PRINCIPLES OF LAW: GENESIS, CONCEPT, CLASSIFICATION, PLACE, AND ROLE IN THE LEGAL SYSTEM OF UKRAINE

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Principles of law constantly draw the attention of legal scholars; however, because of their variability, philosophical essence, and abstractness, the absolute majority of aspects of understanding principles of law require research and reworking. One aspect is the question of the genesis, concept, classification, and their place and role in the legal system of Ukraine.

No doubt any principles, including principles of law, are the product of human activity, as a result of which they act and whose interests they satisfy. Principles are social phenomena both with regard to source of origin and content: their origin is predetermined by the requirements of social development and the natural laws of social life are reflected in them. Without taking into account these material moments, it is impossible to explain and understand the special significance of these principles for subsequent coordination of human activity with the requirements of objective social natural laws. This all, in full measure, concerns also the principles of law — the specific manifestation of a certain part of general-social principles in the legal system. It is important to stress that the general-social nature of legal principles does not always receive respective recognition when characterizing the last, especially as regards the genesis thereof.

Consequently, from the very outset of their origin, principles of law exist as certain modified general-social principles adapted to the legal sphere which are in dialectical unity. The main sources of these principles are policy, economy, morality, ideology, and social life.

Doubtless in considering the problem of the genesis of principles of law it their special role and place of morality in their creation should be emphasized. It is generally known that historically law arises significantly later than does morality, with the emergence of new processes in the sphere of social life which predetermine the need for new types of social regulation. However, one cannot name virtually a single sphere of social relations in which particular types of social norms operate in «pure» form. The interaction of social regulators cannot be bypassed in any spheres of human activity. But in singling out into a relatively autonomous field the operation of moral

norms and principles, one should not overlook their important properties — universality, ability to penetrate into the most diverse spheres of social relations, including legal. This is predetermined by the fact that moral norms are orientated towards such categories as good, honor, conscience, dignity, equity, and the like. They act as criteria for evaluating human behavior in all spheres of their activity. This is a property of morality — the ability to penetrate into the most diverse social relations, including economic, political, legal, is determinative. Hence the general, close interlinkage of norms and principles of law with norms and principles of morality which are determined by the approximate unity of spheres of their regulation.

The political sphere is an important source for forming principles of law. To be persuaded of this, one may turn to the practice of politics and to political theory. The last becomes evident if one resorts to an analysis of the history of political and legal doctrines. Plato, in The Republic, construing the model of an ideal just State, substantiates the principle of equality of men and women[1] on the «Laws» — upholding the principle of legality of the leadership of society.[2] Aristotle, addressing the problem of managing society, placed the principle of equity at the base thereof, and spoke about law (in nature and established by will) only as political law, that is, that which is possible and occurs only in the State (principle of provision of authority).[3] The origin of the principles of law at that time was considered even in the conviction and punishment of Socrates, who spoke on behalf of the need to comply with the principles of individual freedom and autonomy of the individual.

Economic factors in the formation of law were considered first through the principle of private ownership, which gradually became the most important idea of law. Ownership was declared to be a natural right of man, a source of his will and equality with other people. The organic link between the legal form and ownership has been perceived throughout the entire history of their existence. Plato in The Republic advanced a plan for the elimination of private ownership among rulers and soldiers, that is, the first two strata: «No one should have any private ownership ... Then no one should have a dwelling or storehouse to which anyone who wishes should not have access».[4]

The ideology also is a source of the principles of law because any intelligent actions of a person pursue a certain purpose, and ideology is a verbal model which provides for a purpose and, proceeding from this, evaluation of the acts of a person, the State, and other social subjects from the standpoint of general-social interests. Sources of ideology lie in the need to ensure the survival and development of man. They arose at the earliest stages of development (possibly even herd instinct). These principles take there beginning from there: do not kill your own; be concerned for children; respect the elders; come together for protection against enemies and obtaining food under the leadership of the chief, and others. Later, with the development of intellectual abilities of a person, origin of language, various types of ideology, morality, the significance of which in the origin of the principles of law already has been mentioned, religion, and the like emerge. Religion also proclaimed principles which later became, at the same time, legal ones: do not kill, do not steal, do not lie, do not covet, do not commit adultery, respect your parents, work, and others.

