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AXIOLOGY OF CONCEPTION OF LEGAL COLLISION IN MUNICIPAL LAW AND ITS RESOLUTION MECHANISM

Yana LENGER,

Doctor of Law, Professor, Associate Professor of Constitutional and Comparative Law
of State University “Uzhhorod National University”

SUMMARY

This article focuses on clarifying the question of the legal nature of collision, its peculiarities, signs and methods of resolution. It was established that the question of finding out, identifying and solving legal conflicts become more actual. The analysis of doctrinal sources stated that their solution is impossible without theoretical understanding of the causes and nature of law conflicts, as well as comprehensive system review mechanisms for resolving them. It is stated that the study of various kinds of legal conflicts and legal mechanisms of their solution is necessary for ongoing implementation of state legal reform and the effective functioning of the whole mechanism of legal regulation, the emergence of new social relations, approximation of law enforcement and the objective needs and interests of society.

Key words: legal conflict, municipal law, mechanism of resolving collisions, principles of resolving legal collisions, elements of mechanism.

АННОТАЦИЯ

Статья посвящена выяснению правовой природы коллизии, ее особенностей, признаков и механизма решения. Установлено, что вопросы выяснения, выявления и решения правовых коллизий становятся все более актуальными. На основе анализа доктринальных источников констатировано, что их решение невозможно без теоретического осмысления причин и природы коллизий в праве, а также системного комплексного рассмотрения механизма решения таких. Определено, что изучение различного рода правовых коллизий и легального механизма их устранения необходимо как для реализации проводимой государственно-правовой реформы, так и с целью эффективного функционирования всего механизма правового регулирования, становления новых общественных отношений, приближения права и правоприменительной деятельности к объективным потребностям и интересам общества.

Ключевые слова: правовая коллизия, муниципальное право, механизм разрешения коллизий, принципы решения правовой коллизии, элементы механизма.

Formulation of the problem. Studying the nature of legal collision and the mechanism of its regulation plays an important role in the legal system of every state. As a rule, proper cooperation of local governments and public authorities is complicated by legal conflicts which arise between them. First of all, proper application of the principles and methods of legal mechanism for solving legal conflicts becomes possible under conditions of full and proper analysis of the nature of the phenomenon of legal collision, its peculiarities in municipal law. The understanding of essence of the above concepts becomes possible only using axiological approach to revealing the plurality and specificity of these phenomena.

Background research is confirmed by contradictory trends in economic, political, cultural and ideological spheres of Ukrainian society, which cannot find their reflection in the law, which is a universal system of regulation of social processes. As it was established, contradictions permeate many levels of present Ukrainian legal system. In this regard, it is important to understand the nature of legal conflicts in the system of law in general and its specific features in specialized forms in the current period of the new state, movement towards the rule of law and civil society.

Problem research condition. Scientific analysis of the existence of legal nature of collision, its peculiarities, delimitation of adjacent concepts, isolating and resolving its regulating mechanism was carried out by a lot of native and foreign theoretical researchers and lawyers. Among the above should be noted N.I. Matuzov, O.Iu. Buiakov, O.F. Skakun, S.V. Sybileva, V.H. Kartashov, O. V. Maistrenko, I.M. Seniakina, N.A. Vlasenko, Iu.A. Tykhomyrov, etc.

The purpose of the article is to clarify the question of the legal nature of collision, the differentiation of the terms

“juridical” and “legal” collision, and to determine the specific mechanism of its decision and its basic elements.

Presenting main material. In order to improve the knowledge of collision a kind of inventory knowledge and opinions about conflict in general and their varieties and logical ordering of already acquired knowledge are required.

I. M. Syniakina determines legal collision as “conflicts between two more legal norms (or express them by laws and other regulations) in the course of law enforcement. When collision, the contradiction exists among legal regulations not only for their contest but also for forms of expression. Facing the collision of legal norms, we come across one of the types of contradictions in the law” [4, p.34].

