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Human principles of law as a universal normative framework

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Abstract

The object of the research was the disclosure of universal human principles of law as a universal normative framework. It has been investigated that the term “principle” is used in several meanings: 1) in the main framework of the original ideas that are characterized by universality, of general meaning and higher imperative, and reflect the essential provisions of theory, doctrine, science, system of domestic and international law for a political, state or public organization; 2) in the inner conviction of a person, which determines his attitude to reality, ideas and social activities. The methodological basis of the research is presented as comparative-legal and systematic analysis, formal-legal method, method of interpretation, hermeneutic method, as well as methods of analysis and synthesis. By way of conclusion, it has been investigated that universal human principles of law are based on such diverse rights (principles of their concentrated development) as: humanism, all of which are used on the grounds of the dignity of the person and his fundamental rights and freedoms.

Keywords: universal human principles of law; humanism; principle of democracy; principle of justice; principle of equality.

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Principios humanos del derecho como marco normativo universal

Resumen

El objeto de la investigación fue la divulgación de los principios humanos universales del derecho como marco normativo universal. Se ha investigado que el término “principio” se usa en varios significados: 1) en el marco principal de las ideas originales que se caracterizan por la universalidad, de significado general y de imperativo superior, y reflejan las disposiciones esenciales de la teoría, la doctrina, la ciencia, el sistema de derecho interno e internacional para una organización política, estatal o pública; 2) en la convicción interior de una persona, que determina su actitud ante la realidad, las ideas y actividades sociales. La base metodológica de la investigación se presenta como análisis comparativo-legal y sistemático, método formal-legal, método de interpretación, método hermenéutico, así como métodos de análisis y síntesis. A modo de conclusión se ha investigado que principios los humanos universales del derecho se basan en derechos tan diversos (principios de su desarrollo concentrado) como: el humanismo, todo cual se utiliza en razón de la dignidad de la persona y de sus derechos y libertades fundamentales.

Palabras clave: principios humanos universales del derecho; humanismo; principio de democracia; principio de justicia; principio de igualdad.

Introduction

Universal principles form a circle of multifaceted issues, which are difficult to be covered by a single approach or definition of law, and they are decisive in the legal science and practice. On the one hand, (as far as they belong to fundamental principles) they contain broad principles of law reflecting spiritual, historical, social, political, cultural and other peculiarities of the society which are transformed and modified in a concentrated form. On the other hand, generally recognized social values are introduced into life, implemented and applied in legal activity through the principles of law.

In addition, the principles of law are the object of scientific research not only for representatives of the general theory and philosophy of law, sectoral sciences, but also for representatives of the international law. Therefore, our research on the principles of law will be based on an attempt to combine scientific achievements of representatives of different scientific schools and branches of law through the prism of axiological approach to the problem, as well as new needs and challenges to their practical application.

In general, Ukrainian jurists have formed a sufficient methodological basis, which helps to understand the outlined problems of the proposed research.

1. Literature review

Universal principles are formed in the course of productive interaction of human society against the background of the emerging civilizational identity of peoples and they represent one of the best achievements of the mankind. Recognized as universal principles and enshrined in international legal documents, these principles become binding for all states (for example, the principles enshrined in the Charter of the United Nations dated June 26, 1945, in the Final Act of the Conference on Security and Cooperation in Europe dated 01 August, 1975, The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations dated 24 October, 1970, etc.).

Emphasizing the practical importance of principles of law, R.Z. Livshits wrote that they permeate the process of implementing the law, and therefore, they serve as vectors of law enforcement activity both in the case of applying laws and in the case of filling gaps in legal regulation.

Principles of law concentrate the result of the development of law, they embody the inextricable connection of the past, present and future (Lyvshyts, 1994). At the same time, the progressive legal opinion has formed such general framework that cannot be realized irrespective of the principles of organization and functioning of the entire social system, including the legal one. They include principles of humanity, democracy, justice, freedom, equality, etc., that is, principles that are extremely important for functioning of law (law cannot function without such principles). Each of them finds its own expression both in the system of law in general and in its separate branches and institutions.

Development of the theory of principles of law is reflected in works of the outstanding Soviet scientist Prof. S.S. Alekseyev. In his opinion, universal human principles of law are guiding ideas characterizing the content of law, its essence and purpose in the society. On the one hand, they express regularities of law, and on the other hand, they are the most general norms that act in the entire field of legal regulation and apply to all subjects.

These norms are either directly formulated in legislation or derived from the general content of laws (Alekseev, 2005). In addition, universal human principles of law determine ways to improve legal norms, serving as guiding ideas for legislators. They are a connecting link between the

basic patterns of development and functioning of the society and the legal system. Thanks to availability of principles, the legal system is adapted to the most important interests and needs of humans and the society and becomes compatible with them.

One of the first scientists who addressed the issue concerning the principles of law in the 1950s was the head of the Department of History and Theory of State and Law at Ivan Franko Lviv State University, prof. P.O. Nedbailo (Nedbailo, 1971). According to the scientist, the universal human principles of law are the most abstract concepts that express the essence of the state and the law in their basis and are the starting element of the structure of the general theory of state and law (Nedbailo, 1971). The problem of universal human principles of law is especially exacerbated when overcoming gaps in legal regulation, in particular through application and specification of general (universal) principles of law.

