DEPÓSITO LEGAL ZU2020000153
Esta publicación científica en formato digital
es continuidad de la revista impresa
ISSN 0041-8811
E-ISSN 2665-0428

Revista de la Universidad del Zulia

Fundada en 1947
por el Dr. Jesús Enrique Lossada

Ciencias Sociales y Arte

Año 13 N° 38
Septiembre - Diciembre 2022
Tercera Época
Maracaibo-Venezuela

DOI: http://dx.doi.org/10.46925//rdluz.38.07

Private Law and Public Law relation: dualism of Law branches in society

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ABSTRACT

The purpose of the research. The article is concerned with researching relations between private and public law in Ukraine. Main content. The historical aspect of this problem and the substantiation of its current relevance for Ukraine are analyzed. Methodology: Review of materials and methods on the basis of analyzing documentary materials concerning problems of mutual relation and interdependence of private and public law. Conclusions. The optimal balance of private and public interests can be achieved by considering the problem of mutual relation and interdependence of private and public law in a dualistic aspect. Opposition of public and private interests in state regulation by legal means is unacceptable, since it is through streamlining the public-legal regulation of public-legal relations that it is possible to achieve an optimal ratio of public and private interests.

KEYWORDS: Administrative Law, Legislation, Natural Law, Private Law, Civil Law, Public Law.

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Recibido: 12/05/2022 Aceptado: 05/07/2022

DOI: http://dx.doi.org/10.46925//rdluz.38.07

Relación Derecho privado y Derecho público: dualismo de las ramas del Derecho en la sociedad

RESUMEN

El propósito de la investigación. El artículo se ocupa de investigar las relaciones entre el derecho público y privado en Ucrania. Contenido principal. Se analiza el aspecto histórico de este problema y la justificación de su relevancia actual para Ucrania. Metodología: Revisión de materiales y métodos sobre la base del análisis de materiales documentales sobre problemas de relación mutua e interdependencia del derecho público y privado. Conclusiones. El equilibrio óptimo de los intereses públicos y privados puede lograrse considerando el problema de la relación mutua y la interdependencia del derecho público y privado en un aspecto dualista. La oposición de intereses públicos y privados en la regulación estatal por la vía legal es inaceptable, ya que es a través de la agilización de la regulación público-jurídica de las relaciones público-jurídicas cómo es posible lograr una óptima relación de intereses públicos y privados.

PALABRAS CLAVE: Derecho administrativo, Legislación, Derecho natural, Derecho privado, Derecho civil, Derecho público.

Introduction

The up-to-date development of Ukraine's statehood is aimed at the European community and world experience and tends to formation and development of a civil society in the conditions of a market economy, increased effectiveness of legal regulation of individual relations concerning the sphere of private law, recognition of the individual, his/her rights and freedoms as the highest value. In recent years, there has been a reorientation and improvement of Ukrainian legislation, taking into account requirements of the present time: entry into force of the Code of Administrative Legal Proceedings, which defines the procedure for consideration public law disputes, improving the Civil Code of Ukraine as a code of private law, development of international private law, etc. Because of this, the problem of distinguishing private and public law in Ukraine, their mutual relation and interdependence turned from a scientific one into a practical one; and solution of this problem is required by modern legal reality.

It is natural that the approach to dividing the law into private one and public one was revived in the legal science. It was seen that the return to the division of the law into private one and public one should significantly restructure the sphere of social motivations,

DOI: http://dx.doi.org/10.46925//rdluz.38.07

accelerate development of private law basics and at the same time weaken publicity and public-law regulation, especially in the sphere of economic relations and free market. Public law and private law are, on the one hand, contradictory, and on the other hand, interdependent aspects of law. Up to date, legal systems of many civilized countries are based on the principle of dividing law into private one and public one (Germany, France, Italy, Spain, etc.). The world legal science recognizes the division of law into private one and public one to a certain extent conditional, but necessary. The essence of this division of law consists in the fact that each legal system includes norms that are designed to ensure general public interests, i.e. interests of the society, the state as a whole, and there are norms that protect interests of individuals, in particular, private owners. Therefore, the spheres of public relations connected with public interests or private interests are subject to the regulation of public and private law.

The article is concerned with researching relations between private and public law in Ukraine.

