JILS (JOURNAL *of* INDONESIAN LEGAL STUDIES)
NATIONALLY ACCREDITED JOURNAL (SINTA 2)
Published by Faculty of Law, Universitas Negeri Semarang, Indonesia
Volume 5 Issue 2, November 2020 ISSN (Print) 2548-1584 ISSN (Online) 2548-1592

REVIEW ARTICLE

LEGAL PRINCIPLE BETWEEN CONCEPT AND CONTENT

Oleg Yurievich Latyshev[1]✉, Andrei Valerievich Skorobogatov[2], Alexander Valerievich Krasnov[3]

[1] International Mariinskaya Academy, Russia
[2] Kazan Innovation University n.a. V.G. Timiryasov, Russia
[3] Russian State University of Justice, Russia

✉ papa888@list.ru

Submitted: February 11, 2020 **Revised**: April 25, 2020 **Accepted**: August 22, 2020

ABSTRACT

The article is devoted to the study of the legal nature of legal principles. The purpose of the article is a comprehensive study of the legal and social aspects of the essence and content of the legal principle as a philosophical and legal category. The methodological basis of the article is an integrative approach to the study of legal reality, which allowed us to combine general scientific and private scientific methods developed in various scientific paradigms and study the principles of law not only ontologically, but also epistemologically and axiologically, taking into account the phenomenological and communicative aspects of their content, development and functioning. This paper emphasized that the study of legal principles not only in the legal, but also in the general social context allows us to conclude that this category is fundamental in the construction of legal reality cognitively, functionally, and normatively. The legal principle is the conventional result of legal communication. As a fundamental category of legal reality, the principle determines the nature of its analysis, interpretation and evaluation. The

scientific novelty of the article is determined by the specifics of the research methodology and the findings obtained, which allow us to determine the fundamental role of the legal principle at all levels of legal reality. The practical significance of the article lies in the ability to use the findings in the study of other aspects of the development and functioning of legal reality, as well as in generating forecasts for the development of the national legal system.

Keywords: Integrative Methodology; Legal Principle; Legal Reality; Legal Regulation; Philosophical and Legal Category

TABLE OF CONTENTS

HOW TO CITE:
Latyshev, O. Y., Skorobogatov, A. V., & Krasnov, A. (2020). Legal Principle Between Concept and Content. *JILS (Journal of Indonesian Legal Studies)*, 5(2), 479-500. https://doi.org/10.15294/jils.v5i2.37387

INTRODUCTION

The process of cognition of the essence and content of legal reality is complicated by the undeveloped conceptual and categorical apparatus. Legal science is faced with an epistemological task: to determine the meaning of legal phenomena and to give them a definition. It is important that this definition adequately corresponds to legal reality and is understood

equally in the doctrine and at the level of normative consolidation. This will ensure the correlation of legal doctrine and legal system and the harmonization of legal reality. Formulated concepts and categories should correspond to the level of development of the humanities, be the result of scientific and philosophical reflection and reflect the conventional position of most scientists.[1] One of these categories is the legal principle. The study of the legal principle is important for the analysis of the nature, content and functioning of most legal phenomena.

The problem of legal principles has a strong tradition of scientific study. Both representatives of legal positivism[2] and supporters of the natural law theory[3] addressed her. Positivists paid the main attention to the normativity of the principles of law, their consolidation in the legislation. Proponents of natural law theory, on the contrary, drew attention to the doctrinal component of the principles. They note their leading role in law enforcement and enforcement. Only in recent years have representatives of integrative legal thinking addressed the problem of legal principles, emphasizing their dual nature and combination of normative and cognitive components.[4] This determined the purpose of the article—a study of the legal nature of the category "legal principle".

Furthermore, the methodological basis of the article is an integrative approach to the study of legal reality.[5] Integration of the approaches and methods of classical and post-classical philosophy of law allows us to overcome the dogmatism of legal science and consider not only the ontological aspect of the legal principle, the features of its being in legal reality, but also the epistemological and axiological aspects. The possibilities of the postclassical approach create acceptable conditions in order to reveal

---

1 Rudolf Wiethölter, *Proceduralization of The Category Of Law+*. 12 GERMAN LAW JOURNAL465, 465-473 (2011).

2 HERBERT LIONEL ADOLPHUS HART & GENARO R. CARRIÓ. *EL CONCEPTO DE DERECHO* (Buenos Aires, Abeledo-Perrot, 1961); HERBERT LIONEL ADOLPHUS HART, *THE CONCEPT OF LAW*, (Oxford University Press, N.-Y, 1961); Joseph Raz, *Legal Principles and the Limits of Law*, 81 THE YALE LAW JOURNAL, 823-854 (1972).

3 RONALD DWORKIN, *LAW'S EMPIRE* (Harvard University Press, Cambridge, 1988).

4 Cankorel Turgut, *Cognitive Classification of legal Principles: a new Approach to international legal Training*, 5 ANKARA LAW REVIEW 153, 153-200 (2008); Daci Jordan, *Legal Principles, Legal Values and Legal Norms: are they the same or different?* 1 ACADEMICUS INTERNATIONAL SCIENTIFIC JOURNAL 109, 109-115 (2010).

