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Concept and types of legal collisions

Conflict rules are one of the most important theoretical aspects of the theory of state and law. The author reveals the problem of conflict relations, provides the basic definitions of legal collisions. The necessity of scientific and theoretical studies of the development of conflicts of law rules is proved. The special attention is paid to determination of concept and essence of collisions that allow to see and recognize a collision as conflict on the joint of the legal field and idea of justice. An analysis is given to the different types of conflicts (social, legal) and their functions. The different debatable points of view of scientists-lawyers of relatively collision norms are examined.

Key words: collision, legal collisions, classification of collisions, conflict, social conflict, legal conflict.

The concept of legal policy of the Republic of Kazakhstan, adopted in 2002, there were determined the main directions of development of legal system of the country for the period until 2010. For last years a number of the major acts promoting forward development of the state and public institutes, providing sustainable social and economic development of Kazakhstan is accepted [1].

All participants of public relations, regulated by law, are obliged to respect and strictly follow the instructions of legal norms, in order to observe the rights of not only entitled but obliged to specific subjects of legal relations. It is an essence of a legal order in the state. However existence of legal collisions endangers protection of legal order and public safety as the central problem of activity of the government and the state in general as the institute, urged to provide such relations in society at which its forward, progressive development is carried out.

Such activities are carried out by all public authorities to a greater or lesser extent. The law enforcement bodies carry out a specific function of the state function of rule of law, promoting and protecting the rights of man and citizen. State function on protection of a law and order and the rights of citizens can be characterized as the activity of the state directed on ensuring exact and full implementation of its legislative instructions by all participants of the public relations. But how is it possible to provide an accurate and complete implementation of mandatory rules and regulations, if the regulations contradict one another. Precise and steady performance of contradictory and mutually exclusive norms someone's rights are necessarily infringed or otherwise deprived and this contradicts not only the meaning of legal regulation, but also common sense. Special danger on this way are legal collisions as the quintessence of the confrontation of legal norms.

It is worth recognizing that in legal science there is no uniform approach to definition of a legal collision that it is possible to explain with the difficult, multidimensional nature of this phenomenon.

In the encyclopedic dictionary of S.I.Ozhogov and N.Y.Shvedova the following definition is given: «A collision is conflict of any opposite forces, interests, aspirations», F.A.Brokgauz and I.A.Efron define a collision more narrowly — «Collision is a conflict of legal norms (laws or the statuses) occurring in the case when the judge should decide a case on the individuals without residence within the local law, property that is in this range, the acts or transactions made by the prisoners or in another county under the action other than the local laws». N.M.Korkunov concluded that: «conflicts are possible, as between the multi-temporal, succeeding each other in the same state laws as well as between different points the laws of different states». Conflicts between laws arise in the case; «if the fact is committed in the scope of a law, it has to be discussed

under the domination of another law». In this case, one and the same fact would be subject to two different laws: one — the place or the time of its commission, the other — the place or time of their discussion. This is called conflicts of laws, multi-local and multi-temporal».

In other words, there is a discrepancy between the two, or more formally the normative acts issued on the same subject.

S.S.Alekseev points out that: «between separate normative acts conflict can arise. Such contradictions called collisions». According to the author, these definitions are too narrow nature of legal conflicts, focusing on a certain criterion, showing legal collisions.

At the same time it should be stressed that the number of our scientists more broadly fit the definition of the concept and essence of legal collisions. N.I.Matuzov interprets the legal collision more than just a difference or conflict between the provisions of law, including the definition of all the contradictions that appear in the process of enforcement and implementation, competent subjects (authorities and officials) their powers. N.A.Vlasenko, considering the types of defects in law, antinomy, unnecessary duplication and gaps in the law — comes to the conclusion that the legal conflict is the relation between the norms arising about the regulation of one of the actual situation [2]. Such understanding of legal collision includes instances of conflict of laws, and the cases of differences, their discrepancy, which allows to refuse determine the defects of the law as «textually and legal conflicts» that clutter the meaning and the essence of the phenomenon.

