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The Question of the Ratio of the Category "Conflict" and "Dispute" in the Procedural Law

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Abstract: The categories "dispute" and "conflict" are one of basic in the legal theory as so far there is the person there will be both conflicts and disputes. Disclosure of the legal contents which is put in them and accurate determination the ratio of these concepts concerning each other has basic value as in the legal theory and practice. In the study, the analysis of the existing approaches to the understanding of the content of the concepts "conflict" and "dispute" of the substantive and procedural law is carried out. The conclusion that the all-procedural categories "legal conflict" and "legal dispute" correspond among themselves as the general and private is drawn. Legal dispute represents the kind of the legal conflict and respectively, possesses the main lines of the category, patrimonial for itself and distinctive signs.

Key words: Legal conflict, legal dispute, dispute on the right substantive, right, procedural law

INTRODUCTION

The conflict and dispute are general theoretical categories which are studied by the other humanities. For defining the ratio in the theory of the procedural law, it is necessary to investigate for a start process of forming of all humanitarian knowledge of them.

In the West, the first attempts to construct a general theory of conflict (Kriesberg, 1973), a study of its foundations and functions of structural and dynamic characteristics (Bernard, 1950; Coser, 1954) were made in the 1950s-1970s. during the formation of the sociology of conflict as a special area of sociological knowledge. Already in the 1980-2000th, the attention of the Western scientists was paid to the sphere of research and development of questions of permission and conflict prevention. Studying of the general theory of the conflict resolution which base is the new methodology of diagnostics, regulations and preventions of the social conflicts belong to this period (Burton, 1969; Fisher, 1972).

In the Russian science, the first publications about the principles of emergence and development of the conflicts, about practical knowledge were made by people of rules, acceptances of behavior in conflict situations until 1924. Research on the conflicts if was carried out to this period, within such social sciences as philosophy, religion, literature, national creativity. During the period from 1924-1990 studying of the conflict was performed with alternate success in connection with the difficult geopolitical situation characterizing this time and too generally within industry sciences. Interdisciplinary researches of the perspective of the conflicts began to be conducted after 1990, during this period science the conflictology purchases absolute value that leads to increasing in some publications, the public discussions directed on studying of the nature of settlement of the conflicts.

Availability of the conflicts only in the field of the interpersonal relations, therefore, scientific researches were limited to features of interpersonal conflict behavior was recognized. Legalization of the perspective of the conflict happened during reorganization. Despite, a long history of existence and development of conflictology as the science researching contents of the category "conflict" is not current uniform approach to the understanding of the nature of the specified category now.

MATERIALS AND METHODS

As, it was already noted, since the end of the 1980th, the beginnings of the 1990th arise researches, which suggested considering the conflict perspective as the independent science having the subject and the method of research.

In Foreign conflictology, there are three main methodological approaches to the understanding of the conflict: behavioral, motivational and motivational behavior. Supporters of social understanding of the

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conflict (M. Doych, E. Giddens) point to a behavioral aspect of the conflict and do not connect directly the conflict to the contradiction. M. Doych wrote that the conflict arose from the collision of inappropriate actions. Incompatible actions can arise at the individual, in-group, in the nation such conflicts are called intrapersonal, intra-group or intra-national. They can also arise between two or more persons, groups or the nations such conflicts are called interpersonal, intergroup or international. The irreconcilable conflict is understood as action, which does not allow, interferes or in other ways reduces the probability of commission or efficiency of other action.

Giddens (1984) suggested understanding as the social conflict the real antagonism between the individuals participating in the conflict or groups of individuals, irrespective of, what sources of this antagonism, its methods and mechanisms used by each party. Supporters of motivational approach (Darendorf, 1994; Kriesberg, 1973) identify the conflict to the contradiction and believe that the conflict arises in the presence of contrast, incompatibility, discrepancy. Therefore, for example, Darendorf (1994) believes that the contrast of interests and the relations of its participants is the cornerstone of the conflict. According to the researcher, the social conflicts, i.e., systematically arising from the public structure of the contradiction it is impossible to permit the final elimination of the conflict. The conflict resolution which is opposed to its suppression or cancelation is conflict regulation. Regulation of the social conflicts represents the fixed asset of a decrease in the degree of the type of violence almost all types of the conflicts. Thus regulation of the conflicts does not lead to their disappearance, does not become the reason for the decrease in their intensity. However, the conflicts become the under control mechanism.