In addition, scientists consider universal human principles of law as a separate type of legal guarantees concerning correct application of legal norms and exercising subjective rights of citizens; they ensure legality of actions performed by subjects of law, strengthen legality and law enforcement, increase validity and expediency in implementation of norms, contribute to fair assessment of actions within the formal requirements of legal norms. P.O. Nedbailo emphasized that increasing effectiveness of this type of legal guarantees requires strengthened scientific research of universal human principles of law from the point of view that the principles of law are characterized by normalization (Nedbailo, 1971).

Professor A.M. Kolodiy believes that the category “principles of law” should be used in all cases when it comes to starting ideas and provisions that belong to jurisprudence. Therefore, principles of law are the starting ideas of its existence which express the most important regularities and foundations of this type of state and law, and are of the same order as the essence of law, and constitute its main features, are notable for universality, higher imperativeness and general significance, correspond to the objective need to build and strengthen a certain social structure (Kolodii, 1998).

The scientist notes that the main principles, which have not yet been reflected and established in law, cannot be counted among legal principles (principles of law). They are social patterns that require legal mediation, they are ideas, scientific conclusions but they are not principles of law (Kolodii, 1999). In our opinion, it is principles of law that reflect values recognized in the society, regulate social relations through hierarchical unity, and create a system of requirements for the proper and possible behavior of people.

2. Materials and methods

The research is based on the works of foreign and Ukrainian researchers on methodological approaches of understanding principles of law as a universal normative framework.

The essence of methodological approaches of understanding universal human principles of law as a universal normative framework was determined by the use of the gnoseological method; the conceptual apparatus was deepened and the essence of concepts of universal human principles of law as a universal normative framework was defined thanks to the logic-semantic method.

Constituent elements of methodological approaches to understanding universal human principles of law as a universal normative framework were investigated by means of using the system-structural method. The structural-logical method was used to define the basic directions for optimization of methodological approaches to understanding universal human principles of law as a universal normative framework.

3. Results and discussion

The greatest value of the supremacy of law consists exactly in its “incomparable universality” thanks to which it “should be perceived not simply as a universal principle of law, but as an integral one”, as a “mega principle” (Holovaty, 2011).

Universal human principles of law have the highest (maximum possible) degree of abstraction which makes them suitable for any system of law. In addition, they act as a flexible tool for legal regulation of a wide range of possible situations that are resolved by legal means between any legal subjects.

Universal human principles of law are the basis for formation of principles of international law as well as principles of law of regional communities and principles of intrastate (national) law, therefore these principles act as a connecting link between the national legal systems of various states, as well as between national and international law; they can serve as a tool for convergence of international and national law, universalization of legal regulation on a global scale. They serve as guidelines for reforming national legal systems in countries that wish to enter the European legal space, including in Ukraine.

The existing degree of abstractness of these principles determines their concretization in accordance with regional or national legal traditions, features of the legal system and the sphere of regulated relations. According

to its art.38 the Statute of the International Court of Justice operates under the category of general principles of law recognized by civilized nations, which are typical only for states with a democratic and humanistic orientation.

At the same time, it can be quite difficult to find out what principles are meant: principles of law recognized by all nations, by most states, by a group of states with a democratic regime, or any other principles.

At the same time, the progressive legal opinion has formed such general framework that cannot be realized irrespective of the principles of organization and functioning of the entire social system, including the legal one. They include principles of humanity, democracy, justice, freedom, equality, etc., that is, principles that are extremely important for functioning of law (law cannot function without such principles). Each of them finds its own expression both in the system of law in general and in its separate branches and institutions (Leheza *et al.*, 2022).

The principle of humanism is one of the most important value characteristics of a civilized society. It is this principle that is the criterion for the progressiveness of social institutions and recognizes the good of humans, their right to freedom, happiness, and expression of their abilities. Ideas of humanism have a universal (civilizational) nature, and manifestation of the principle of humanism in law means establishing relationship between personality, the state and the society in legal forms (Leheza *et al.*, 2021).

The principle of humanism is recognition of the value of the human personality, inalienability of its rights and freedoms, respect for its dignity, protection against arbitrary interference in the sphere of personal life. The principle of humanism in law finds its embodiment in a number of normative regulations of various sectoral affiliations (Lebedev, 1990).

The principle of the supremacy of law is one of the leading elements of the general framework of the constitutional system of any modern democratic, legal state. In the sphere of law, the principle of the supremacy of law finds its embodiment in the idea of justice, equality, freedom and humanism. In addition, it forms the appropriate legal system and determines the conditions that make it possible to turn this idea into reality.

According to the well-known researcher of this topic B. Tamanaha (Tamanaha, 2007), within this legal system it is “an exclusive and legitimizing political ideal”, which is gradually spreading for the entire world today, and is designed to qualitatively change both the fundamental framework and the practical component of the system of legal regulation of social relations in the direction of universally recognized humanitarian values and criteria of social efficiency (Leheza *et al.*, 2022).