5 Krawietz Werner, *Juridische Kommunikation im modernen Rechtssystem in rechtstheoretischer Perspektive*. In: Brugger W., Neumann U., KIRSTE S. (EDS.) *RECHTSPHILOSOPHIE IM 21. JAHRHUNDERT*. (Suhrkamp, Frankfurt-am-Main, 2008).

the meaning of the category "legal principle" and its place in the legal discourse, to determine the value potential of the category in the legal life of a person, society and the State.

LEGAL PRINCIPLE: HOW DOES IT WORKS?

I. THE NATURE OF LEGAL PRINCIPLE

Modern philosophy defines the principle as the starting point of a theory or worldview. These provisions determine the system of knowledge, values and behavior of a person, social group and society. Consideration of legal reality as part of social reality makes it possible to extrapolate the general concept of a principle to the meaning of the category "legal principle" and reveal its dual nature.

The duality of legal principles is determined by the features of their origin and their role in legal reality. Legal principles are simultaneously the conventional result of the legal interaction of members of a particular community (social group or society)[6] and social construction by the political elite.[7] In the second case, the principles reflect the legislator's ideal ideas about human actions that are most consistent with the generalized expression of social interests.[8]

Legal principles are an essential element of any legal system. The correlation of principles with legal norms and law enforcement determines the degree of effectiveness of legal regulation and the legitimacy of a State's legal policy.[9]

The leading role of legal principles in legal regulation is recognized by most scientists, although the interpretation of the meaning of this category varies significantly. The whole variety of interpretations of legal principles

---

[6] Volkmar Gessner, *Global Legal Interaction and Legal Cultures*, 7 RATIO JURIS: AN INTERNATIONAL JOURNAL OF JURISPRUDENCE AND PHILOSOPHY OF LAW132, 132-145 (1994).

[7] PETER L. BERGER & THOMAS LUCKMANN, *THE SOCIAL CONSTRUCTION OF REALITY: A TREATISE IN THE SOCIOLOGY OF KNOWLEDGE* (Penguin Books, N.Y, 1991).

[8] KARL NICKERSON LLEWELLYN, *THE CASE LAW SYSTEM IN AMERICA*, (The University of Chicago Press, Chicago, 1989).

[9] JÜRGEN HABERMAS, *DIE EINBEZIEHUNG DES ANDEREN. STUDIEN ZUR POLITISCHEN THEORIE,* (Suhrkamp Verlag, Frankfurt am Main, 1996).

can be reduced to three positions: (1) legal principles are basic ideas; (2) legal principles are fundamental values enshrined in the rule of law that determine the specifics of legal regulation; (3) legal principles are a complex category that combines basic ideas and normatively expressed values that equally affect the content of legal regulation.[10]

The authors of the article believe that the third point of view is the most adequate to the content and significance of legal principles in legal regulation. It not only corresponds to the integrative tendency of the development of modern jurisprudence, but also reflects the objective-subjective nature of legal principles and reveals the dichotomism of principles in legal life. On the one hand, legal principles are the result of social construction. On the other hand, it is the principles that determine the value attitude of a person, a social group and society to legal reality. They can be correlated with the spirit of the law, about which Montesquieu,[11] and with the folk spirit of the German historical school of law.[12]

At the same time, significantly different positions are proposed regarding the understanding of the legal nature of legal principles. In particular, based on the ideas of an integrative theory of law,[13] the legal principle can be defined as a fundamental form of law that characterizes the cognitive aspect of legal reality, capable of ensuring homeostasis of the legal system and the focus of law formation and law enforcement. The principle is simultaneously interpreted both as a form of law and as a regulator of social relations along with the rule of law.

Legal principles do not just create law and influence the content of norms. Although this kind of influence exists, it is imperative. Legal principles are used as a direct regulator of public relations in cases where the rule of law (or the rule of law governing similar public relations) is absent (with gaps). Either there are contradictions in the content of several rules of law or in the order of their application (legal conflicts), or there is some legal uncertainty in understanding the content of certain rules of law that must

---

[10] Rüthers B & Fischer Ch, *RECHTSTHEORIE: BEGRIFF, GELTUNG UND ANWENDUNG DES RECHTS*. 5, 195-196 (Auflage, Verlag C. H. Beck, München, 2010).

[11] CHARLES DE MONTESQUIEU, *MONTESQUIEU: THE SPIRIT OF THE LAWS*, (Cambridge University Press,Cambridge, 1989).

[12] Puchta, George Friedrich, 1965. *Das Gewohnheitsrecht. 2 vols. Reprint*, Wissenschaftliche Buchgesellschaft: Darmstadt. (in Germ.).

