohibition to abuse one's rights. The situation is unique if a particular norm providing for certain harmful consequences is violated, and if the principle of good faith is violated, then in each specific case the situation may cause different consequences, not always prescribed by the rule of law, formulated in a very abstract way and in general legal-language terms. Thus, two cases can be identified: an offense, marked by wrongfulness; unlawful behavior, which entails or may entail harmful consequences.

As a result, we can argue that abuse of law is a form of unlawful behavior, unlawful counteraction to the enforcement of law, which entails the occurrence of harmful consequences or threatens their occurrence, is associated with the intention of the abusing subject to gain benefits of a different sort by leveling of legal requirements, requires the implementation of liability measures or protective measures. Last point in this conclusion can be criticized, because it reduces the abuse of law simultaneously to an

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offense and other unlawful behavior. However, it is still one more argument to prove our position on the unlawfulness of abuse of law, although it requires clarification.

Case practice, involving the fact of abuse of law, highlights interesting circumstance, i. e. courts differently qualify and evaluate it. The abuse of law entails the implementation of measures of responsibility or protection measures. Looking for an explanation of this state of affairs and reviewing court cases allowed us to conclude the following. When legal responsibility is implemented, the abuse of law acts as a component of the modus operandi of the offense, i.e., it serves as a part of the actus reus of the offense, and therefore legal responsibility follows. By contrast, legal protection measures should be applied to cases where the abuse of law becomes an independent legal fact associated with the breach of the principle of good faith, for instance. Both cases are derived from the current legislation.

For example, part 3 of article 79 of the Code of Civil Procedure of the Russian Federation states that in case of evasion of a party from participation in the expertise, if under the circumstances of the case it is impossible to conduct the expertise without participation of this party, the court, taking into account which party evades the expertise, is entitled to recognize the fact, clarification of which was the purpose of the expertise, either established or rejected, i. e. to apply measures of a protective nature. In addition, unfair procedural actions aimed at avoiding participation in the expertise appear to be an obstacle to the administration of justice and may entail liability measures.

The above mentioned position is believed to help to overcome the opinion seeming to be a methodological error on the issue of unresolved unlawfulness of procedural actions, when discussing the exercise one' s rights, wrongfulness of such exercise and lack of application sanctions in case of such wrongful behavior [28, p. 223]. It should be noted that not every unlawfulness entails the occurrence of legal responsibility.

Further, it is worth mentioning that, according to the High Arbitration Court Information Letter, the abuse of law is of secondary nature with respect to a particular offense. For example, if the defendant, previously acting as a customer in the disputed material contract relation, accepted the work from the executor (plaintiff), with no payment, claiming in court that the contract is unconcluded, acted solely to achieve exemption from the obligation to pay for the work performed for him, as well as from the application of liability due to untimely execution of the obligation to pay, it is an abuse of law under the meaning of article 10 of the Civil Code of the Russian Federation.

Finding the Court of Appeal's application of Article 10 of the Civil Code unreasonable, the Court of Cassation pointed out that, since the parties had not agreed on the initial and final terms of the work, the contract is not concluded. However, the defendant, having accepted the work performed by the plaintiff in the absence of a contractual relationship between them, unjustly saved at his expense money in the amount of the cost of work performed. Therefore, he is obliged to return to the latter unjustly acquired or saved property (unjust enrichment). The amount of unjust enrichment is subject to interest for the use of other people' s money.

2.4 On the abuse of law through the breach of one' s duty.

The position on interpreting the abuse of law as a breach of duty does not seem sufficiently reasoned, although it is attractive to a certain extent. It is presented both in scientific publications and in some acts of judicial bodies mentioned earlier. Such a view harms neither the system of knowledge, nor the practical nature of jurisprudence. However, it does not cause much support due to a certain portion of confusion and allowed, as it seems, substitution of one phenomenon for another.