Under the collision it is also understood a contradiction between the existing legal acts, law and order and claims, actions for their change of recognition or cancel».

Y.A.Tikhomirov understands legal collisions as «the contradiction between the legal norms, regulations, and institutions and claims, actions for their change of violation, rejection» [3]. Later, the scientist has put forward, in our view, a more expressive and at the same abstract definition, according to which «legal collision is a contradiction between the existing legal order and the intentions and actions to change it». Proposed definition of legal collisions contains a wider and more systemic understanding of this phenomenon. Traditional interpretation of the legal conflict as a clash of norms does not disappear, but the only and universal becomes one of the aspects of the definition.

According to the scientist, a legal collision is expressed: a) in contrasting the differences of legal opinions and positions in legal thinking; b) in a clash of norms and regulations within the legal system, both in industry and in the federal aspects; c) of misconduct within the mechanism of public authority between the state and other institutions and authorities; d) in the differences between the rules of international laws; e) in disputes between states and the contradictions between the norms of national and international law. In our opinion, this definition covers almost all kinds of legal collisions, as well as an indication of their characteristics, allowing to distinguish legal collisions from similar, similar terms (conflicts, fiction). In addition, in our opinion, this definition allows to see and recognize the conflict as a conflict at the junction of the legal field and the idea of justice, which legislating is intended to build, as the confrontation between the aspirations and interests reflected in the existing legal regulations and their real provision.

From the above it can be concluded, that concepts of collision and competition law norms are not subject to identification. Of course, these concepts are similar in content, but you cannot identify them. The existence of the norm is stipulated by the nature of the legal regulation. Competition arises if necessary concretization of legal norms, which are abstract in nature to a certain type of social relations. Multidimensionality of approaches to the definition of legal conflicts, their diversity and heterogeneity necessitates their classification. This issue has been studied by scientists such as M.L.Baimakhanov, N.A.Vlasenko, P.S.Dagel, N.I.Matuzov, V.V.Smironov, Y.A.Tikhomirov and others. Most scientists have the same position as their vision of legal collisions is much the same.

Since most scientists link these collisions with the contradictions and clashes of the norms, the classification of legal collisions mainly carried out in the same manner.

Collisions «horizontal» arise between the rules which have the same legal force. The following types of collisions in this group:

Collisions contained in an article of a normative legal act.

Collisions contained in various articles of one legal act.

Collisions contained in various laws and regulations. These conflicts often occur in practice.

A special type of legal collisions constitute collision «of state bodies, public organizations, officials, other government agencies and entities». The peculiarity of this type of conflict is the following: firstly, they can be emitted not two apparently contradictory norms, and the action of a complex of not reconciled to the law; secondly, these collisions may be the cause of conflicts between the specific legal norms.

Collisions of competence can be expressed in that certain state agencies, officials and other parties, possessing powers to implement them fully or, on the contrary, are beyond its competence, ignoring the competence of other subjects. Although it may be a deformation of status or extralegal formation of the government or public body, the organization, the official.

The reasons of occurrence of legal conflicts, the study which we will spend the next, you can select the conflicts arising due to the development of social relations, i.e. the influence of objective factors, and the conflicts arising due to low legal technique, combat tactical interests in the apparatus of state power, insufficient level of legal culture of the population and, in particular, legislators, etc) i.e. the influence of subjective factors.

N.A.Vlasenko proposed his own classification of conflicts somewhat different from the conventional, but capacious and flexible, according to which conflicts are:

- Temporal;
- Spatial;
- Hierarchical;
- Meaningful.

Temporal collisions are divergence of norms in time, resulting from the publication of several norms that contain the different legal regulations on the same issue in different times.

Typically, these collisions occur because of errors or non-compliance with the rules of legal technique, where the adoption of a new rule in the proper order is not canceled the old action.