[13] Valentin V. Ershov, *The essence of the principles of law*, 11 JOURNAL OF SIBERIAN FEDERAL UNIVERSITY. HUMANITIES & SOCIAL SCIENCES 2089, 2089-2103 (2018).

be implemented. In this sense, the legal principle acts as a form of law: although the principle of internal content is an idea, this idea concerns patterns of behavior, albeit fairly general and abstract, but nonetheless defining the legal behavior of the subject. Based on the fact that the legal principle may or may not have direct regulatory fixation, it is an external expression of law and cannot be identified with the rule of law. The legal principle thereby occupies a special place among the forms of law, not always having an unambiguous documentary embodiment, sometimes existing in the legal consciousness or "dissolving" in the content of numerous legal norms. However, the sign of a possible lack of normative consolidation is not completely specific, since a legal custom as a form of law may also not have a fixed written fixation.

We emphasize that in the framework of this study, we use as a priority the category of legal principle, and not the principle of law. The designated categories do not seem to us identical in content. The legal principle is the most general category, which includes, in particular, the principles of law. In this case, we are based, as mentioned above, on an integrative understanding of law, within the framework of which the existence of law in various manifestations is allowed. In particular, this right is positive (mainly - legislation, and in the Anglo-Saxon tradition—a system of judicial precedents), natural law as a system of inborn and inalienable human rights, as well as informal (unwritten, or social law) law. The category of legal principle is intended to cover principles at all levels—positive, natural, informal law. The category of the principle of law reveals the principles of positive law (they can also be designated as legal principles). At the same time, the principles of natural as well as informal (unwritten) law also exist in legal reality.

Considering the legal principles in the dialectical interaction of the ontological and axiological aspects, the synthesis of objective and subjective forms of existence and evaluation,[14] \they can be divided into normative and doctrinal.

Normative legal principles are socially legitimate initial ideas, enshrined in legal norms and implemented in legal policy. Being included in formal sources of law, such principles determine the main directions of

[14] R. George Wright, *Objective and Subjective Tests in the Law*, 16 THE UNH LAW REVIEW121, 121-146 (2017).

embodiment of the State will in the construction of legal and social reality, which have received social recognition and support. To a large extent, the explicit presence of a legal principle in the law ensures its legitimization and helps to increase the effectiveness of legal regulation and harmonization of legal reality.[15]

Doctrinal legal principles reflect a conventional social position, are a cognitive image of the value component of a national legal tradition and are not directly expressed in formal sources of law. Their identification and formulation is the result of the deconstruction of legislation and legal practice, and is doctrinal in nature. The degree of correlation of legal texts with the legal tradition shows the features of the legitimization of legislation in a particular country.[16]

Thus, the classification of legal principles given here is based on one of the essential and basic principles in the context of this presentation of the thesis that legal principles do not always have external regulatory reinforcement, being in this case included in the legal doctrine. As an example, we can cite such general legal principles as the principle of the unity of subjective rights and legal duties, as well as the principle of combining conviction and coercion in law. It is obvious that the above legal principles initially exist as a component of scientific doctrine and are not inferred from the content of existing legal norms. If we say the opposite, then we can encounter a mixture of causes and effects, primary and secondary: due to the presence of such principles in the rules of law, the corresponding content appears, and not vice versa, when we begin to judge the existence of such legal principles by the rules of law.

---

[15] Alexander Valerievich Krasnov, *Legitimnostʹ prava: aksiologicheskij aspekt [Legitimacy of the Law: Axiological Aspect]*, 1 THE REVIEW OF ECONOMY, THE LAW AND SOCIOLOGY 87, 87-90 (2019).

[16] Andrei Valerievich Skorobogatov, & Ali Abbood Malik, *Legitimaciya zakona v yuridicheskom diskurse [Legitimation of law in juridical discourse]*, 13 ACTUAL PROBLEMS OF ECONOMICS AND LAW 1370, 1370–1378 (2019).

II. LEGAL PRINCIPLE: A PHILOSOPHICAL AND LEGAL CATEGORY

The legal principle as a philosophical and legal category is characterized by a number of features.

a. Social Conditionality of the Legal Principle

The social conditionality of the legal principle, its focus on the protection of socially recognized values. Despite the constructed nature of the legal principle, its content is determined by the content and features of the functioning of social reality.[17] The legal principle is formed in the process of legal communication of horizontal orientation and represents the conventional result of social interaction. The legal principle acts as a fundamental idea, which allows the formation of conflict-free legal communication in a particular community (social group, society). It is the assimilation of principles as a guiding idea and a value guideline of behavior in the process of secondary legal socialization that provides legal identification of a person in a community. Being a reflection of social interaction in the legal sphere, legal principles act as constants of legal being that are universal in nature, but capable of transformation in the course of social evolution. This allows you to correlate the legal principle with natural law.[18]

However, the sociality of the legal principle is often associated with the position of the reference group (for example, the political elite), which is able to extend its value orientations to other members of society in the process of vertical legal communication. In this situation, legal principles are more of a constructive nature. The degree of their development by society depends on the effectiveness of the mechanism of legal regulation and the specifics of legitimization of legal policy. The constructibility of legal principles by a reference group based on legal borrowing is especially characteristic of transitive societies. The perception of these principles as

[17] DAVID MILLER, *PRINCIPLES OF SOCIAL JUSTICE*, (Harvard University Press, Cambridge, 1999).