1. Literature review

It should be noted that the problem of dividing the law into public one and private one has a long history. Its origins date back to the times of Ancient Rome. First, this division arose as a way of studying the law. In the judicial practice and jurisprudence of Rome two branches of law were distinguished - public one "juspublicum" and private one "juspriwatum". Roman lawyers distinguished private law from public law (as opposed to public law). The classical division of public law and private law was introduced by Roman lawyer Ulpian (170-228) who defined that "public law concerns the status of the Roman state while private law concerns the benefit of separate individuals" (Banchuk, 2007). The greatest attention in those times was given to private law (civil, family legal relations, property law, law of obligations, inheritance). As for public law, it covered only the judicial system, civil process, and application of lawsuits. At the same time, certain elements of law institutes were borrowed from Greek and Egyptian law; some were determined by the will of the next ruler or were formed from local traditions and customs. The peculiarity of private law was that not all people were its subjects. This was due to the fact that Rome was a slave-owning state and slaves who owned by their slave owners did not have any rights. Rights were granted only to free people, in particular, only Roman citizens were recognized as full-

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fledged people. Only later, did the circle of individuals (subjects of private Roman law) expand (Borisevich, 2013).

Over the centuries, this understanding of public law and private law remained unchanged, so it was only at the beginning of the 19th century that scientists began to actively study this issue both in Western Europe and in the territory of the Russian Empire. Since the specified period and up to the present-day time a large number of theories have been put forward and many criteria for distinguishing public law from private law have been defined.

Public law and private law are traditionally regarded as cross-cutting lines of legal development of the Romano-Germanic family. For this family, the history of these concepts is the history of the whole law. This is due to the influence of the Roman law: the Romano-Germanic law has inherited such classification of norms from the Roman law (Dorokhin, 2006).

The Soviet legal doctrine completely rejected the concept of private law (incompatible with the nature of the socialist system). After the October Socialist Revolution of 1917, the division of the law into public one and private one was abolished, because such a division was considered incompatible with the nature of the new system and the economic bases of the state, which did not recognize private property and private law and private relationships. Such an order could not help but have a negative impact on the complex mechanism of legal regulation in the USSR: The state had the right to interfere in the private (then - personal) life of citizens, it did not ensure democratic rights and freedoms and limited the desire in property relations, etc. (Borisevich, 2013). By means of rejecting the idea of dividing the right into public one and private one the Soviet jurisprudence at the same time deprived the concept of "private law" of its inherent content. In the absence of a clearly defined structure of the legal system, private law was equated with civil law, and these terms were used as synonyms: "the ruling division of law is an ambiguous division into a) private or civil law; b) public law" (Shershenevich, 1995).

With the collapse of the Soviet Union and the establishment of Ukraine's independence, a new stage in the construction of the legal system has begun.

2. Materials and methods

The research is based on works of foreign and Ukrainian researchers concerning

mutual relation (ratio) of private law and public law in Ukraine.

Comparative analysis and the dialectical method of cognition made it possible to comprehensively study the relationship between private and public law in Ukraine. The concepts of private law and public law in Ukraine are determined using the synthetic method.

3. Results and discussion

One of the main factors that complicate the division of Ukrainian law into public one and private one consists in the lack of uniform criteria which could create a clear boundary between public-law and private-law relations. Thus, according to some modern Ukrainian scholars, a dominating criterion of the public law is presented as state interests, the legal status of state bodies, officials, as well as the regulation of relations of a pronounced social nature, while in case with the private law the main role belongs to interests of individuals (Nechay, 2004) is. According to O. Banchuk establishment of privacy or publicity of relations will be enhanced through considering public law and private law not as separate systems with a sharp boundary between them, but as a set of social relations that are constantly moving from one quality to another and combined into a single regulatory system (theory of the unity of the legal system). The scientist believes that when dissolving public and private relations the following criteria should be taken into account: 1) difference between subjects of relations; 2) distinguishing the legal status of participants in relations; 3) difference in the method of regulating legal relations; 4) exceptional nature of legal protection of rights (Banchuk, 2007).

Other opinions can be also found in the educational and methodical literature. For example, the following criteria of assigning norms to private law or public law are proposed to be distinguished: 1) interest; 2) subject of legal regulation; 3) method of legal regulation; 4) subject-matter composition (Leheza et al, 2020).

Establishing a unified approach to the criteria for dividing the law into private one and public one is necessary to clarify the limits of state (public authority) intervention in the interests of a person, as well as limits of the impact on the legal system in general.

