

CONSTITUTIONAL PRINCIPLES OF LAW: CONCEPT, TYPES AND THEIR ROLE IN THE LEGAL SYSTEM

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Abstract: The article aims at defining the concept of constitutional principles of law and their meaning in the legal systems of civil law countries, as well as classifying the constitutional principles of law. The sources underlying the study are constitutional and sectoral codified acts of civil law countries. The main methods of scientific research include the formal legal analysis of regulatory legal acts and their classification. The article distinguishes between the concepts of "constitutional principles of law" and "principles of constitutional law". It defines the principles of constitutional law as follows: constitutional principles of law are the most important initial ideas that are enshrined in constitutional acts and underlie a certain branch of law, a set of its branches or the entire legal regulation within a specific legal system. The article emphasizes the importance of constitutional principles of law in civil law countries. The position is substantiated that all general legal principles are constitutional in such countries but not all constitutional principles are general legal. The authors propose the classification of constitutional principles of law based on such criteria as their scope, duplication in sectoral legislation, the way of presenting a constitutional act in text.

Keywords: legal principles, constitutional principles of law, principles of constitutional law, Constitution, civil law system, positivism.

1 Introduction

Currently, the United Nations counts 193 member states [1]. Each of them has its own legal system. At the same time, the legal systems of some countries have similarities due to their historical development, geographic proximity, cultural community and other factors. Therefore, these are usually combined into legal systems [2-4]. Along with the Anglo-Saxon legal system ("common law"), the Romano-Germanic legal family ("civil law") plays an important role on the world map of legal families.

In civil law countries, the main source of law is a regulatory legal act, and the key legal act is the Constitution. Any branch of law and the entire system of legal regulation consists of certain basic and initial ideas that are called the principles of law in the scientific community. Considering the role of constitutional acts in the legal systems of civil law countries, constitutional principles rank high among the principles of law, i.e. ideas that are directly enshrined in the Constitution.

The corresponding scientific literature is concerned with various aspects of the principles of law in their positivist understanding. The main efforts aim at studying the concept and types of principles of law, the legal technique of their consolidation in regulatory acts and their role in legal regulation [5-8].

Scholars who adhere to the ideas of natural law in their modern interpretation also address the principles of law. However, they focus not on their normative and regulatory function but rather on their axiological and cognitive components [9-11].

Within the framework of integrative legal thinking, attempts are made (not effective, in our opinion) to synthesize positivist and natural legal ideas about the principles of law, to combine their regulatory and philosophical understanding [12-14].

Finally, there are studies concerned with the general principles of European Union law and the principles of individual branches of law of its member states, including constitutional law [15-20].

Despite scientific interest in the principles of law in general and the principles of constitutional law in particular, the constitutional principles of law are still understudied. This is especially true for their definition, classification and role in the legal system.

The article aims at defining the concept of constitutional principles of law and their meaning in the legal systems of civil law countries, as well as classifying the constitutional principles of law.

2 Methods

We support positivist legal thinking. In this regard, the main type of sources was regulatory legal acts of civil law countries. Since the constitutional principles of law are enshrined in the Constitution and duplicated in sectoral legislation, first of all, we considered Constitutions and sectoral codified acts. The main scientific method was the formal legal analysis of regulatory legal acts (or the scientific interpretation of regulatory legal acts), which allowed to single out and systematize the constitutional principles of law. When structuring the system of constitutional principles of law, we utilized the classification method.

3 Results

3.1 Constitutional principles of law and principles of constitutional law

The relevant scientific literature does not distinguish between the concepts of "constitutional principles of law" and "principles of constitutional law" [16, 21-24], which mixes the essence of these concepts. The use of these two concepts as synonyms significantly narrows the content of each of them. These concepts partially overlap but they are not identical.

We believe that the constitutional principles of law are enshrined in the Constitution (mandatory element) and, in some cases, duplicated or specified in sectoral legislation (optional element) as the most important, significant, basic, initial ideas and provisions that underlie a certain branch of law, a set of branches of law or all legal regulation within a specific legal system.

The principles of constitutional law are the principles of a branch of constitutional law, i.e. special norms of "constitutional legislation which have the highest legal force, allowing to organize the relevant social relations; universality allows the principles to exert a guiding impact on all subjects, all spheres of social relations within the state; their influence is imperative" [25, p. 61].