[1] *Plato*, Сочинения [Works] (Moscow, 1970), p. 238.
[2] Ibid., p. 351.
[3] *Aristotle*, Сочинения [Works] (Moscow, 1983), IV, p. 159.
[4] *Plato*, Сочинения [Works] (Moscow, 19701), III(1).

One may affirm that from the outset the content of principles of law is planned by life itself, spontaneously, in social relations which are formed in real life and later receive regulation and protection on the part of the State in complexes of subjective rights of the participants of legal relations. The origin of principles of law as general-social is a necessary condition following their consolidation in the form of juridical principles and norms, because this testifies to their actuality for society and the need for their legal formalization. The principal role in singling out and constructing these principles belongs not to law-making, especially law-formation, but more specifically to legal practice, which by its nature is called upon to efficiently react to changes which occur in the sphere of law. In connection with the foregoing, it seems that the process of creating guiding provisions of law may be so considered.

The effectiveness of legal regulation of social relations depends directly on the conformity thereof to objective natural laws of their existence and development. The ability of the legislator to recognize in a timely manner the basic trends, main orientations, or their gradual development and to reflect the last in the content of the basic elements of the system of law — the principles thereof — has priority importance. However, the legislative consolidation of the said trends for objective and subjective reasons always lags behind and evidently will lag behind from the real change of actual social relations which have formed or are forming.

At the same time, the requirements and interests of society generate the need to regulate new social relations, proceeding from the sole criterion which would reflect the inherent natural laws thereof. That is, the systematic nature, complexity, and cyclicity of social life objectively provides for the legal mediation thereof which would best respond to the essence of the processes which are occurring; this is possible only when this rests on respective principles.

Therefore, legal practice in the process of right-realization and law enforcement activity first encounters the said problems. At the same time, this may not be expected when the legislator discovers and formulates necessary guiding provisions. Life compels us to discover essential natural law sin social relations and reflect the results obtained from the outset in the form of individual requirements which are advanced for the behavior of participants of legal relations, and later they acquire a general character. This enables legal regulation to provide the necessary uniformity, stability, and effectiveness, to link law-making, right-realization, and law enforcement. The generalization of judicial and administrative practice and other types of legal activity is of importance in this understanding. New legal principles which in an evolutionary way repeal the operation of obsolete or not urgent principles are born within the bowels of a civil society, within the limits of right-formation, with the assistance of legal practice.

In modern Ukrainian doctrinal writings and that which has come down to us as a legacy many different definitions exist of principles of law. No doubt this is predetermined by the fact that principles of law are not a uniform and unequivocal phenomenon, the investigation of which may and must be approached from various aspects. However, in my view, it is desirable to insert into the concept and definition of principles which operate in the legal sphere some uniformity to the extent that this is possible in legal science.

From the gnosiological point of view, it is vital to stress that the category «principle» is closely linked with the category of «natural law» and «essence». The monosemantic character of these concepts provides a basis for defining legal principles

through the natural laws of the development of society (general-social principles) and rights (or legal principles), and also through the essence and basic content of the last.

It also should be emphasized that the term «principle» emanates from the Latin principium, which means basic, most general, fundamental provisions, means, rules that determine the nature and social essence of a phenomenon, its orientation, and most material properties.

To the most material indicia of principles of law may be relegated, first, their regulatory function. The normative regulatory character of principles of law is seen in the fact that principles fixed in law acquire the significance of general rules of behavior which have a generally binding, authoritative character. This character becomes inherent to norms-principles directly and to principles which are drawn from norms: «Principles regulate insofar as law itself regulates», said Semenov.[1]

By objective conditionality of principles of law should be understood their conformity to the character of social relations and the economic, political and ideological processes which are occurring in society. In other words, principles of law are those legal phenomena which directly link the content of law to its social foundations — those natural laws of social life on which the particular legal system is structured and which it consolidates.

Principles of law are an ideological category, and this means that they, just as law as a whole, are a form of social consciousness which ideological, informational-educational influence of a general character effectuates, that is, fulfills the function of the general consolidation of social relations, which makes it possible to consider them from the standpoint of certain ideas, guiding fundamental principles. Thus, recognition of the priority of universal humanitarian interests, undoubtedly, in the most general form influences the legal system as a whole, the mechanism of legal regulation, the types and methods thereof.