In our opinion, the scientific approach of N.A. Vlasenko is more correct. He rightly observed that while describing the collision we cannot only focus only on contradictions or differences because the collision may act as the first and as the second one [2, p. 28]. In some cases the collision is controversial, that is the solutions contained in the norms reciprocally exclude one another and are polar. But the collision may also act as a difference. If in the first case we talk about the mutual exclusion, polarity, then in the second we talk about the inconsistency of law regulations. The specific feature of legal collisions is the existence of one factual circumstance falling under the regulation of two or more law principles. In other words, conflict relations among legal norms arise when every rule in the same question offer different solutions. Thus, we should not reduce the collisions only to conflicts or only to disparity between legal norms. Such “restrictive” approach significantly limits the field of scientific research. As rightly pointed H. T. Chornobel’ the substantial disparity field concept is somewhat broader. The contradiction as if specifies what is this or that disparity [6, p. 67].

From this we can conclude that legal collisions can be expressed in the form of contradiction, and in the form of different legal rules and regulations. Besides, the approach of N. I. Matuzov of legal collision definition is very interesting. N. I. Matuzov interprets it wider than just a difference or conflicts between rules of law, including in its definition contradictions that arise during the implementation and enforcement by competent entities (agencies and officials) their powers [3, p. 56]. Such approach to proper understanding this phenomenon, in our opinion, emphasizes that participants face them usually in the course of enforcement activities and, in addition, we observe collisions in legal acts.

Summing the mentioned approaches to determination of legal collisions, it should be noticed that for a long period in Ukrainian legal science, due to dogmatic approach to the law, collisions were considered as contradictions or differences between the rules of law «conflict of laws». Recently, due to the denial of this approach to the law, the proliferation of natural law orientation and understanding of law values, other terms of definition of a legal conflict science began to emerge.

However, overly broad, in our opinion, is the approach of Iu. A. Tykhomyrov to the concept of legal collision, defining it as «a contradiction between the existing order and intentions and actions of its changes» [5, p. 56].

An attempt to integrate these polar views was made by A.Iu. Buiakov. He determined that juridical (legal) conflict is conditioned by objective and subjective factors of social development formal contradiction (difference) between the rule of law (complex law), between law and interpretation acts aimed at regulating the same public relations, creating difficulty in the law realization [1, p. 37].

Thus, despite significant interest in this issue, the question of currently determining juridical (legal) conflicts remains debatable. At the same time, a clear definition of legal collision is important not only in theoretical but also in practical aspect with a view to its further typology, detection and removal. In this regard, having answered the question of what the collisions are, their nature and causes, we can talk about the mechanism of their solution.

Solving problems for further reforming of various sectors of our society contribute to the increased interest of national legal science representatives to the study of contradictions inherent in the process of formation and functioning of legal system. In our legal doctrine the problems solving the mechanism of legal collisions received only partial coverage yet, although their severity requires finding new approaches. Thus in legal science many issues related to the definition and elimination of legal collisions still remain debatable, there is no unity in the classification of legal ways to resolve conflicts and individual regulatory requirements, and the term of mechanism for resolving legal collisions is not used at all.

In particular, according to N.I. Matuzov, the ways of solving legal conflicts are: 1) interpretation; 2) adoption of a new act; 3) cancel the old one; 4) amendments or clarifications to the existing ones; 5) judicial, administrative, arbitration examination; 6) systematization of legislation, harmonization of legal standards; 7) negotiations, the establishment of conciliation committees; 8) constitutional justice; 9) optimization of law understanding, the relationship between theory and practice; 10) international procedures [3, p. 45].

A.Iu. Buiakov, agreeing with the classification proposed by N. I. Matuzov, supplements the list of ways to resolve legal conflicts by coordination of national legislation with international law, laws and regulations, regulations of state and local authorities [1, p. 38].

O.N. Vlasenko separates all legal means of elimination of legal collisions into methods of resolving and overcoming, in our opinion, is quite reasonable.

In his opinion, collisions resolving is held into two ways:

1) through a standard-setting way, that is, when the collision regulations are finally solved, as a law-making body, setting the conflict rules, usually takes one of the solutions: a) abolishes one of the conflicting legal rules (laws); if more than two conflicting rules, it cancels all except one; b) changes, clarifies the object regulation, making appropriate additions; a) abolishes all conflicting legal rules and issues a new legal order;

2) the acceptance of law collisions, which is rather a universal way to eliminate contradictions (differences) of legal requirements and is used to facilitate the enforcement process, as it allows to determine exactly what the rule of law to apply [2, p. 29].