The constitutional principles of law underlie various branches of law, while the principles of constitutional law lay the basis for constitutional law. It is worth mentioning that the constitutional principles of law conditions the system of law, while the principles of constitutional law lay the foundations of the state structure and its constitutional system. In the latter case, we deal with the principles of state structure enshrined in the Constitution (for example, the principle of democracy, the principle of sovereignty, the principle of separation of powers, etc.) or the principles of organizing public power, constitutional principles of justice, principles of the constitutional system, principles of constitutionalism, etc.

After studying the correlation between the constitutional principles of law and the principles of constitutional law, we

have concluded that these are not only different concepts but also completely different elements of the legal system.

3.2 Correlation of constitutional principles of law with general legal, intersectoral and sectoral principles

In legal literature, there are different classifications of the principles of law. V.V. Ershov made a detailed review of them [26, p. 310-324]. One of such classifications divides the principles of law into general (or general legal), intersectoral and sectoral [27, p. 105-106]. Let us consider the role of the constitutional principles of law in this system.

General or general legal principles are enshrined and used in all branches of the law of a particular state. These ideas underlie legal regulation, all branches of law, the system of law and the legal system. If any principle is present in most branches of law but is absent at least in one of them, then it cannot be attributed to general legal and becomes intersectoral.

The allocation of general legal principles is complicated by the fact that there is a division of law into substantive and procedural. Due to their specifics, most principles of procedural law cannot be typical of material branches since the latter is characterized by a different nature of regulated social relations. For example, the principles of adversariality, the language of legal proceedings or the consideration of a case within a reasonable time are exclusively procedural and cannot operate in the branches of substantive law.

Cross-sectoral principles are typical of several branches of law. They can be exemplified by the cross-sectoral principles of the procedural branches of law (the principles of administering justice only by the court, the independence of judges, adversariality, a reasonable period of proceedings, the language of court proceedings and others).

Sectoral principles are specific principles inherent only to a particular branch of law. They are legal endemics that are common to a particular branch and cannot be found in other branches.

Based on positivist legal thinking and the fact that the Constitution contains the most general and important rules, we believe that civil law countries have no general legal principles that are not enshrined in the Constitution. On the contrary, the Anglo-Saxon legal system often has unwritten constitutional principles of law [28], which influences not only the legal system itself but also the political decision-making process.

Some scholars express an erroneous opinion that general legal and constitutional principles are the same phenomenon [24, p. 34]. We believe that all general legal principles are constitutional in civil law countries but not all constitutional principles are general legal. The last statement can be exemplified by the legislation of the Russian Federation.

According to the Constitution of the Russian Federation adopted at National Voting on December 12, 1993, the principle of independence of the judiciary is enshrined in Clause 1 of Article 120, the principle of adversariality is consolidated in Clause 3 of Article 123, the principle of the language used in legal proceedings is fixed in Article 68. All these constitutional principles (as well as several others) are not general legal principles, but intersectoral, since they are common to such branches of the Russian law as criminal procedural, civil procedural, arbitration procedural and administrative procedural. An intersectoral constitutional principle of law is the presumption of innocence enshrined in Article 49 of the Constitution of the Russian Federation which operates in criminal, administrative and tax law.

Certain constitutional principles of law are even narrower and more sectoral, inherent in only one specific branch of law. For instance, we can cite such a principle of family law as the principle of state protection of the family, motherhood,

fatherhood and childhood (Clause 1 of Article 38 of the Constitution of the Russian Federation), such a principle of labor law as the principle of freedom of labor (Clause 1 and Clause 2 of Article 37 of the Constitution of the Russian Federation) or such a principle of criminal law as the principle of the inadmissibility of repeated conviction for the same crime (Clause 1 of Article 50 of the Constitution of the Russian Federation). This list of examples can be continued.

3.3 Specific formulation and classification of the constitutional principles of law

The constitution in civil law countries is a regulatory legal act that differs from all the other legal acts not only by its leading role in the system of legal regulation and a special role in the system of law and the legal system but also by the specific structure and nature of enshrining the rules of law. The fact that the most general and socially significant norms are enshrined in constitutional acts influenced their wording. In the constitutions of civil law countries, the concept of "principle" is used mainly in relation to international law (generally recognized principles of international law) and extremely rarely in the meaning of "principle of law" [8, p. 612-613]. This complicates the interpretation of a constitutional act on whether a particular provision of the Constitution is a principle of law, how to formulate a specific principle, whether this principle is enshrined in one article of the Constitution or is "scattered" under several articles. Accordingly, an important role is played by the interpretation of the text of the Constitution: how a particular constitutional principle is called in sectoral legislation, how it is disclosed, duplicated and/or interpreted.