An important indicator of principles of law is the means of their materialization in law. Two means of reflecting principles of law are distinguished: direct formulation thereof in norms of law (textual consolidation) and deduction of principles of law from the content of normative legal acts (substantive consolidation). The problem of forming a civil society and rule-of-law State insistently requires that general legal principles be textually reflected in the 1996 Constitution of Ukraine, inter-branch, and branch, and also respective principles of the structure of law — codification and incorporative acts, principles of a legal institute — in acts which concern this institute. The second means of reflecting principles of law is their substantive consolidation, that is, deducting principles from the content of norms of law. These principles are more abstract, with their assistance one may regulate the most general social relations. They reflect primarily general orientations, trends of legal development. However, this in no way diminishes their role.

The next indicator of principles of law is that these are principles of all, including legal, phenomena are historical. This means that the historical conditions of the development of society and the State advance respective principles: they are those of that epoch, people, and their requirements, way of life, and social relations.

[1] *V. M. Semenov*, Принципы советского гражданского процессуального права [Principles of Soviet Civil Procedure Law] (Sverdlovsk, 1965), pp. 8–18 (abstract diss. doctor iurid. nauk).

Thus, we come to the conclusion that the category «principles of law» should be used in all instances when we refer to the initial ideas and propositions which belong to jurisprudence. The term «principles» may only be clarified depending upon what is the sphere of their existence and functional orientation. In this understanding, one may speak about general-social and legal principles. The last should be differentiated into principles of the system (general-legal, inter-branch, branch, principles of institutes) and principles of structure (public and private, protective and regulatory, material and procedural, subjective and objective) law. The principles of right-formation, right-realization, and law enforcement, and also systemic and structural principles of law, should be combined into principles of legal regulation. Consequently, the concept of a legal principle encompasses both general-social and specific legal fundamental principles.

Consequently, principles of law are those initial ideas about the being thereof which reflect major natural laws and fundamental principles of a particular type of State and law, are of the same order with the essence of law and form its principal features, are distinctive for universality, high imperativeness and general significance, meet the objective necessity of structuring and strengthening a certain social system. Principles of law direct and ensure the timing of the entire mechanism of legal regulation of social relations, more perfectly than others disclose the place of law in social life and the development thereof. Principles of law are a criterion of legality and lawfulness of the actions of citizens and officials, the administrative apparatus and justice agencies, and under certain conditions have importance for the growth of the legal consciousness of the population and the culture and education thereof.

In forming the principal content of law, legal principles collect to themselves all the properties and functions thereof. This means that: (a) they are normative-regulatory, universal, binding, objectively-conditioned, historical, and ideological-political categories; (b) their social function is the regulation and protection of social relations; (c) they are an autonomous legal category, that is, have indicia distinguishing them from all others. Imperativeness and unconditionality, the concentrated reflection in them of the major natural laws of a particular society, separate them from legal norms. Principles of law bring uniformity to the entire system of legal norms and ensure the unity of legal regulation of social relations, cementing all components of the legal superstructure. This is their intra-legal function.

Principles of law have also an autonomous influence on social relations. We refer to both norms-principles and to principles-programs and principles-tasks, which also are autonomous legislative acts. One may relegate to these with complete assurance the «Declaration on the State Sovereignty of Ukraine» of 16 July 1990 and the «Act of the Proclamation of the Independence of Ukraine» of 24 August 1991. The orientating influence of these provisions gives rise to no doubt. However, these principles do not contain models of rights and duties, legal relations, variants of behavior, and therefore may lead to speaking of the programmatic function of these principles of law.

Considering the question of the classification of principles of law, the criteria and types thereof, it should be noted, first, that general-legal principles of law which have a universal character find their more concrete embodiment in the principles of each branch. Second, the basic principles of law receive specific modification in the branches of law and in the spheres of right-formation, right-realization, and law enforcement. Therefore, in the sphere of right-formation one may refer to relatively

autonomous principles of law-making, and among them legislation, and in right-realization — especially to principles of law-application, and in law enforcement, to principles of the administration of justice, legal responsibility, and others. Third, basic principles are differentiated into general-social and special-juridical (systemic and structural), and among the general-social the political, economic, social, ideological, and moral foundations of law are rather precisely singled out.

