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Principles of law in the legislative and law enforcement process

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Abstract

The purpose of the research was to study the sufficient and necessary conditions for applying the principles of law in the processes of law making and execution. In the main content it has been established that the principles of law should be understood as universal, fundamental, basic provisions and ideas reflecting deep foundations of human existence, general relations formed by the participants of legal realities as a result of their social interaction and as the basis for legal development. The following methods were used in the research: analysis of biographical sources, synthesis, deduction, comparative analysis and meta-analysis, etc. In the conclusions of the case it has been shown that consistent adherence to legal principles by legislative and law enforcement bodies will create an atmosphere of predictability and stability of legislation in society. Finally, the principles enshrined in the Constitution and codes of Ukraine should become a prerequisite for modern Ukrainian society to implement a humanistic concept of personality, education of legal subjects, an effective norm on a par with other norms regulating specific relationships, and should not remain only a statement.

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Keywords: law enforcement; principles of law; legislative activity; police activity; legal development.

Principios del derecho en los procesos legislativos y de aplicación de la ley

Resumen

El propósito de la investigación fue estudiar las condiciones suficientes y necesarias para aplicar los principios del derecho en los procesos de elaboración y ejecución de la ley. En el contenido principal se ha establecido que los principios del derecho deben entenderse como disposiciones universales, fundamentales, básicas e ideas que reflejan fundamentos profundos de la existencia humana, relaciones generales formadas por los participantes de las realidades jurídicas como resultado de su interacción social y como la base para el desarrollo jurídico. En la investigación se utilizaron los siguientes métodos: análisis de fuentes biográficas, síntesis, deducción, análisis comparativo y metaanálisis, etc. En las conclusiones del caso se ha demostrado que la adhesión coherente a los principios jurídicos por parte de los órganos legislativos y encargados de hacer cumplir la ley, creará una atmósfera de previsibilidad y estabilidad de la legislación en la sociedad. Finalmente, los principios consagrados en la Constitución y los códigos de Ucrania deberían convertirse en un requisito para que la sociedad ucraniana moderna implemente un concepto humanista de la personalidad, la educación de los sujetos de derecho, una norma eficaz a la par de otras normas que regulan relaciones específicas, y no deberían seguir siendo únicamente una declaración.

Palabras clave: aplicación de la ley; principios del derecho; actividad legislativa; actividad policial; desarrollo jurídico.

Introduction

The problem of principles of law is quite relevant in the current Ukrainian legal development. Effectiveness of legal development, of course, depends on the starting ideas this development is based on. People's legal awareness is influenced not so much by specific legal prescriptions as by general legal ideas, provisions, postulates that establish a certain hierarchy of values, a number of fundamental values that society should protect and be guided by. Legal principles are basic ideas and provisions that, on the one hand, reflect established views on the law and its essence, reveal its substantive

and meaningful characteristics, and fix legal values; on the other hand, they are generally accepted requirements that are expressed in a generalized form and are addressed to the subjects of the law.

1. Literature review

The issue of principles of law was studied in scientific publications by Halaburda Nadiia, Leheza Yevhen, Chalavan Viktor, Yefimov Volodymyr, Yefimova Inna and others. etc. And although the issue of principles of law has been repeatedly considered in legal science, a unified approach to understanding their nature has not been formed.

According to A.M. Kolodiy, the principles provide internal integrity to the existing legal system, they serve to strengthen law and order, public discipline, and guarantee realization of Ukrainian citizens' interests and rights. Provided they are enshrined in the Constitution, such principles ensure the unity of law creation, implementation and protection processes. Principles of law are a criterion for evaluating the law and they are a methodological basis for its further improvement in the sense that at the same time, on the basis of the principles, the level and effectiveness of law implementation are evaluated, and on the basis of these particular categories the law is learned and improved (Kolodii, 1999).

Domestic legislation (including sector specific legislation) does not provide a concept of principles of law. This gives rise to differences in the definitions proposed by scientists, in their elemental composition, this also creates difficulties in the effective application of legal principles in law-making and law-enforcement activities and allows us to put forward a thesis about the need to develop a single concept and enshrine it in legislation.