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Hierarchical collisions — it is already the conflict of «vertical», the public relations fall under the simultaneous regulation of norms of law of different legal force, containing a variety of inconsistent regulations.

Meaningful collisions occur in the event of a conflict between the general and special rules of law governing the same situation, i.e. the difference between the standards is the extent of regulation — specific norm produces a kind of withdrawal from the individual circumstances of the validity of a general rule.

Noteworthy position of Z.F.Kovriga and K.K.Panko, who believe that legal fiction is a variety of legal collisions. Legal fiction is a special legal technique used by the legislator in order to resolve certain social relations by creating a likelihood of legal provisions. The conditional admission for the truth, as a deliberate falsity of the accepted provisions are a legal fiction only the outer form, which is vested in the creation of new legal norms. Actually, legal fiction is in its content, just the rule of law, regulating the relationship between objective reality. inconsistency of legal fictions is their likely, conditional nature. The contradiction lies between the real state of certain facts and the decision of judicial body, which is conditional on their presence or absence. However, it is difficult to agree with the statement that collisions of any fictions — in generation of confusion, where the person is wrong, has a false idea about the existence or absence of certain facts.

Since when considering the question of the definition of legal collisions, revealing their essence as a legal phenomenon, the author pointed to a narrowing of the subject of the study when looking at them from the traditional positions and tied his position with Y.Tikhomirov, then the classification given to these scientists, we also seem the most appropriate nature of the phenomenon.

According to Y.Tikhomirov, the most common situations in which collisions are occurring include:

the legality of the publication of those or other laws and regulations, assess their relations among themselves and in particular with the Constitution;

the status of the state education authority, organization, official;

the ratio of the rights, duties and responsibilities of parties to the dispute;

legal actions (inaction);

legal facts. This circumstance, in accordance with the rights set forth in the statutory procedural form, causing statutory legal consequences, From the legal point of view fixed legal fact is defected, if its characteristics do not correspond to the model as enshrined in the hypothesis of a legal norm;

legal documents. Often contradictory types, shapes and details, complicated procedure of registration and traffic flows. Many errors are not only leads to defects in the documents themselves, and challenging, but also regulations that generate them, and, in turn, are implemented by the dynamic array of primary documents;

mechanical borrowing of foreign legal systems principles, institutions and norms that give rise to contradictions in the process of preparation, consideration and implementation of the law and other acts;
 obstacles to the powers of an entity;
 extra-legal education institutions, bodies and organizations;
 confrontation and non-recognition of the legitimate interests of the subjects of the law;
 realization of legal decisions.

Since the objects of collisions can occur in practice, either individually or in the aggregate, making them difficult to identify, distinguish and overcome, Y.A.Tikhomirov points out additional features of legal collisions that distinguish them from other types of contradictions [4]. These features can be considered:

legal procedure for the examination of collisions;
 use and assessment of the evidence in a legal dispute;
 existence of a body, authorized to resolve the collision;
 recognition of the binding decision of the dispute as in force achieved the consent of, the arrangements for reconciliation of the parties and the mandatory regulations of the appropriate authority;
 compensation, that is, sanctions and compensation for damage and loss of profit, to restore the former (normal) the legal status of one or all subjects.

In order to better ascertain the nature of legal conflicts, their causes, to determine the «filling» of the concept of «legal collision», it is necessary, in our opinion, also set the place and role of legal collisions in social conflicts, to identify the relationship of these phenomena.

As one of the main incentives for social development, the conflict is considered at the end of the XIX century in the works of G.Spencer, M.Weber, L.Gumplowicz, and by the end of the 1950s, the sociology of conflict began in sociological science of relatively independent line. As a discipline sociology of conflict has developed in 50–60 years of the XX century, evolving from sociology and political science. Its subject was identified as the explanation of the causes of life, functioning and development of social systems and subsystems through the category of the conflict. It has a complex and at the same time, theoretical and applied character, which is caused by the conflicts in all spheres of public life and the opportunity of reviewing the conflict in any area from different points of view. The conflict in the legal sphere at the same time can be considered from the point of view of the economy, psychology, theory of law, sociology, exact sciences. Purpose of study of conflict is identification and explanation of the mechanisms of managing the public of processes connected with the conflict, their development and overcoming their negative traits.