It also is important to emphasize that those provisions which are expressly formulated in the 1996 Constitution of Ukraine should not be the only ones relegated to general-legal principles of law. One should overcome the narrow normativist interpretation of law and formal understanding of its principles in the sense that, continuing to investigate the difference already indicated between the orientating ideas of legal consciousness and the chief principles of law property, it must be acknowledged that some general-legal principles may be formed, perfected, and operate without having for a certain time to be consolidated precisely in legislation. They may function in the sphere of judicial practice and legal customs or traditions, in the sphere of complexes of subjective rights and concrete (especially self-regulating) legal relations which are formed, that is, be preferentially general-social, general-legal principles of law. Of course, the optimal variant is seen in the full consolidation of the main sources in constitutional legislation, which imparts to them a stability and universality, but one must not forget everything set out above.

One would also wish to stress that singling out the structural principles and the new theoretical view as a whole of the principles of law has become possible as a result of combining such components as the position of general theory of systems, ideas of the mechanism of legal regulation, but not as categories which encompass all legal phenomena, but as a mechanism of the life of law in social relations and a conception of the dual nature of law which is seen in the affirmation that law, on one hand, is an element of superstructure (informational sub-system) and, on the other, an element or means which is formed from objective law in the process of regulating a specific variant of behavior.

Thus, the principles of law should be considered not only as fundamental ideas guiding principles of law, but as a reflection in law of the chief links which really exist in the legal system. On the other hand, principles have remained virtually the sole informational component of the system of law, relative to which there are not efforts to find an ontological analogue in legal reality. If one considers the principles as phenomena on which all other relations in the middle of the system depend, one must come to the conclusion that principles of law exist with an objective basis in the form of principles-relations.

This is confirmed by the fact that all principles of law so far formulated (except for fictitious ones) may be relegated to principles-links, that is, each legal principle has a principle-relation on which it is based. Branch principles are based on three groups of legal links: first, links which exist in the subject-matter of the branch; second, links which exist in the method of the branch; third, links in the mechanism of branch legal regulation, that is, between means of legal influence on the subject-matter. During the analysis and singling out thereof, all these links will merge. For example, an important structural link in the mechanism of legal regulation is the legal link between subjects, that is, legal relations. At the same time, the subject-matter of the branch penetrates the legal structure, that is, the system of legal relations. The dialectic of the correlation of the legal system and structures is such.

Hence one may assert that in law it is essential to single out principles which law contains as a reflection of objectively existing links in legal regulation of social relations (or principles of the system) and principles peculiar to the structural organization of the system of law. In this event we refer to links between the major parts thereof — public and private, material and procedural law, individual branches of law, and so on. Here the mutual linkage of principles of the structural organization of law and the principles which law receives as a regulator of social relations is undoubted. The conditionality of the last principles-links between all legal means and links in the subject-matter and method of an individual branch creates a certain chain of natural laws which act as the objective basis of structuring and improving the system and structure of legislation.

Consequently, proceeding from this one may assert the reality of the existence of general-social and legal, public and private, enforcement and regulatory, material and procedural, objective and subjective principles, and the branches of law in conformity with them.

The aggregate of the most clear, generally-significant principles which are formed by a civil society are relegated to general-social law, arise spontaneously on the basis of the direct interaction of subjects within the limits of right-formation. Juridical law is derivative from it, being regarded as the aggregate of generally-binding, formally determined norms and principles materially expressed in normative legal acts. The last also may be differentiated into public and private, enforcement and regulatory, material and procedural branches of law, and the legislation in accordance with them.

Hence one may assert that one should single out: (1) principles of legal consciousness; (2) principles of right-formation; (3) principles of law-making, and among them, legislation and norm-creation; (4) principles of the system of law: (a) general-legal (basic); (b) inter-branch; (c) branch; (d) principles of institutes of law; (5) principles of the structure of law: (a) general-social and legal; (b) public and private; (c) regulatory and enforcement; (d) material and procedural; (e) objective and subjective; (6) principles of right-realization, and among them, principles of law-application; (7) principles of enforcement, and among them especially principles of the administration of justice and legal responsibility. Principles of the system and structure of law which change into principles of right-formation, right-realization, and law enforcement may be called principles of legal regulation, acknowledging in so doing the special role of general-legal (or basic) principles.