Unlike most Constitutions of civil law countries, articles in the Constitution of the Republic of Armenia adopted on July 5, 1995 (as amended by a referendum on December 6, 2015) have informative titles with the "principle" word. For example, Article 6 "The principle of lawfulness", Article 71 "The principle of guilt and principle of proportionality of punishments", Article 72 "The principle of lawfulness in defining crimes and imposing punishments", Article 78 "The principle of proportionality" and Article 79 "The principle of certainty". Thus, the legislator unambiguously indicated which ideas enshrined in the Constitution of the Republic of Armenia were regarded as the principles of law. However, this does not mean that the constitutional principles of the Armenian law are enshrined exclusively in these articles.

In contrast to the constitutional principles of law, it is easier to emphasize the principles of law in sectoral legislation. However, there are different ways to consolidate such principles in regulatory legal acts [29]. The most efficient method is to determine a chapter or article, whose title includes the "principle" word, in the structure of a codified act.

Based on the foregoing, we can propose the following classification of constitutional principles of law. Using such a criterion as scope, the constitutional principles of law should be divided into three groups:

1. General legal constitutional principles.
2. Cross-sectoral constitutional principles.
3. Sectoral constitutional principles.

In different countries, there is a different ratio of these groups [30] but the constitutional principles of each group are enshrined in the national Constitution. The scope of general legal constitutional principles is all branches of law, the scope of cross-sectoral principles is at least two branches, sectoral principles are the only branch of law characterized by a specific principle.

The examples of general legal principles (based on the Russian and Armenian sources) are as follows: the principle of lawfulness (Clauses 1, 2, 3 of Article 15 of the Constitution of the Russian Federation; Article 6 of the Constitution of the Republic of Armenia), the principle of guaranteed protection of

human and civil rights and freedoms (Article 17, Article 18, Clause 1 of Article 45 of the Constitution of the Russian Federation; Articles 3, 75, 76, 80 of the Constitution of the Republic of Armenia), the principle of equality before the law and court (Clause 1 of Article 19 of the Constitution of the Russian Federation; Articles 28, 29, 30 of the Constitution of the Republic of Armenia), etc.

Cross-sectoral constitutional principles of law comprise the principle of the inadmissibility of using evidence received through violating law (Clause 2 of Article 50 of the Constitution of the Russian Federation; Clause 3 of Article 63 of the Constitution of the Republic of Armenia) that is valid in all procedural branches of law; the principle of administering justice only by the court (Clause 1 of Article 118 of the Constitution of the Russian Federation; Article 162 of the Constitution of the Republic of Armenia), the principle of freedom from the obligation to testify (Article 51 of the Constitution of the Russian Federation, Article 65 of the Constitution of the Republic of Armenia), etc.

Finally, national constitutional sectoral principles include such a principle of criminal law as the principle of inadmissibility of repeated conviction for the same crime (Clause 1 of Article 50 of the Constitution of the Russian Federation; Article 68 of the Constitution of the Republic of Armenia), such principles of civil law as the principle of free movement of goods, services and capital (Clause 1 of Article 8 of the Constitution of the Russian Federation) and the principle of freedom of economic activities and guaranteeing economic competition (Article 59 of the Constitution of the Republic of Armenia), such a principle of family law as the principle of the obligation of adults to take care of their disabled parents (Clause 3 of Article 38, Paragraph 1 of Clause 1 of Article 72 of the Constitution of the Russian Federation; Clause 2 of Article 36 of the Constitution of the Republic of Armenia), etc.

The constitutional principles of law can also be divided according to such a criterion as duplication and/or specification in sectoral legislation. Accordingly, all the constitutional principles of any legal branch are divided into 1) those enshrined in the Constitution and not duplicated in sectoral codes; 2) constitutional principles duplicated and/or specified in sectoral legislation. For each branch of law, the ratio of these types of constitutional principles will be different in civil law countries [8, p. 612-614]. Although the Constitution has supreme legal force and direct effect in most modern states, all the constitutional principles should be enshrined in sectoral codified acts for the convenience of the law enforcement officer.

Depending on the way the constitutional principles of law are presented in the text of a constitutional act, they can be divided into 1) those enshrined in one article; 2) fixed in one or more clauses of one article; 3) consolidated in different articles or clauses of different articles. Here are some examples from the Constitution of the Russian Federation. Thus, the principle of the presumption of innocence is enshrined in only one article of the Constitution of the Russian Federation (Article 49). It is worth mentioning that this method of securing the presumption of innocence is typical of the constitutional acts of all civil law countries, starting with the Declaration of the Rights of Man and of the Citizen adopted in France on August 26, 1789 (Article 9) and up to the present.