Supporters of motivational and social understanding of the conflict (L. Kozer, M. Croze) claim that the conflict arises when incompatibility (contradiction) of interests is defined by the availability of the behavior models directed against each other. L. Kozer defined the social conflict as the antagonism because of differing values or claims on the status, the power or limited resources in which the purposes of parties concerned are not only achievement desirable but also and conflict neutralization, damnification or elimination of the partner (Coser, 1956). M. Krozye also investigated the conflict as the antagonism of the groups having the incompatible purposes.

Certainly, both behavioral and motivational and motivational and behavioral approaches reflect certain features of the conflict. At the same time, in our opinion, each of approaches possesses certain shortcomings. So, supporters of behavioral approach point to the emergence of the conflict in the situation of availability of the real antagonism between participants of the conflict, however within this concept situation of the appearance of the conflict in the lack of the antagonism of other party are not considered. Supporters of motivational approach, identifying the conflict to the contradiction, absolutely lose sight of that the conflict cannot arise without the commission of one of the parties to the actions directed by expression of the position. Availability of the contradiction is not enough to define the type of social interaction as conflict.

The existence of the conflict assumes action availability, i.e., intense expression of the position in addition to the availability of the contradiction. In other words, the conflict is the type of social behavior, which is characterized by the dynamic development of the contradiction that arose between the parties. The specified features of the conflict are considered by supporters of motivational and behavioral approach, connecting origins of the conflict not only to the availability of contradictions but also with the availability of the antagonism between participants of the conflict.

At the same time, it should be noted that neither availability of contradictions nor availability of the antagonism is not signed, without fail inherent in the conflict. For the emergence of the conflict, it is enough of that one of participants of the conflict assumes the availability of contradictions and formulates the objections. The second party can be involved in the conflict for lack of contradictions, protection of the rights and interests against unreasonably made a complaint will be the purpose of the second party in this case.

Thus, conflict emergence mainly depends on an understanding of the provision or this or that situation one of the participants of the conflict and least depends on the objective emergence of contradictions and the antagonism between the parties. We believe what exactly that the all-humanitarian category can formulate a sociological understanding of the conflict as. To define the general approach to the ratio of the concepts “contradiction”, “conflict”, “dispute” of legal process, it is necessary to investigate the approaches to the understanding of the content of the specified concepts existing in legal conflictology.

RESULTS AND DISCUSSION

Early studies of the conflicts in the right were conducted in the 80th of the 20th century. Registration of

legal conflictology in independent scientific knowledge happened in the mid-nineties of the 20th century when the works published in the general edition of V.N. Kudryavtsev in which were considered concept, dynamics of development, typology of the legal conflicts and also methods of permission of conflict situations in the field of the right were issued and Yu.A. Tikhomirov's work in which the understanding of the legal nature and origins of legal collisions revealed. Today, V.S. Nersesyants understands as judicial conflictology finding of the directions of transition from the unlawful situation within the conflict to the legal situation. T.V. Hudoykina specifies that can be included in the subject of legal conflictology not only the legal conflict but also the social conflict that becomes legal at certain stages of the development.

Taking into account stated it is possible to note that within the Russian jurisprudence the subject of legal conflictology makes the social conflict from the right position. However, uniform approach to the determination of the concept "legal conflict" still is absent in modern legal science. Having analyzed the offered definitions of the legal conflict, it is possible to come to the conclusion that practically Russian authors as signs of the legal (legal) conflict call all:

- Availability of the contradictions arising between two or more participants of the conflict
- The possibility of completion of the legal conflict to use of legal methods

We believe that not all from the above signs are signs, without fail inherent in the legal conflict. First, you should not forget that conflict legal relationship arises and if one party mistakenly believes that its legitimate interests are broken or restrained. In the specified situation between the parties of legal relationship, there are both no contradictions and the antagonism. Thus, the above signs will not matter for the determination of legal relationship as conflict.

Secondly, conflict situations not always come to the end of the use of legal methods. The formulation of the claim of one of the parties to the legal relationship to another does not testify about volume; the conflict situation can develop into dispute and come to the end in the legal sphere. Taking into account stated it is possible to draw the conclusion that the legal conflict can arise in the situation of the actual lack of contradictions between two and more warring parties; the legal conflict shall not be resolved by the legal method.