There are no non-transitional borders between public law and private law. They are interconnected. The functions they perform are in the interests of everyone. Therefore, private law actually does not exist without public law, because public sphere is called to

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protect and defend private relations. Private law is based on public law, it could be devalued without public law. In addition, in the process of historical development boundaries between these branches of law in a number of spheres of public and state life are blurred, mixed public and private relations arise (for example, concerning issues of social law, labor law and other spheres of law). At the same time, today public law and private law remain fundamental initial constituents of a truly democratic legal system. But the modern legal system of Ukraine is characterized by insufficient development of private law, since for a long period of time the main attention was paid mostly to the development of public law. Therefore, there is a tendency to support the priority development of private law - conditions for approximation of Ukrainian law to the standards of the Western tradition of law (Maidanik, 2013). Thus, some sources note that, despite equivalence and interrelations between private law and public law, "... increased attention should still be paid to private law, because it (along with or in combination with human rights) reflects the main processes associated with formation of a system of subjective rights opening a guaranteed space for people's own active work, their creativity, initiative ..." (Boshytsky & Chernetska, 2009). Emphasizing the exceptional role of civil law (as the central division of law in the countries of the Romano-Germanic family), R. David noted that private law remains the true law and that formation of a lawyer can be provided through studying civil law (Maidanik, 2013).

Also R. Maidanyk notes that supporters of economic law consider division of law into public one and private one (in any case, in the sphere of entrepreneurship) to be a phenomenon that has outlived itself.

Of course, in modern conditions it is impossible to draw a clear line between public law and private law by means of placing it on one or another side of the positive law sphere. Attempts to scatter existing industries in these areas, which are made today by individual authors, are unproductive. Many new branches of law are a combination of various elements (public ones, private ones, public-private ones, private-public ones). A number of spheres, which are no doubt included in private law, have a public beginning. The process of mutual penetration is manifested in the expansion of the use of public-law principles in the sphere of regulation of property relations, contractual relations, on the one hand, and at the same time the use of private-law institutions for implementation of public goals. In turn, civil legal constructions extend to the traditional sphere of public law, which is a process of

"civilization" of public relations. In public law, coordination methods are sometimes used in relations between state authorities, contractual relations begin to be applied not only in international public law, but also in the national law of Ukraine (Leheza et al, 2021).

The private legal component is convincingly present in legal fields belonging to the sphere of public law, in particular in all procedural fields. The basic principles of private legal regulation of public relations are determined by the Constitution, so the constitutional law touches one or another sphere, it forms a common basis, shows not only public but private interests, it agrees these interests and brings them into the unified system.

In our opinion, despite the processes of mutual penetration of public law and private law, the dualism of law continues to exist. Dualism (from the Latin double) is a philosophical theory that allows two independent and non-subordinate principles in any field. In a broader sense, dualism is the coexistence of two different and closely similar principles (Leheza et al, 2018).

In the modern legal science, all researchers formally recognize existence of two spheres of law - private one and public one. Besides, the Ukrainian scientist M. Sibiliov expressed the opinion that the normative principles of recognizing division of the law into private one and public one are presented in the Constitution of Ukraine, in particular, Article 3 emphasizes that a person, his/her life and health, honor and dignity, inviolability and security are recognized as the highest social value, and the main duty of the state (which is responsible for its activities to a person) consists in affirmation and provision of person's rights and freedoms. It is human rights freedoms and guarantees that determine content and direction of state's activity (Sibilov, 1998).

V. Selivanov also notes that any democratic transformation processes in the state, modern transformations in the national legal science should ensure implementation of one of the main public interests - recognition of the person, his/her life and health, honor and dignity, inviolability and security as the highest social value through protection of his/her rights and freedoms, harmonization of common private interests as well as private and public interests coordinated with each other. The qualitatively new goal of Ukraine's social progress should not be the immediate good of the state, but good for every person (Selivanov, 2001).

Conclusions

Therefore, the theory of dividing the law into public one and private one is a multifaceted phenomenon that has both theoretical and practical value. At the same time, the problem of relationship between private and public law is important because its solution will give an opportunity to solve a large number of actual practical issues, in particular, possible limits of state interference in the economy and private life of persons, etc. Up to date, legal systems of many civilized countries are based on the principle of dividing law into private one and public one. The world legal science recognizes the division of law into private one and public one to a certain extent conditional, but necessary. Opposition of public and private interests in state regulation by legal means is unacceptable, since it is through streamlining the public-legal regulation of public-legal relations that it is possible to achieve an optimal ratio of public and private interests.

From the point of dualism optimality of interrelation between private law and public law, consists in interconnection and interdependence, as well as in establishing equilibrium and a fair balance of private and public interests for the purpose of achieving modern tasks of Ukraine.

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