Investigating the role and place of principles of law in the legal system of Ukraine, it is worth noting that in accordance with the laws of a systems approach, one must understand by legal system the aggregate of all inter-linked material and intangible, objective and subjective, static and dynamic legal phenomena which function in society with regard to the creation, realization, and enforcement of law. That is, the legal system is an exceedingly broad concept which encompassed the interaction thereof with other social systems (political, economic, spiritual) — an external-systems approach, the process of the creation, realization, and enforcement of law in the activity of State and non-State agencies and organizations (institutional aspect), matter of law (organic aspect), process of the influence of law on social relations (functional aspect), attitude of society, collectives of people, and individual persons towards law (ideological aspect), links with combine the aspects thereof and make the system a single whole (communicative aspect) — an intra-systemic approach.

The external-systemic approach to a legal system predetermines the existence and necessity of singling out such aspects thereof as: (1) the purposes and interests which are pursued by the structure and functioning of the legal system. They may be fundamental and situational, primary or secondary, and so on; (2) the material base encompassing all the means which are expended on the proper maintenance of certain structure, agencies, and organizations of the legal system; (3) the normative foundation, by which should be understood the entire aggregate of international and Ukrainian normative legal acts, legal traditions, legal legacy; (4) the spiritual foundation as a sub-system of the most general starting ideas, propositions, and principles; (5) the organizational structure, including the entire aggregate of State and non-State agencies and organizations which function for the creation, realization, and enforcement of law.

The intra-systemic approach to a legal system conditions the existence of such aspects thereof as: (1) the institutional — includes the entire aggregate of State and non-State purely legal agencies and organizations which function for the creation, realization, and enforcement of law; (2) organic — that is, norms and principles which form law proper, and also legal traditions and customs, morality, and aesthetics of legal life; (3) functional — the process and procedure for the creation, operation, and enforcement of law. It is necessary to relegate right-creation, legal relations, right-realization, and law enforcement to these; (4) ideological — by which is understood the attitude of society to law reflected in legal views, consciousness, and culture; (5) communicative — the links which combine the aspects thereof and make the system a single whole.

These aspects of the legal system act as sub-systems thereof and are of different levels with respect to the amount and role thereof in the legal system, and therefore should draw attention at once because the actions and measures for their reformation may be different in extent, measure, and significance, but to improve any system is possible only by improving all the sub-systems and constituent elements thereof.

The said sub-systems and elements of the legal system are unified by the principles thereof which act therein as the main structural links. Principles in a legal system fulfill the function of a system-forming factor. They together with norms of law occupy a central place therein, ensuring the interaction between the legal system as a whole and other social systems. They penetrate the internal structure of the legal system, comprise the main content thereof, and therefore acquire a high imperativeness and general significance.

It is not entirely obligatory that principles of a legal system always be consolidated in laws or other normative acts. In accumulating the most major essential natural laws of law, principles may not have linguistic expression in legal norms, determining the orientation and character of law-creation or law-application activity and even the development of the legal system as a whole.

In turn, the legal system embodies in principles and norms, first, general socio-historical natural laws which are responsive to the existing social system as a whole; second, their internal natural laws as a specific social phenomenon; third, natural links of the first with the second. Therefore, the interaction between aspects and individual elements of a legal system is much stronger and more stable than between parties and elements of other social systems. This conclusion has special significance relating to the modern Ukrainian State in connection with the structuring therein of a rule-of-law State and civil society. Ensuring the mutual coordination of the aspects

and elements of its legal system is becoming the major assignment of Ukraine in the sphere of law. In any event, the balance, consolidation, and interaction of the aspects and components of a legal system is one of the main conditions of its effectiveness.

At the same time, it should be recognized that some external and internal contradictions in the legal system are objective. They are inherent to any legal system. Such, for example, is the contradiction between legal norms as an identical measure of behavior which applies to people and individual peculiarities of these people, and also those situations in which they fall. A contradiction exists between the objective and the subjective in law; in the trends towards the unification of legal norms and the need to take into account the various levels of peculiarities (for example, branch, general-State, and local); in the constant tendency towards the differentiation and the integration of legislation.