[18] Philip Selznick, *Sociology and natural law*, 61 NATURAL LAW FORUM, 84-108 (1961).

value guidelines for legal behavior by other members of society is not only evidence of their legal identification, but also the basis for effective vertical mobility and the possibility of joining reference groups.

As a fairly typical example of the construction of legal principles, the reform of Russian legislation in the 1990s can be identified, and this was most clearly manifested in the field of civil law, where not only the borrowing of foreign legislation took place, but even their direct transfer, which, respectively, suggested a significant change in principles. The latter was also due to the need for a fundamental change in the legal regulation of economic relations on the basis of the country's development paradigm in line with the market economy, chosen by the ruling elite as a guide. However, until now, in Russian society (or in a certain part of it, and very significant in quantitative composition), some legal principles cause some rejection due to their inconsistency with the understanding of the principles of justice and collectivism that prevailed in the Soviet era (and, in the Soviet understanding, party spirit)—as an example, the principle of non-interference in private affairs (which, according to many, prevents the fair distribution of the results of the efforts made in the form of income). In addition, not all segments of the population are encouraged by the choice of the so-called flat taxation scale, which is fundamentally fixed in tax legislation.

b. The Normativeness of the Legal Principle

The normativeness of the legal principle means the possibility of its normative consolidation. Being enshrined in a legal norm, the principle becomes not only a form of law, but also a source of direct action, which is imperative.[19] It is a sign of normativity that shows that the legal principle is not only a cognitive, but also a functional construct. It is not only oriented towards mastering the legal consciousness but is also called upon to act as a value guide for legal behavior.[20] The normativeness of legal principles is not identical to their mandatory documentary consolidation in the written text:

[19] Joseph Raz, *The Rule of Law and its Virtue*. In: BELLAMY, R. (ED.). *THE RULE OF LAW AND THE SEPARATION OF POWERS* 77-78, (Routledge, London, 2005)

[20] Gerald J. Postema, *Law's Melody: Time and the Normativity of Law. A Realist Approach to the Objectivity of Norms and Law*, 7 ASSOCIATIONS. JOURNAL FOR LEGAL AND SOCIAL THEORY 227, 227-239 (2003).

as we noted above, some principles of law and the principles of informal law may not be fixed in norms but contained in the doctrine. However, despite the absence of legal documents, in such cases, the principle also fixes a certain general and abstract model of behavior, which allows us to talk about the universality of the normative sign in relation to legal principles.

c. Non-Personalization of the Legal Principle

Non-personalization of the legal principle according to the subject composition, spatially and temporally. Acting as a fundamental idea, the principle is oriented to any subject of law within the framework of a certain historically and socioculturally determined legal reality. The legal principle determines the perception of legal reality and the legal behavior of subjects within a certain sociocultural chronotope, although it can also extend to other sections of legal reality, acting as an archetype.[21] The shift in the application of principles in legal reality, which can take place during large-scale legal reforms, occurs at a certain chronological period of time, within which legal reality has not yet adapted to new areas in legal regulation: new, possibly borrowed, legal principles have been proclaimed, have found their reflected in the norms of the relevant bills, however, at the level of the implementation of law and the level of legal behavior, a conflict occurs with the usual, prevailing before governmental legal principles. A similar situation took place in the legal reality of Russia both in 1918-1922, in the era of the formation of Soviet law and the gradual abandonment of the principles of the law of tsarist Russia, and in the late 1980s and early 1990s, which led to disharmony in legal reality and it required significant enough efforts, legal, structural and organizational reforms to overcome the negative situation. In turn, non-personalization, as the absence of a direct reference to a specific addressee, allows the principle to communicate with an indefinite circle of subjects of the same name equally, often independently not only of their social role, but also of their legal status.[22]

---

[21] JOHN BELL, BOYRON SOPHIE, & WHITTAKER SIMON, *PRINCIPLES OF FRENCH LAW, SECOND EDITION*, vii-ix (Oxford University Press: N.-Y, 2008). x

[22] HART, *supra note* 2, at. 127.

d. Orientation to Duty

The legal principle focuses on the performance of actions that are prescribed by the modes "forbidden", "allowed", "mandatory" (Arnold T.W. 1969). The imperative content of the legal principle orientes the subject not to the ontological level of behavior, but to the deontological one. The principle reflects a model of behavior, an ideal image, which, according to the subjects of social construction, to the greatest extent allows satisfying the interests of a person, society and the State and (or) ensuring the rule of law.

At the same time, the most general legal principles are abstract ideas expressing an appeal to certain social and legal values, and, thus, they act only as the most general guide of behavior, not offering any specific patterns of it, which requires a feedback mechanism, first of all, through the judicial system, when, as part of the application of the principle by interpretation, the possible facets of its understanding are revealed.

e. The Objectivity of the Legal Principle of Legal Reality

Although the legal principle is of a constructive nature, its content is determined not only by the legal consciousness of the reference group, but also by the specifics of legal communication—both within the group and between groups. In a transitive society, this feature is enhanced. The reference group in the design of legislation may be guided by legal borrowing. At the same time, there is a transfer of legal principles developed in the legal reality of the donor society and often not corresponding to the legal reality of the recipient society. In this situation, the reference group constructs a new reality, and the approved new legal principles simultaneously fulfill two roles. On the one hand, they contribute to the establishment of a new legal reality. On the other hand, their content, being determined by the legal reality of the donor society, in the formation of the legal reality of the recipient society, also objects the reality of the donor society.[23]

[23] Brian H. Bix, *Introduction.* In: FRANK J. *LAW AND MODERN MIND* xxviii-xxx, (Routledge, London, N.-Y, 2017).