In case of absence in a legal system a perfect mechanism (collision norms) we cannot go about resolving conflicts but overcoming them to the particular case. As the latter, according to N.A. Vlasenko, a legal interpretation may come [2, p. 28].

In other words writes Iu. A. Tykhomyrov about means of solving conflicts. It should be mentioned that in this case collisions are referred to not only as conflict regulations, but also as social impacts in the law. He identifies the following ways: a uniform, systematic and orderly development of legislation; consistent course on the implementation of the law; negotiations; application of conflict of laws; consideration of legal disputes; restoration of the former one or creation of a new legal status [5, p. 67].

In our view, it is appropriate to divide all the legal tools – tools used in the process of solving legal collisions in the municipal law into the ways of overcoming and elimination. But, overall, supporting the position of N.A. Vlasenko, it is necessary to note first of all that in nowadays the set of legal instruments has changed significantly [2, p. 28]. The central issues that require deeper theoretical study become, in our view, the question of legal nature and relationship of ways resolving legal conflicts and problems of their optimal choice and efficiency.

In the general theory of law the problem of interaction of legal methods in the process of elimination and overcoming legal collisions, despite to its importance, is almost not examined. Moreover, in our opinion, the need for a comprehensive study of legal means, tools and ways of solving legal collisions, their interaction with each other objectively arisen.

We consider that the theoretical and methodological basis for such an analysis is a systematic approach to solving legal conflicts in Ukrainian system of legislature and according to this, the use of legal category of «mechanisms for resolving legal collisions».

The current usage of such terms as “mechanism of legal influence” and “mechanism of solving legal collisions” can be often found in legal literature [6, p. 54]. It is worth to be noticed that relate to each other as a general and the whole one. Since the mechanism of legal regulation expresses the active side of process towards transformation the normative law into ordered social relations. This regulation is a long-termed process that breaks down into stages, each of which contains special legal means, which together constitute a mechanism of legal regulation. So, one of the varieties of legal mechanisms of influence, in our opinion, is a mechanism for resolving legal collisions, which acts as a part of the mechanism of legal regulation.

The use of such a category allows to examine questions of resolving conflicts and to identify problems when considering the interaction of various legal instruments, to show what place a particular legal tool takes in the system of other ways of resolving collisions. The latter is especially important. As the elucidation of the role given to a legal remedy among others in solving legal conflicts, largely contributes to clarify its legal

nature, without which its effective implementation becomes impossible.

The term «mechanism» as a technical concept, entered legal terminology quite deeply. Any mechanism is a set of connected and interacting parts, items, having, on the one hand, the internal consistency between ordering and on the other – the differentiation and relative autonomy.

According to the fact that the process of solving legal collisions cannot be considered as a static one, the term “mechanism” is the ground for the perception of it as a single phenomenon. It allows the connection of its elements into a structural and functional “node” and to provide them with a dynamic and integrated content.

In this regard, the use of this category in legal science is very broad and is reflected in such a phenomena as the mechanism of state or state mechanism, the mechanism of state power, the mechanism and forms of realization of state functions, the mechanism of legal enforcement, the mechanism of regulation, the lawmaking mechanism, the mechanism of legal liability and etc.

In our opinion, this term is acceptable to be used for studying the phenomenon of resolving legal collisions in municipal law where its meaning becomes deeper and more significant.

Indeed, any mechanism implies a dynamic system of elements. We consider the elements of the mechanism for resolving legal collisions to be the following:

- 1) subjects solving legal conflicts (e.g. the legislative body; the subject, which interprets the rule of law, the court);
- 2) law principles and norms of collisions on the basis of which the elimination of legal collisions is provided;
- 3) conflict-legal relationship that arises between subjects on resolving legal conflicts. Within conflicting legal interactions between subjects through the actions implemented conflict rules and principles are applied;
- 4) methods and procedures of solving legal collisions;
- 5) the final act of resolving legal conflicts that may be in the form of regulating acts, an act of law interpretation and application depending on the choice of the subject how to resolve a collision.