The examples of consolidating constitutional principles are as follows: in one clause of the article – the principle of protecting rights and freedoms in all ways not prohibited by law (Clause 2 of Article 45 of the Constitution of the Russian Federation) and the principle of privacy of correspondence, telephone conversations, postal, telegraph and other messages (Clause 2 of Article 23 Constitution of the Russian Federation), in several clauses of one article – the principle of lawfulness (Clauses 1, 2 and 3 of Article 15 of the Constitution of the Russian Federation) and the principle of openness of judicial proceedings (Clauses 1 and 2 of Article 123 of the Constitution of the Russian Federation). For example, several articles of the

Constitution of the Russian Federation consolidate the principle of respect for the honor and dignity of the individual (Articles 21 and 22) and the principle of compensation for damages caused by unlawful actions (inaction) of public authorities or their officials, as well as a result of a crime (Articles 42, 52, 53). Furthermore, the norms on compensation are also contained in Article 133 of the Constitution of the Russian Federation concerned with the guarantees of local self-government. In this article, local self-government in the Russian Federation shall be guaranteed by the right for judicial protection, for compensation for additional expenses emerging as a result of decisions adopted by state authority bodies. Finally, an example of consolidating one constitutional principle in separate clauses of different articles is the principle of privacy (Clause 1 of Article 23 and Clause 1 of Article 24 of the Constitution of the Russian Federation).

3.4 Constitutional principles of law in the legal system of society

The constitutional principles of law consist of the most significant ideas. Naturally, any idea arises in a real historical situation and is conditioned by it. While society develops, some ideas lose their relevance and others emerge and perform an important social function, influencing lawmaking and law enforcement. On the one hand, doctrinal ideas are the basis for the principles of law and become such if the legislator has enshrined them in the text of a regulatory legal act. On the other hand, the principles of law and their practical implementation have an impact on the development of legal science.

The principles of law are the ideological core of any branch of law, while constitutional principles are the basis of the system of principles of each legal branch. The effectiveness of law enforcement directly depends on the formulation of the principles of law and the degree of their comprehensibility for all the subjects of legal relations. Considering the above-mentioned specifics of the constitutional principles of law, which consists in the fact that the "principle" word is not used in the texts of constitutional acts, it is important to interpret the Constitution. Indeed, the doctrinal interpretation of the Constitution is necessary but only its official interpretation influences legal relations in society. In different states, the official interpretation of the Constitution is entrusted to different higher judicial bodies: the Constitutional Council in France, the Federal Constitutional Court in Germany, the Constitutional Court in Russia, etc.

While creating a framework of sectoral principles, the constitutional principles of law act as the basis of the entire system of law. Currently, it is impossible to effectively regulate public relations without legally fixed ideas, therefore the effectiveness of the entire system of law directly depends on the efficient consolidation of the principles of law. At the same time, the constitutional principles of law are not only the basis of the system of law but also the basis of the entire legal system. The Constitution contains ideas that determine the entire state and social structure, the construction of civil society and the rule of law. Therefore, we can conclude that the constitutional principles of law are not only important but also crucial in the legal system of civil law countries.

4 Conclusion

The constitutional principles of law are the most important initial ideas enshrined in constitutional acts which underlie a certain branch of law, a set of branches of law or the entire legal regulation within a specific legal system. The constitutional principles of law represent the ideological core of any branch of law and lay the basis for the system of the principles of each legal branch and the entire system of law.

The constitutional principles of law have not only theoretical but also practical significance because the effectiveness of law enforcement directly depends on how they are formulated and how subjects of law understand them as a guide to action.

In contrast to the principles of law enshrined in codified legal acts, the constitutional principles of law have a specific structure and consolidate the rules of law. This is manifested in the fact that constitutional acts practically do not use the concept of "principle" in the meaning of "principle of national law", which hinders the process of identifying constitutional principles of law or formulating their names, and also predetermines the significant role of the official interpretation of the Constitution.

In civil law countries, all general legal principles are constitutional but not all constitutional principles are general legal. Being a phenomenon of legal reality, constitutional principles of law can be classified based on various criteria. Depending on their scope, the constitutional principles of law can be divided into general legal, intersectoral and sectoral. Depending on the duplication in sectoral legislation, we can single out the constitutional principles enshrined in the Constitution and not duplicated in the sectoral codes, and constitutional principles duplicated and/or specified in sectoral legislation. Finally, depending on the presentation of a constitutional act, constitutional principles can be divided into those enshrined in one article; consolidated in one or more clauses of one article and fixed in different articles or clauses of different articles.

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