One may assert that the principles of a legal system, including in Ukraine — are objectively conditioned sources thereof, in accordance with which it develops and which underlie the systemicity thereof. These are elements of the legal system which have the most general content, fix the major orientations and means of operation thereof. They in the fullest measure are combined with the objective laws of the development of society and with the general principles of the organization and functioning of social relations. The dialectical unity of principles of the legal system with the principles of other social systems of society — economic, political, moral, religious — enable one to assert, first, the close interlinkage of these systems and, second, the mutual, but undoubtedly not absolute mediation of the aspects and individual elements as a whole and the principles, in particular, in these systems.

The dynamic of the principles of a legal system is determined by this dialectic. They exist, operate, and develop not in and of themselves, but in aggregate with social relations. A change of the last always is caused by the need for their review, but at the same time the principles of the legal system link to the greatest extent the new variant thereof with the preceding variant.

Thus, one may assert that all the aforementioned principles may be relegated to the principles of a legal system, including the legal system of Ukraine. If they are considered in accordance with the formulated theory of the legal system, it should be emphasized that they also relate to the various aspects and consist of all known legal principles.

The constructive aspect of the principle of a systemic approach to a legal system should be used in order to elaborate a conception of law reform in Ukraine in accordance with the theoretical model of the legal system.

In my view, a future Conception of law reform in Ukraine should consist of three sections. Section One, which might be named «General Provisions», should substantiate the urgency, concept, purpose, orientations, and methodological approaches for the investigation and development thereof. Here it should be indicated that with the adoption of the 1996 Constitution of Ukraine the legal foundation arose which makes it possible to reform the State and society on a democratic, long-term, and planned basis. An integral part of such reformation is law reform, for the effectuation of which the Constitution of Ukraine should be the basis. The task is to precisely determine the purpose, orientation, approaches, and methodology of this law reform.

Section Two, which might be called «External-Systemic Principles of the Effectuation of Law Reform», it should be noted that this means that the Conception is being developed and law reform is being effectuated with a precise understanding

of the functioning of the legal system in close connection with other social systems (political, economic, spiritual). The material base of the legal system is created by the economic system, its purpose and institutions which it is appropriate to impose, the political system is determined, and the principles — by the culture and spiritual life of society.

Section Three, which it would be advisable to call «Intra-Systemic Principles of the Effectuation of Law Reform», should indicate that the last illuminates the structure of the legal system, and therefore ensures the integrated reformation of the sub-systems (constituent elements) of the legal system. Any system is a whole which consists of the parts whose interaction ensures a new quality.

To the intra-systemic chief orientations of the reformation of the Ukrainian legal system should be relegated its institutional, organic, functional, ideological, and communicative aspects.

In conclusion, it should be noted that the reformation of law in accordance with the concept of a legal system is an exceedingly important and lengthy process, but the systemicity and complexity testify to its benefits. Even at the level of sound reason it is understandable that this reform must include the reformation of State and non-State legal institutes, the system and structure of law and legislation, the process of the arising thereof, actions and enforcement, and the public evaluation thereof and attitude towards it. Law reform and the Conception thereof must encompass the greatest ambit of legal phenomena, and only on condition of this will it be capable to ensure the structuring of a rule-of-law State and civil society in Ukraine.

Kolodii A. Principles of Law: Genesis, Concept, Classification, Place, and Role in the Legal System of Ukraine

Abstract. In the article genesis, concept, classification, position and role of the principles of law in the legal system of Ukraine are considered.

Key words: legal system, law, principles of law, legal reform.

Колодій А. М. Принципи права: генезис, поняття, класифікація, місце і роль у правовій системі України

Анотація. У статті розглянуто генезу, поняття, класифікацію, місце і роль принципів права у правовій системі України.

Ключові слова: правова система, право, принципи права, правова реформа.

Колодий А. Н. Принципы права: генезис, понятие, классификация, место и роль в правовой системе Украины

Аннотация. В статье рассмотрены генезис, понятие, классификация, место и роль принципов права в правовой системе Украины.

Ключевые слова: правовая система, право, принципы права, правовая реформа.