Thus, the indicated sign is by no means understood as the objective nature of legal principles, but only indicates a certain degree of objectivity of the content, which does not exclude the refraction of their content through the consciousness of subjects: as we noted, legal principles per se differ essentially in mixed, objective-subjective character.

At the same time, legal principles participate in the process of legal formation as not only ideas, but also basic norms with the most general and abstract content. The construction of a new legal reality requires from reference groups not only the positioning of its theoretical foundations, but also their normative consolidation. The legal principle verbalized in a legal norm for effective perception among recipients and further social legitimation should not only be formulated, but also detailed. Consequently, the effectiveness of the impact of legal principles on legal reality is associated with their consolidation not only in the norms-principles, but also in the norms-definitions. In the latter case, the principle not only constructs a new reality, but also objectifies the existing one, because it is formulated in the traditions of the legal system of the recipient society. Thus, legal principles become the value basis not only of lawmaking,[24] but also of constructing legal reality at other levels.

The mutual process of constructing reality and objectifying the existing reality is embodied at the level of the realization of law, first of all, in the activities of law enforcement bodies, which at the stage of legal qualification, on the one hand, form legal reality by issuing relevant authoritative individual legal decisions, and on the other, approach to the understanding of legal principles that is in demand by the prevailing sociocultural tradition and leads to a more effective legal regulation.

However, the perception and reproduction of legal principles in legal behavior is non-linear, especially in a situation of legal borrowing. If the behavior of reference groups is unambiguously based on new principles, then the recipients of legal communication perceive the new principles cognitively and reproduce functionally only if they correlate with the national legal tradition. In this case, the convention of legal policy and the harmonization of legal reality are achieved. The indicated process of harmonization of legal reality on the basis of new legal principles introduced

[24] RAZ, *supra note* 2.

in it, as we noted above, can be quite controversial and take a relatively long period of time.

f. The Rule of Law

Being a form of expression of a social system of legal values, legal principles not only have an imperative effect, but also determine the content of the legal system. It is the principles that give this system organizational and value unity. Even without being included in legal norms, the principles not only determine their content, but also the correlation of State and social interests, ensuring the legitimization of legislation and helping to increase the efficiency of its implementation and harmonization of legal reality.

The supremacy of the legal principle can be considered both ideologically and normatively. On the one hand, the principles determine the most significant features, directions in legal regulation, and thus are directly related to legal ideology, being its guides in the normative array. In this regard, the principle is supreme as the most important and defining idea that lawmaking actors are guided by, creating, changing, and terminating the rule of law. Moreover, the choice of the main ideas that become legal principles depends on the sociocultural context that dominates the representations of the reference (ruling) groups and on the social relations that have developed during this period and the features of their legal regulation. For example, during the development of the current Constitution of Russia, adopted on December 12, 1993, the idea of priority of human rights over legislation, that is, positive law, was taken as a basis, as expressed in Art. 2 and a number of other articles of the Constitution. That is, the legal principle of the priority of human rights, that is, natural law over positive, is put at the forefront. However, one should not make an unambiguous conclusion that the Constitution of the Russian Federation is based solely on the concept of natural law. In a number of her other articles, one can notice formulations testifying to the influence of normativism and the sociological concept of understanding of law on its content. However, nevertheless, a construction with the principle of the priority of human rights over legislation confirms our thesis about the supremacy of principles, especially in the context of the priority of the principle over other forms of law, first of all, legislation. That is, the rule of law in this case looks uniquely secondary to the rule of law.

g. Stability of the Legal Principle

Legal principles are a constant of both official[25] and unofficial law. They ensure the continuity of the legal system with the legal tradition, giving it a certain stability and contributing to its legitimation. However, the constancy of principles does not mean their value absoluteness and universality.

The transformation of legal reality in the direction determined by socio-cultural development, both at this historical stage and taking into account the continuity of the existing legal experience and tradition, presupposes a change in legal principles as fundamental provisions that provide reflection on legal progress and its assessment by society. Unlike legislation, principles are significantly less subject to transformation. A change in legal reality is not only normative and functional, but cognitively (at the level of legal principles) means a fairly successful passage of the bifurcation point and a transition from one relatively stable system to another relatively stable system. The stability of the system will be ensured by legal principles, provided that they are disseminated not only in lawmaking and law enforcement, but also in legal behavior as a value guide.