So, we consider the mechanism which regulates collisions resolving to be defined as a part of the mechanism of legal regulation. It is a regulated by law norms complex of certain elements and legal instruments which allow legal means to resolve legal collisions through their elimination or overcoming to regularize social relations and to abolish contradictions in legal system.

It consists of several groups of legal ways that allow to resolve legal conflicts, through law-making; organizing, resolving collisions in the enforcement process, interpretation, in court and out of court, inside negotiations and conciliations. Considering the various means of resolving legal collisions within a single system, a mechanism they should be examined as interrelated elements.

Applied specific principles (rules) of resolving legal conflicts depend on their types and forms of expression. Since internal legal collisions are characterized by several manifestations, each of them has its own principle of decision.

1. Legal collisions between normative legal acts:
 - a) between codified and usual – the principle of resolving in favor of codified is proceeded;
 - b) between general and special rules (horizontal collision) – priority is given to special rules;
 - c) between acts of different bodies (vertical collision) – the principle of priority of superior body or an official;

d) between the earlier and later issued regulations – the principle of priority of later adopted regulation;

2) Legal conflicts in law enforcement. Judicial and non-judicial methods of regulation are applied (including judicatory, negotiations and conciliation procedures) and also their characteristic principles.

Law-making as a way of solving legal collisions is carried by authorized subject adopting a new regulation and abolition of controversial regulations, or by making changes and amendments to the valid act.

Conclusions. It should be recognized that through the time in any developed legal system a huge number of regulations with the same subject of regulation is produced. The requirements of such acts are often repeated and sometimes contain explicit collisions. In this regard, the necessity for elimination of plurality, competition of regulations and their consolidation appears.

It should be recognized that legal collisions as a consequence of social contradictions have a regular nature.

Of course, the legislator is interested in their fast elimination, as they significantly reduce the effectiveness of the mechanism of regulation. Thus, we can aver that legal collisions should be generally removed, requiring an efficient mechanism of their solving.

Being a complicated and multifaceted phenomenon, the legal conflict finds its demonstration in different forms. That is as collisions in law, regulatory acts, law institutes, legal doctrines. Depending on the amount of certain conflict categories and concepts with decreasing objective conditions, one can make the chain that adequately reflects the reality: social conflicts – legal conflicts – regulation conflicts – law collisions – collisions of legal authorities – conflicts of law norms. It is natural that the element of conditionality is always present in such equality. Though such suggestion gives the opportunity to imagine the fact that collision as a phenomenon can exist without other related phenomena. It is closely connected and interacts with them creating a certain logical chain.

However, it is necessary to consider the fact that conflicts carry a positive beginning for both the legal system and society as a whole. They are the evidence of normal development of social relations and corresponding them state and legal institutions.

Positive meaning of legal collisions is that they help to identify destructive phenomena and take measures for their localization and removal carried out in the course of solving legal conflicts.

References:

1. Буяков А.Ю. Юридические коллизии и способы их устранения : автореф. дис. на соискание степени канд. юрид. наук / А.Ю. Буяков. – Саратов, 1999. – 20 с.
2. Власенко Н.И. Коллизионные нормы в советском праве / Н.И. Власенко. – Иркутск, 1984. – 210 с.
3. Матузов Н.И. Юридические коллизии и способы их разрешения // Теория государства и права. Курс лекций / Под ред. Матузова Н.И. и Малько А.В. – Саратов, 1995. – 353 с.
4. Сенякина И.М. Специальные нормы радянського права / И.М. Сенякина. – Саратов, 1987. – 64 с.
5. Тихомиров Ю.А. Коллизионное право: учебное и научно-практическое пособие / Ю.А. Тихомиров. – М., 2005. – 226 с.
6. Чернобель Г.Т. Противоречия и пробелы в конституциях и уставах субъектов Российской Федерации. Проблемы их преодоления / Г.Т. Чернобель // Закон: создание и толкование. Сборник научных статей. – Москва, 1998. – 121 с.