In our opinion, the legal conflict the substantive requirement, objectification in the form of the claim, the statement and so on is the cornerstone, of one privy, believing that its legitimate interests are broken or restrained, to the new privy. The material component of the legal conflict is reduced to the substantive requirement that the privy believes that its interests contradict interests of another person, shows to the specified person. There is open the question of the need for availability of the procedural component of the conflict. In our opinion, it is possible to say about the existence of the conflict how one of the parties to legal relationship formulated the claims to another party. The second party can accept the position of the initiator of the conflict, without objecting and then the conflict will be resolved without the use of its elimination, any of procedural mechanisms. The second party can react to the position of the initiator of the conflict having entered with it the procedural interaction directed on the conflict resolution. However, availability of procedural interaction between the parties will testify to dispute emergence, i.e., the process directed by the conflict resolution.

Taking into account the stated we believe that for the emergence of the conflict its material basis, i.e., the claim formulation to other party matters. Therefore, the legal conflict represents a legal relationship that results from a presentation by the person believing that its interests contradict interests of another person, the substantive requirement for the specified person.

We believe that the category "legal conflict" has many similarities with the category "legal dispute", despite the distinctions existing between them. As Zelentsov (2000) fairly notes, within different branches of law two main approaches to the understanding of legal dispute allowed to formulate researches of the concept "legal dispute": the general and private. In a private sense the concept "legal dispute" is identified with the concept "dispute on the right," i.e., with the concept of dispute on any subjective right (civil, administrative, labor, etc.). In a general sense the concept "legal dispute" includes not only dispute on the right but also dispute the fact and also legality dispute.

The understanding of dispute on the right as procedural guarding legal relationship is based on idea that dispute on the right represents the phenomenon that arises in connection with the statement of the interested person before court that it has the interest protected by the law that is broken or is disputed by the respondent. The criticism of the "procedural" theory of dispute on the right is quite obvious and is reduced to that the specified concept does not assume the availability of dispute out of the procedural relations arising in connection with its permission court or another

authorized body. So, M. D. Matiyevsky specifies that dispute purchases property of legal category since the moment when the interested person declares dispute in the order established by the procedural legislation.

Here, mixing of concepts of dispute and the claim since dispute arises before the process and its existence is looked through it is possible and out of the process. Zelentsov (2000) believes that the specified approach leads eventually to merge into the whole of a dispute with the process of its consideration, i.e. to the connection of dispute and activities for justice implementation, to the identification of legal case and the process of its permission. Besides, in this case, the concept of dispute does not join possibility of a contest of actions within substantive procedures.

According to the second approach dispute on the right is understood as a set of financially regulatory and procedural legal relationship, the dispute on the right appears as the phenomenon of material character and will be transformed into the procedural category after the jurisdictional body performs procedures of adoption of the statement to consideration. The above approach received the name of the same concept of dispute on the right.

The criticism of the above approach can be found at Zaytsev (1974) according to which position, weaknesses of dualistic approach are, first, that the dualistic concept leads to destruction of unity of concept of dispute and secondly, refuses available the independent legal contents to the concept "legal dispute" because it is offered to understand substantive dispute that was submitted to jurisdictional body as procedural dispute.

According to the third approach dispute on the right is understood as the organizational and guarding legal relationship including the rights and obligations of parties to variance which activity is directed on belief of each other in the correctness that is expressed in the rights and duties formulated in the law to show, prove and prove the requirements and objections. In the cases provided by the law, the dispute can be settled by parties at variance without appeal to the jurisdictional body. In the event of a transfer of legal dispute for consideration in the jurisdictional body, the dispute does not lose the substantive contents and it becomes simple the subject of judicial activities for its consideration. In this case dispute does not purchase a procedural character and it appears the periprocedural relation, in communication by that dispute exists between the parties and the procedural relations arise only with the assistance of jurisdictional body. The specified approach received the name of the "pre-procedural" theory.

According to the fourth approach to the understanding of dispute on the right which carries the name of "conflict" approach, the dispute on the right is understood as the kind of the legal conflict. Dispute on the right it, including, the claims and objections declared by the established procedure, i.e., the legal form of the objectivization of the conflict in this plan can be considered dispute on the right as the kind of the conflict. "Conflict" approach to dispute on the right creates an opportunity to design the new integrative concept that would allow to overcome the treatments of dispute offered within conflict approach about "material" and "procedural" theories.