The stability of a principle in legal regulation and legal impact is determined by its place in the general system of legal principles and the space of its distribution. The legal principle of a local group is usually situational, and can change with the adjustment or transformation of intra-group and inter-group legal communication.[26] The national legal principle has great stability, although its understanding may change historically. Thus, the principle of justice remains relatively stable for westernized societies for several centuries, and determines the content of not only positive, but also social law. However, the further development of this logical chain will be limited by the space of legal civilization but cannot claim global significance. Despite the active attempts of Western societies to declare the existence of universal principles that are absolute and universal in nature and designed to determine the content and functioning of any national legal reality, regardless of national legal traditions, the legal policies of Asian and African

[25] LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW. 4TH ED.* 10, (Oxford University Press, Cambridge, 2019).
[26] MARK VAN HOECKE, *LAW AS COMMUNICATION*, (Hart Publishing, Oxford, 2002).

States show that the value basis of legal reality can be and other principles. Therefore, attempts at legal transfer and legal expansion of Western societies, primarily the United States, are doomed to failure.

h. The System-Forming Nature of the Legal Principle

The construction of legal reality with the maximum allowance for the content and features of the existence of legal principles is able to ensure the value and regulatory stability of not only the positive law system, but also its correlation with other systems of unofficial law. Legal principles give stability and uniformity to the legal impact, ensure its legitimacy and effectiveness. Thus, the rule of law is formed not only normatively and functionally, but also cognitively, gaining a foothold in discursive contexts.[27]

In the mechanism of legal regulation and legal impact, the legal principle can be used at several stages and in different quality. *Firstly*, being enshrined in legal norms, or acting as an independent regulator of public relations, it directly affects the behavior of participants in legal relations and ensuring the rule of law. *Secondly*, as a fundamental idea, the legal principle functionally determines the features of the processes of lawmaking and law enforcement.[28] *Thirdly*, the legal principle is the value basis of the legal interpretative activities of officials aimed at creating clarifications on the application of legal norms in disputed situations.

In connection with the foregoing, it seems fair to note that the legal principle acts not only as a form of law, but also as a basic element of the legal system (the primary element is the rule of law).

i. The Abstractness of the Legal Principle

The legal principle acts as a highly generalized imperative requirement for legal action. Being a reflection of legal values, principles affect the human

[27] N.G. Hramcova, *TEORIYA PRAVOVOGO DISKURSA: BAZOVYE IDEI, PROBLEMY, ZAKONOMERNOSTI [THEORY OF LEGAL DISCOURSE: BASIC IDEAS, PROBLEMS, PATTERNS]*, 10 (Izd-vo Kurganskogo gos, un-ta: Kurgan, 2010). (in Russ.), 49.

[28] Celesta A. Albonetti, *An Integration of Theories to Explain Judicial Discretion*, 38 SOCIAL PROBLEMS 247, 247–266 (1991).

mind and behavior at all levels of legal reality (Skorobogatov A.V., Bulnina I.S., Krasnov A.V. and Tyabina D.V. 2015). With regard to lawmaking, the principles determine the value guidelines of the legislative process both normatively (in the form of norm-principles enshrined in the text of the law) and cognitively (as a set of fundamental ideas that determine the process of adoption and content of laws). In law enforcement, the principle acts as the basis for the value correlation of law enforcement and law enforcement acts in the content and form of normative legal acts. In legal behavior, the principles are a value reference point for legal actions that comply with the regulatory framework of the law and ensure the lawfulness and law-abiding behavior of the subject (individual, local group, society) and, constructing a conflict-free coexistence of members of the group with which a person identifies himself.

The content and role of principles in the legal impact is revealed through the functions that they perform. The regulatory function reflects the participation of the legal principle in the legal regulation of public relations. The regulatory function is carried out by the principle both directly in the form of fixing principles in legal norms (norm-principle), and indirectly. In the latter case, the principle is inductively derived from positive or social law and is the cognitive and functional basis of the processes of lawmaking and law enforcement, especially law enforcement. The principle in this case imperatively determines the boundaries of the behavior of subjects and serves as a value guide for decisions made.[29] (Gurvitch G. 2001).

The protective function of the legal principle is aimed at ensuring the protection of the interests of participants in legal communication. The implementation of this function is carried out in the case of both vertical communication and horizontal. In the first case, the imperative function does not allow the addressee to exert uncontrolled influence on the addressee. It is a ban on using coercion against the addressee and ensuring the observance of the interests of all participants in communication. In the second case, communication participants simultaneously act as the addressee and the addressee. The implementation of the protective function in this case is expressed in the fact that the subjects in the implementation of individual interests are limited not only by the conventionality of group

[29] GEORGES GURVITCH, *SOCIOLOGY OF LAW*, (Transaction Publishers, New Brunswick, 2001).

interests, but also by the coercive force of group influence (actual or potential). Legal principles provide a uniform interpretation of the rules of law and legal actions by the subjects of communication, suppressing possible deviations as inappropriate social conventions. This makes it possible to limit and / or repeal the norms of positive law, which are or are recognized as illegitimate by the social majority, since they not only create obstacles to legal communication, but also threaten conflict-free social coexistence[30] and therefore, can lead to disharmonization of legal reality.