According to O.V. Petrishina, today the principle of the supremacy of law is being considered in two aspects: first, in a broad sense - as a principle of legal organization of state power in the society, so to speak, in the sense of “the supremacy of law over the state”; secondly, in a narrow sense, namely in the context of the ratio of homogeneous legal categories - law and legislation in the system of regulation of social relations, their role and place in ensuring law and order, i.e. in the sense of “supremacy of law over legislation” (Petryshyn, 2010). Art. 8 of the Constitution of Ukraine, which enshrines the recognition and operation of the principle of the supremacy of law and clarifies its content accordingly, is focused on exactly this approach (Law of Ukraine, 1996).

A special approach to understanding the principle of the supremacy of law makes it possible to consider the issue of the rule of law in social relations as well as more general problems of state power organization as relatively independent problems, to focus the attention of legal scholars on the actual legal component of both the first and second issues, in particular the role of judicial bodies as the final arbiter of legal issues, primarily regarding the protection of rights and freedoms of humans and citizens (Petryshyn, 2010).

According to one of the creators of the doctrine of the supremacy of law, Daisy, this principle is based on the recognition and unconditional acceptance of the highest value of human personality, human inalienable rights and freedoms which are “the basis and not the result of country law”, but the rules underlying of the constitutional code are “not a source, but a consequence of rights of individuals” (Daisy, 2008).

The principle of democracy is manifested in the fact that law and legislation express the will of the people, the will of everyone and anyone. Manifestation of the principle of democracy occurs through the forms of people’s rule: direct and representative democracy, therefore, it manifests itself in law by enshrining in norms the legal position of a person, the order of people’s participation in formation of state authorities, in implementation of their legal policy, in creation and improvement of legislation; in addition, the principle of democracy combines and interconnects two aspects: the national one and the international legal one (Leheza *et al.*, 2018).

The principle of equality is expressed in the equality of the legal position of all before the law, as well as in existence of equal civil rights and duties, equal protection in court regardless of nationality, gender, religious affiliation, origin, place of residence, official status and other circumstances (Leheza *et al.*, 2021). Formation of objective connections and relations G. Hehel justified the formal, legal equality of people: people are equal precisely as free individuals, equal in their right to private property, but not in the amount of property ownership. And the scientist considers the demand for equality in distribution of property to be an unreasonable point of view (Hehel, 2000).

Tarakhonych notes that the principles of law reflect the level of development of various spheres of social relations, namely economic, political, ideological, social, etc.; they reproduce the essence and social nature of law, regularities of its development and functioning; the relationship with other social regulators is characteristic of principles of law (Tarakhonych, 2014).

When considering the principle of justice, it seems appropriate to cite the position of the famous British lawyer Lord Dennis Lloyd, who distinguishes formal justice which is embodied in the principle of the same approach to the same cases and provides for availability of three conditions for existence of norms that prescribe necessary behavior in specific conditions; their general nature, i.e., application to everybody and to anybody or to certain categories of persons, and not selectively; impartiality (that is, their application without any discrimination, coercion or, on the contrary, concessions) and “real” justice, which implies, in addition to the three specified, formal attributes.

The value of such an approach lies not only in the fact that it makes it possible to make the principles underlying the legal system quite open, but also in the fact that it can make them mandatory legal norms which when violated lead to prosecution according to the legislation (Leheza *et al.*, 2020).

The principle of freedom as an opportunity to choose an option of behavior is an absolute good and it can be limited only by the need to ensure freedom of other persons which is achieved by establishing a certain degree of freedom of a separate individual. The activities of state bodies and officials should be aimed at creating conditions for the realization and protection of human freedom (Leheza *et al.*, 2022).

Conclusions

Therefore, universal human principles of law are its universal normative framework which is recorded in positive law and developed by humanity as a global macro-civilizational system, objectively determined by the needs and level of development of human civilization and which embodies its best achievements in the legal sphere, determines the essence and direction of legal regulation and is applicable in any legal system.

The progressive legal opinion has formed such general framework that cannot be realized irrespective of the principles of organization and functioning of the entire social system, including the legal one.

They include principles of humanity, democracy, justice, freedom, equality, etc., that is, principles that are extremely important for functioning

of law (law cannot function without such principles). Each of them finds its own expression both in the system of law in general and in its separate branches and institutions.

Universal human principles of law indicate the level of humanity development and should act as a universal criterion for formation of national legal systems. They are enshrined in documents and partially in the domestic legislation of individual states. From the point of view of the legal nature, universal human civilizational principles of law are principles of positive law, which should be distinguished from legal principles as a broader concept covering basic, defining legal ideas. At the same time, legal principles are the first principles of legal consciousness or doctrine, while the principles of law are general, normative, mandatory principles, and their implementation is guaranteed by the state.

Therefore, it is worth noting that the concepts of “universal human principles of law” and “universal human legal principles” are also not identical, since among universal human principles you can single out both principles of law and principles of legal consciousness, doctrines (legal principles) that are not fixed in the positive law. It should be added that, by their nature, universal human principles of law (just the same as any other principles) are normative principles that determine the essence and direction of legal regulation.

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