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Initially began to explore the conflicts between the state authorities and society, then the social and class conflicts, then the study were political, national, intergroup and interpersonal conflicts.

According to the known position of Hobbes, causes of conflict is the nature of people, each person believes that he is not mistaken and estimates of surrounding events and actions, considers himself elected.

At the analysis of causality conflict it is necessary, first, to determine the underlying contradictions. The appearance of a conflict — or rather the effect of a number of reasons, which generalizes the sign of which is the growth of tensions and the allocation of the motives of the parties' activities. The latter are formed on the basis of the assessment of the situation as a conflict, stimulating the adoption of specific measures aimed at the protection of its interests.

All functions of the conflict have two sides: positive, constructive and destructive, acting in unity. The resolution of the conflict, elimination of contradictions — positive, but in the process of its permissions can be changed, to «break» and perceptions of people and their relationships, and social relations in general. It is impossible to calculate the presence and number of conflicts in the society mathematically, however, when certain of their prevalence is growing trend of mutual reinforcement of conflicts and social tensions: a society becomes polyconflict.

Contradictions may arise from violations of the provisions of the law and universally recognized principles and norms of morality, as a result of incorrect (in reality or in terms of the individual) actions by official authorities. The arising contradictions can be objectively necessary and developed by chance. The diversity and conflict of interests makes it necessary for governments and public institutions to bring them into balance. In many ways, it is promoted as a system of universal law, mandatory, protected from violation by force of state enforcement of the rules of conduct.

Social conflict settled by legal means, is complicated, multifaceted, and due to many reasons: economic, political, demographic. Legal conflicts represent the highest, the most civilized form of social conflict.

They are a genuine expression of the essence of social reality: the content and dynamics of the law, the form of its implementation, the ratio rights with other social norms, the relationship of the individual and society and others. V.L.Kudryavcev insists on the same. Social conflict, according to him, always eventually permitted in the legal form, therefore, a legal dispute is the most mature form of the social differences in the society. Legal conflict is one of the types of social conflict arising between subjects concerning the incompatibility of their needs, interests, values, knowledge, status claims. The most fully legal aspect is expressed in those conflicts that occur in connection with the objectively existing contradictions between two or more legal rules related to the same subject matter. This is a legal conflict in the strict sense of the word. Such a conflict begins and ends with the use of legal tools and procedures. However, the majority of conflicts arise out of the legal profession, and only later in the development process, acquires legal signs, acquiring thereby a transitional or mixed. The motivation of such conflicts is initially far from the legal profession and associated with the economic, national, social, personal or public interest. It is in every sense a «conflict of interest», gradually acquiring legal form. Legal conflict inherent contradictions, contrast, the incompatibility of the lawful and legitimate interests; opposing types of legally significant behavior.

According to Y.A.Tikhomirov «legal contradictions are expressed in different legal thinking, collisions of legal acts, illegal actions of governmental, intergovernmental and non-governmental structures, claims and actions on change of the existing order». Legality is the core of normal functioning of the social system, and in particular — a factor which is necessary for the proper and reliable functioning of the public authorities and services. Proof of this statement is to determine the legitimacy given to V.S.Afanasyev: «legality — it is the principle, the method and mode of compliance behavior (activity) of the participants of public relations and its results the rule of law, as expressed in the laws, based on these by-laws and other sources of law» [5].

Legality involves the provision of equal rights and the presentation of unified requirements to all citizens, that is, the implementation of the principle of equality of all before the law. Naturally, that its implementation contributes to strengthen the consciousness of people such important social values, as the authority of the state and law, social justice, the reliability of the rule of law. The mode of the legality requires the presence of security for the performance contained in the law regulations.