The instrumental function of legal principles expresses their value and system-forming nature and reflects their leading role in the legal impact on the legal system. It is the principles that determine the correlation of value orientations, lawmaking, law enforcement and legal behavior and ensure the harmonization of legal reality. Ensuring the consistency of law and legal impact, the principles reflect the frontier nature of the impact of law on the consciousness and behavior of subjects. Setting the boundaries of the legal and non-legal principle, they are guided not only by legal, but also by social values, and determine the ability of the addressee to influence the consciousness and behavior of the addressee not only by legal, but also by psychological, sociocultural and other means. Thus, the direction of legal communication is set, and the instrumental capabilities of the addressee of communication and the degree of value reflection of these means by the addressees of communication are established.

The function of standardizing the legal principle is related to the fact that it is the principle that is the single value reference of social and positive law. The implementation (including formalization) of the principles in legislation and law enforcement practice ensures the correlation of legal and legal norms and contribute to the legitimization and improvement of the effectiveness of legislation in order to achieve legal conflict-free conflict and harmonize legal reality in general.

To the greatest extent, legal principles perform a communicative function. Thanks to the principles, both vertical and horizontal legal communication takes on a unified value character. A uniform understanding of the boundaries of legal and non-legal, on the one hand, allows the addressee of vertical legal communication to exert legal influence on the addressee with the least possible use of coercion. On the other hand, the

[30] HABERMAS, *supra note* 9, at. 298.

addressee of legal communication, perceiving the legal impact as a means of formalizing social values, implements legal norms intuitively. To an even greater extent, the communicative function of legal principles is realized in horizontal communication. It is the principles that provide the methodological basis for the conventionality of legal behavior in the community.

The meaning of communicative function is transformed in a digital society.[31] The development of digital justice and the virtualization of legal reality contribute to a decrease in the role of traditional legal standards in legal communication. However, at the same time, the conventional component of horizontal legal communication is expanding, which contributes to the construction of legal rules not so much for real communication as for communication in the information space.

The function of systematizing legal principles is related to their role in the process of systematizing the legal array. The principles determine the limits of legal regulation not only vertically, but also horizontally. They establish the boundaries of certain subjects of legal regulation. Thus, a methodological basis is being formed for implementing industry codification and improving the quality of the legal system and improving the legal effectiveness of legal regulation.

The participation of legal principles not only directly in the process of legal regulation, but also the interpretation of the norms of positive law, allows us to highlight the function of stabilizing legal regulation performed by them. This function is expressed in the fact that the principles make it possible to determine the unified value foundations of lawmaking, law enforcement and legal behavior and to ensure uniformity of the subject's legal actions at all levels of legal reality, not only in a synchronous, but also in a diachronous context.

CONCLUSION

Thus, the legal principle as a philosophical-legal category is the conventional result of legal communication and can be represented in the epistemological,

[31] David R. Johnson & David Post, *Law and borders: The rise of law in cyberspace*, 48 STANFORD LAW REVIEW 1367, 1367-1402 (1996).

ontological and axiological aspects. The epistemological legal principle is a fundamental concept that determines the nature of the analysis, interpretation and assessment of legal reality through the use of tools of postclassical rationality. The ontological legal principle is a fundamental form of law that characterizes the cognitive aspect of legal reality, capable of ensuring the homeostasis of the legal system and the focus of law formation and law enforcement. Axiologically, the legal principle acts as a value system that characterizes the specifics of individual and social reflection of legal reality and determines the features of the design, development and functioning of legal reality.

ACKNOWLEDGMENTS

The authors express deep gratitude for the invaluable help and support provided to them during the research by the staff of the Department of Theory of State and Law and Public Law Disciplines of Kazan Innovation University named after V.G. Timiryasov (IEUP), branch departments "History. Historical sciences" and "State and law. Jurisprudence" of the International Mariinskaya Academy named after M.D. Shapovalenko, as well as of the Department of Theory and History of Law and State of the Kazan Branch of the Russian State University of Justice.

REFERENCES

Albonetti, C. A. (1991). An Integration of Theories to Explain Judicial Discretion. *Social Problems*, 38 (2). 247–266.

Arnold, T. W. (1969). Law as Symbolism. In.: Aubert V. (ed.). *Sociology of Law. Selected Readings*, Baltimore: Penguin Books.

Bell, J., Boyron, S., & Whittaker, S. (2008). *Principles of French law. Second Edition.* N.-Y: Oxford University Press.

Berger, P. L., & Luckmann, T. (1991). *The Social Construction of Reality: A Treatise in the Sociology of Knowledge.* N.Y: Penguin Books.

Bix, B. H. (2017). Introduction. In: Frank J. *Law and Modern Mind*. London, N.Y: Routledge.

Cankorel, T. (2008). Cognitive Classification of legal Principles: a new Approach to international legal Training. *Ankara Law Review*, 5 (2). 153-200.

Daci, J. (2010). Legal Principles, Legal Values and Legal Norms: are they the same or different? *Academicus International Scientific Journal*, 1(2). 109-115.