The reason for this is seen in the idea to consider general legal and specialized principles through the connection with the duty. For example, good faith is understood as the

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obligation of a subject, entering into legal relations, to provide due care for the rights and interests of other participants of civil transaction [29, p. 20], in good faith to fulfill the obligation of a debtor in an obligation, behave in good faith while exercising subjective right [30, s. 125], although this very principle due to its evaluative nature may cause some uncertainty in legal relations [31]. It is the violation, in particular, of this obligation that causes an abuse of the right. However, other principles (respect for rights and freedoms, reasonableness, the rule of law, transparency, etc.) also contain elements of mandatory and prohibitive nature. At the same time, when violations are committed, few people remember them. The situation is different with the abuse of the right, which involves both a violation of the limits of the exercise of the right, and the violation of a duty, which is not supported. Generally, the violation of duties and prohibitions indicates the fact of an offense, which is followed by the legal responsibility, which does not always happen with the abuse of law, as was explained above.

Moreover, the legal construction of abuse of law is represented by elements, among which there is no and should not be a duty, except for the duty of a counterparty, since we are talking about the realization of a right. This construction appears to be as follows: subjective right - exercise of subjective right - limits of exercise of subjective right - wrongful act - occurrence of harmful consequences or the threat of their occurrence - measures of responsibility or protection measures.

The process of duty realization is described by a different construction. In case of abuse of law the duty can be found only when justifying the limits of exercising the right, which are determined, among others, by the general principles and prohibitions, but no more.

It is probably only permissible to consider a breach of duty as a ground for recognizing wrongful conduct as an abuse of law when referring to the law as a whole, including international law, when dealing with the use, for example, of various procedural requirements to the benefit of one or a group of subjects of international law, but to the detriment of others. In this case, right acts as an object of assault and abuse as an object of common culture, non-recognition of it as a regulator of relations and as a means of justice and other generally recognized values.

3. Conclusions.

Our findings allow us to state some thesis of a synoptic nature from the perspective of the goal of this study:

- abuse of law - an unlawful form of counteraction to the implementation of the law, involving the occurrence of harmful consequences or the threat of their occurrence, associated with the ambition of the abusing subject to gain benefits of a different nature by leveling the legal requirements;

- abuse of law in the law enforcement process acts as a legal fact, to be proved due to the general presumption by the person alleging the abuse of law on the part of his contractor;

- within the structure of a complex unlawful behavior, an abuse of law either acts as a way of committing an offence and thus constitutes the objective element of the act, or has an autonomous meaning;

- abuse of law may lead to the application of legal liability measures, if it acts as a modus operandi of the offense, and legal protection measures, if it has an autonomous meaning;

- the legal construction of the abuse of law does not include a duty, the violation of which gives rise to such an abuse of law;

- the abuse of law may be represented both as active and passive mode of behavior, because of the peculiarities of the ways of implementation of the empowering prescription and subjective right;

- abuse of law is multifaceted, and its taxonomy may look as follows:

(a) according to the form of realization of the subjective right, the abuse of the law can be committed in an active or passive mode;

b) by the nature of the right exercised in violation of the limits, we can distinguish the abuse of substantive or procedural rights;

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c) according to the moment of occurrence of the fact of right abuse, this phenomenon can be either prejurisdictional or jurisdictional;

d) according to the place in the structure of the unlawful behavior, the abuse of law may have an independent meaning or be an integral part of the objective element of the offence;

e) by the consequences caused by the fact of abuse of law, it may result in measures of legal responsibility or measures of legal protection.

The analysis of theoretical achievements on the issue of abuse of law and the emerging practice of its legal assessment and qualification in resolving actual cases, is believed to help establish well-defined criteria and effective means of prevention and response to this phenomenon at the level of law-making activity, and effective tactics for its neutralization at the level of law-enforcement activity.

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INFORMATION ABOUT AUTHOR

Nadezhda I. Sukhova – PhD in Law, Associate Professor; Associate Professor, Department of State and Law Theory
Saratov State Academy of Law
1, Vol'skaya ul., Saratov, 410056, Russia E-mail: Sukhova777@yandex.ru
ORCID: 0000-0003-0346-2713
RSCI SPIN-code: 7898-9107

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