Principle of legality is specified in all legislative acts, to a certain extent regulating the activities of bodies of internal Affairs, as they aim to provide a significant volume of work on the protection of public order, the strengthening of legality, the protection of human rights and freedoms, protection of legitimate interests of state and private enterprises and organizations of different forms of ownership and labor collectives, to combat crime and other offences.

Today speedy and stable provision of legitimacy can and should be regarded as a priority goal and primary task, because of the collision between the laws and other normative legal acts have become commonplace. They have created a fertile ground for abuse of the various authorities deformation of economic and social relations, and violations of law and order.

It should be remembered that all the laws passed by-laws and other regulations must, among other requirements for the acts of this kind, to answer the idea of justice and humanity, respect for human rights and freedoms. And these same ideas of social justice, equality, freedom, non-moral categories, but more often included in the concept of law, were offset by a few years of endless political, economic, social and cultural reforms in the country.

The rule of law in the country — one of the main objectives of the government. On the one hand, the rule of law is possible only if effective laws passed by the government, and strict observance of the rule of law (in the first instance, the government institutions and persons in authority), on the other hand, the rule of law requires the observance of the laws directly by the people, and it can be achieved in two ways — the planting of fear of authority and the law, and the inevitability of cruel punishment, and the formation of a law-abiding consciousness, belief in the need to respect the law» [6].

Legal conflict reflects the changes in the legal system or some of its elements, objective the modernization of state institutions, serves as evidence of the natural contradictions of normal development and functioning of the state and legal institutions, and may express a just claim to a new legal order or the protection of the constitutional system, the legitimate opposition to the arbitrary, illegal acts and actions, i.e. all sorts of violations of the law. In this connection the problem of the effectiveness of legislation, determine the effectiveness of law enforcement and currently represents one of the priorities and future directions in the Russian legal science [7]. So, in that sense, which is embedded in the concept under consideration, it can be considered a generic, basic. The collision is not just a one-time act or action, or both cross-sectional committed. This procedure and the analysis of available laws and other acts and documents contained in the evaluation

of public law, public institutions, economic systems, and the confrontation of interests, as reflected in the existing legal provisions and their real security and interests of citizens, officials, government agencies, political parties, social movements, expressed in other state law claims and activities.

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А.Е.Төкішева

Құқықтық қайшылықтың түсінігі және түрлері

Коллизиялық нормалар мемлекет және құқық теориясының маңызды теориялық мәселелерінің бірі болып табылады. Мақалада коллизиялық қатынастар мәселелері ашылып, заңдық коллизияның негізгі анықтамасы берілді. Коллизиялық нормалар дамуын ғылыми-теориялық зерттеу қажеттілігі негізделді. Коллизияны құқықтық кеңістік және әділеттілік идеясы арасындағы дау ретінде қарастыруға және тануға мүмкіндік беретін коллизия түсінігі мен мәнін анықтауға ерекше назар аударылды. Даудың әркелкі түрлеріне (әлеуметтік, заңдық) және олардың қызметіне талдау жасалды. Ғалым-заңгерлердің коллизиялық нормаларға қатысты әр түрлі даулы көзқарастары қарастырылды.

А.Е.Токишева

Понятие и виды юридических коллизий

Автором отмечено, что коллизионные нормы являются одним из важнейших теоретических вопросов теории государства и права. Раскрыта проблема коллизионных отношений, приведены основные дефиниции юридических коллизий. Обоснована необходимость научно-теоретического исследования развития коллизионных норм. Особое внимание уделено определению понятия и сущности коллизий, которые позволяют увидеть и распознать коллизию как конфликт на стыке правового поля и идеи справедливости. Дан анализ разным видам конфликтов (социальному, юридическому) и их функциям. Рассмотрены различные спорные точки зрения ученых-юристов относительно коллизионных норм.