De Montesquieu, C. (1989). *Montesquieu: The Spirit of the Laws.* Cambridge: University Press: Cambridge.

Dworkin, R. (1988). *Law's Empire.* Cambridge: Harvard University Press.

Ershov, V. V. (2018). The essence of the principles of law. *Journal of Siberian Federal University. Humanities & Social Sciences*, 11(12). 2089-2103.

Friedman, L.M. 2019. *A History of American Law. 4th ed.* Cambridge: Oxford University Press.

Gessner, V. (1994). Global Legal Interaction and Legal Cultures. *Ratio Juris. An International Journal of Jurisprudence and Philosophy of Law*, 7(2). 132-145.

Gurvitch, G. (2001). *Sociology of Law.* New Brunswick: Transaction Publishers.

Habermas, J. (1973). *Legitimationsprobleme im Spctkapitalismus.* Suhrkamp Verlag: Frankfurt am Main. (in Germ.)

Habermas, J. 1996. *Die Einbeziehung des Anderen. Studien zur politischen Theorie.* Suhrkamp Verlag: Frankfurt am Main. (in germ.)

Hart, H. L. A. (1961). *The Concept of Law.* N.Y: Oxford University Press.

Hart, H. L. A., & Carrió, G. R. (1961). *El concepto de derecho* (pp. 149-150). Buenos Aires: Abeledo-Perrot.

Hramcova, N.G. (2010). *Teoriya pravovogo diskursa: bazovye idei, problemy, zakonomernosti [Theory of legal discourse: basic ideas, problems, patterns].* Izd-vo Kurganskogo gos. un-ta: Kurgan. (in Russ.)

Johnson, D. R., & Post, D. (1996). Law and Borders: The Rise of Law in Cyberspace. *Stanford Law Review*, 48 (5). 1367-1402.

Krasnov, A. V. (2019). Legitimnost' prava: aksiologicheskij aspekt [Legitimacy of the Law: Axiological Aspect]. *The Review of Economy, the Law and Sociology*, 1. 87-90. (in Russ.).

Krawietz, W. (2008). "Juridische Kommunikation im modernen Rechtssystem in rechtstheoretischer Perspektive". In: Brugger W., Neumann, U., & Kirste, S. (eds.) *Rechtsphilosophie im 21. Jahrhundert.* Suhrkamp: Frankfurt-am-Main. (in Germ.)

Llewellyn, K. (1989). *The Case Law System in America.* Chicago: The University of Chicago Press.

Lyons, D. (1977). Principles, positivism, and legal theory. *The Yale Law Journal.* 87 (2). 415-435.

M. Van Hoecke. (2002). *Law as Communication.* Oxford: Hart Publishing.

Miller, D. 1999. *Principles of Social Justice*. Cambridge: Harvard University Press.

Postema, G. J. (2003). Law's Melody: Time and the Normativity of Law. A Realist Approach to the Objectivity of Norms and Law. *Associations. Journal for Legal and Social Theory*, 7 (1). 227-239.

Puchta, G.F. 1965. *Das Gewohnheitsrecht. 2 vols. Reprint*, Wissenschaftliche Buchgesellschaft: Darmstadt. (in Germ.).

Raz, J. (1972). Legal Principles and the Limits of Law. *The Yale Law Journal*, 81. 823-854.

Raz, J. (2005). "The Rule of Law and its Virtue". In: Bellamy, R. (ed.). *The Rule of Law and the Separation of Powers*. London: Routledge.

Rüthers, B., & Fischer, Ch. (2010). *Rechtstheorie: Begriff, Geltung und Anwendung des Rechts*. 5. Auflage. Verlag C. H. Beck: München. (in Germ.)

Selznick, P. (1961). Sociology and natural law. *Natural Law Forum*, 61, 84-108.

Skorobogatov, A.V, Bulnina I.S., Krasnov A.V., & Tyabina, D. V. (2015). Legal reality as a jurhal category. *Mediterranean Journal of Social Sciences*, 6 (3). 664-668.

Skorobogatov, A.V., & Malik, A. A. (2019). Legitimaciya zakona v yuridicheskom diskurse [Legitimation of law in juridical discourse]. *Actual Problems of Economics and Law*, 13 (3). 1370–1378 (in Russ.).

Wiethölter, R. (2011). Proceduralization of The Category of Law+. *German Law Journal*, *12*(1), 465-473.

Wright, R. G. (2017). Objective and Subjective Tests in the Law. *The UNH Law Review*, 16(1). 121-146.

ABOUT AUTHORS

Prof Dr. Oleg Yurievich Latyshev is a legal practitioner and President of International Mariinskaya Academy (IMA), Russia.

Prof. Andrei Valerievich Skorobogatov is an Associate Professor Department of Theory of State and Law and Public Law Disciplines, Kazan Innovation University n.a. V.G. Timiryasov (IEP), academician in the sections "History-Historical sciences" and "State and law-Jurisprudence" of International Mariinskaya Academy.

Prof. Alexander Valerievich Krasnov is an Associate Professor Department of Theory and History of Law and State, Kazan Branch of the Russian State University of Justice.