At the same time, it is necessary to recognize that the legislative consolidation of principles of law does not yet mean its final and unconditional transition from the sphere of legal awareness to the practical plane. It is necessary to ensure implementation of principles of law in the process of law-making and law-enforcement activities, as well as in behavior of legal subjects.

The nature of the state itself can be largely judged about based on the principles the legal order is based on (Petryshyn, 2002:193). And a legal state should optimally and in a balanced way express needs and interests of all classes and social groups, it should become a social democratic state.

In their content principles of law fix necessary and essential connections that exist in society and in law, they allow to establish such an order that to the greatest extent contributes to their strengthening and development.

It is necessary to remember that the influence caused by the principles on society consists in the fact that they help in education of citizens as well as in formation of a high legal culture in them. Universal legal principles of law today require in-depth handling and study in order to statically implement them into the practice of application. Recognition, observance and application of these principles are signs of democracy of the state and a criterion of the “rule of law” concept.

2. Materials and methods

The research is based on the works of foreign and Ukrainian researchers regarding application of principles of law in law-making and law-enforcement processes, etc.

With the help of the epistemological method, application of principles of law in the law-making and law-enforcing processes, etc., was clarified, thanks to the logical-semantic method, the conceptual apparatus was deepened, application of principles of law in the law-making and law-enforcing processes, etc. was determined. Thanks to the existing methods of law, we managed to analyze the essence of applying principles of law in law-making and law-enforcement processes, etc.

3. Results and discussion

The principles enshrined in the current Constitution of Ukraine, in particular, the principle of democracy (Art. 1), the principle of socially oriented state (Art1), the principle of the rule of law (Art. 1 and Art. 8), the principle of a human being as the highest social value in Ukraine (Art. 3), the principle of inalienability of human rights (Art. 20), the principle of equality of all citizens in their rights (Art. 21), the principle of pluralism of ownership forms (Art. 15, p.1), respect for property rights (Articles 41,42), the principle of derivative nature of state power in relation to the person and people (Art. 3),the principle of distribution of power, the principle of impartial and fair distribution of public goods (Art. 95) etc. (Law of Ukraine, 1996).

It is a pity that such fundamental ideas are only declarative in nature and have no relation to the living (actual) life of modern Ukrainians.

The consequence of this consists in a total crisis of all spheres of life of the citizenry, as well as of state power at all levels, and Ukraine’s total lagging behind the developed democratic countries of the world, relegating the country to the backwoods of history (Halaburda *et al.*, 2021).

Analysis of the existing scientific literature shows that the modern theory of understanding principles of law in domestic legal science does not provide the modern practice with unambiguous approaches to the way of principles of law, and it does not clearly explain what exactly such principles consist of, where and how they arise, etc.

In the context of the legal approach, principles of law are not only those provisions enshrined in the legislation and other sources of legal norms, but also the fundamental ideas of legal consciousness, which were formed during thousands of years of human coexistence, accumulated the invaluable experience of generations and peoples of different eras, adequately and briefly reflected in human interests and needs, and therefore received general recognition in activities of justice bodies, other subjects of domestic and international law, despite the lack of their formal fixation in objective law (Svianadze, 2022).

Principles, as well as legal norms, reflect in a very generalized form the essential characteristics, certain regularities of development of social relations. However, the specificity of their nature is that they express laws of a deeper order. Principles of law are not a product of empirical, rational thinking typical for all legalists, (thinking producing norms at this level), but they are a product of rational thinking, they are a synthesis of a higher categorical level. Like norms, principles are completely suitable for regulating legal relations, for law making, law enforcement. That is, it can be considered that characteristics of principles of law are not only certain requirements to the system of legal norms, but also requirements to the real behavior of subjects of legal relations (Leheza *et al.*, 2022).

According to O.O. Uvarova, one of the problems of such principles consists in uncertainty of their content. Application of Principles of Law is impossible without revealing their content, and this is the biggest problem (Uvarova, 2007).

A rule of law is always a defined rule of conduct, imperative one or dispositive (optional) one. Principle of law is an abstract imperative requirement. And it is their abstract wording that “frightens off” law enforcement officers who must be helped by scientist

The main task of legal science in the study of law enforcement function of principles of law is to reveal their content through a system of requirements. Analysis of practice applied by the European Court of Human Rights should play an important role in this. Disclosure of the content of principles of law through a system of requirements not only simplifies the task of law enforcers, but also limits their discretion (Leheza *et al.*, 2022).

Principles of law characterize not only the essence, but also the content of law, reflect not only its internal structure, statics, but also the entire process of its application. Principles of law have a great influence on the entire

process of preparing normative acts, their issuance, and establishment of guarantees (Todyka, 2001).

It would be incorrect to say that principles of law are always on the surface of law. Often, in order to find and analyze them, it is necessary to delve into the essence of law. They also serve as general guidelines in law-making and law enforcement.

Legal principles should play the role of a starting point in law-making activities when developing and adopting new laws and codes and making changes to existing ones.

Management of the requirements of principles of law, their consideration in the process of forming legislation and implementation in the norms of industry legislation will contribute to increasing the efficiency of law-making activities, and this will also ensure the system and unity of legal norms (Kyrychenko *et al.*, 2022).

Legislators must constantly solve the problem of achieving an optimal combination of stability of legal regulation and its flexibility, as well as the ability to adequately regulate newly emerging social relations (Bondarenko, 2009). Ideally, this will enable legislators to balance interests of all subjects of legal relations during the rule-making process; the adopted norms of behavior will meet the criteria of justice, and a certain restriction of rights will be allowed only for the public benefit, and not as we have today, for example, with changes in tax, labor, pension, election legislation, etc.

Ignoring legal principles in the process of law formation leads to legal nihilism, as well as to existence of such phenomena as collision of legal norms, adoption of so-called “dead norms”, violation of the requirements of the Constitution, as well as violation of the rights and freedoms of humans and citizens.

Effectiveness of principles of law is verified by practice. If such principles do not become a reference point for subjects of legal relations, are leveled by them, then in such a society the principles do not reflect the real value system of society. This especially applies to use of such principles in judicial proceedings.

Conclusion

Thus we can state that principles of law must be understood as universal, fundamental, basic provisions, ideas that reflect deep foundations of human existence, general relations formed by participants of legal relations as a result of their social interaction and are the basis for legal development. From the point of view of the legal approach, it is emphasized that deviation

from these principles, denial of them in law-making and law-enforcement activities threaten to initiate destruction of law as such, destabilization of social life, state-authority activity, destruction of democratic values, etc. Therefore, affirming these principles and protecting them is an urgent task for every individual, for the entire civil society, and for the state authorities.

Consistent and consistent adherence to legal principles by law-making and law-enforcing bodies will create an atmosphere of predictability and stability of legislation in society.

Principles enshrined in the Constitution and codes of Ukraine should become a requirement for modern Ukrainian society in implementing a humanistic concept of personality, education of subjects of law, an effective norm on a par with other norms regulating specific relations, and they should not remain a declaration.

Now, in law enforcement practice, lawyers with an increasing frequency turn to the basic principles and this indicates that these principles are gradually taking roots in our society. The main areas of implementing principles of law in realization of judicial proceedings are the following: application of legal principles to eliminate gaps in the current legislation; application of legal principles when making a decision on specific cases; filling the legal principle formulated by legislators with specific legal content; a direct indication of inconsistency of normative legal acts and specific legal norms with the requirements of the general principles of law and with branch-specific principle .

When considering specific cases, the court must first of all be guided by the principles of law. When considering a dispute between conflicting parties, the court can and should refer to the principles of law in all cases, and especially when faced with a legal relationship not regulated by law or when a conflict of legal norms arises. This will serve as a guarantee of correct application of legal norms, adoption of well-founded and legal decisions, since it is through judicial practice that the fundamental principles and main ideas of the legal system are revealed, including those that have not been normatively enshrined in legislation.

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