According to the fifth approach dispute on the right is understood as the difficult legal structure including a set of three dispositive facts on condition of their emergence in the caused order. Treat such facts:

- Violation or contest of the subjective rights of the person (subject of protection) by another particular person (violator)
- Presentation of the subject of protection of the requirement to the violator about the certain behavior
- Non-execution by the violator of the obligation of the subject of protection (Rozhkova, 2005)

Thus, today in the Russian science the following approaches to understanding of dispute on the right are formulated: dispute on the right as guarding legal relationship which nature can be either substantive or procedural, the dualistic concept of dispute on the right, the periprocedural concept of dispute on the right, the conflict concept of dispute on the right, dispute on the right as difficult legal structure.

The main lack of all offered concepts is the understanding of dispute on the right as a special form of the offense, i.e., violation of the rights, legitimate interests of another party. The emergence of the dispute is not always connected with violation of someone's rights, legitimate interests, the party can mistakenly believe the right broken, however, impose requirement and initiate dispute.

The above approaches characterize legal dispute as a dispute on the subjective right, i.e., particular approach to the concept "legal dispute". According to the general approach to concept dispute, the specified category covers not only dispute on the right but also dispute the fact, dispute on legality. The understanding of dispute on the right as procedural guarding legal relationship is based on idea that dispute on the right represents the phenomenon that arises in connection with the statement of the interested person before court that it has the interest protected by the law that is broken or is disputed by the respondent.

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the category "dispute" is closely connected with the problem of ascertaining of availability/lack of dispute in different types of legal proceedings.

The concept "dispute on the right" is plugged in traditionally with such type of civil legal proceedings as claim production. While affairs from the public legal relationship, the cases considered within special proceeding belong to category so-called "not claim indisputable" productions.

However, there is also the opposite position, according to which existence of any substantive relations including public that settlement requires the intervention of the court, already testifies that they are in the condition of dispute. The difference of particular proceeding from claim and affairs productions, arising from the public legal relationship, at the heart of consideration of inconsistent proofs, independent judgments concerning the existence of the fact, etc. In all similar cases, the court shall be convinced of existence or lack of the facts, having checked and having compared proofs, having revealed contradictions in judgments of the persons participating in the process, i.e., having eliminated "argumentativeness" of the determined facts and circumstances.

We believe that availability or lack of dispute on the right cannot serve as a criterion for differentiation of claim production from other (not claim) types of legal proceedings. Within claim production the court protects the violated or disputed rights, establishes availability or absence between interested persons of the material legal relationship of the specific contents, etc. Thus, at the heart of the legal relationship arising between the parties as a result of the initiation of any legal proceedings the legal conflict that is in the process of permission, i.e., legal dispute lies.

Moreover, if to take procedural understanding of legal dispute as the basis as the condition of consideration and permission of the legal conflict to the equal or imperious subject (or between imperious subjects), availability of argumentativeness it is possible to state in any process: administrative, criminal, constitutional, at pre-judicial stages of criminal and administrative processes, etc. The above position finds reflection in researches A.I. Trusov, who suggests understanding as criminal procedure rationally organized criminal legal dispute competing among themselves, the parties of charge and protection, equal before the independent court (Pants, 1994). Vinnytsia (1999) specifies that the subject of criminal procedure is a criminal legal dispute.

As, it was noted above, the general classical understanding of legal dispute integrates into itself: dispute on the right, dispute on the fact, legality dispute. However, the position created within the theory of the "broadest" legal process according to which dispute can exist not only in judicial processes but also at pre-judicial stages in criminal and administrative processes, in executive production and so on, allowed to fill the content of the concept "dispute" with a new sense. So, Pavlushina (2002) suggested understanding as dispute the legal relationship with the participation of the parties based on their disagreement concerning the application of the rule of law which is allowed by the disinterested third party.

We believe that legal dispute can be resolved by the parties as with participation of the third party and is independent. Therefore, availability/lack of the third disinterested party resolving dispute can form the basis for allocation of types of legal process, prevalent on the dispute resolution, however, cannot act as a criterion for differentiation of the categories "legal dispute" and "legal conflict".

Dispute includes two components: material and procedural. The material component of legal dispute is reduced to the substantive requirement, objectification in the form of the claim, the statement, claim, etc. which the privy believing that its interests contradict interests of another person shows to the specified person (the material component of the legal conflict) and/or the disinterested third party. The procedural component of legal dispute consists available legal relationship, procedural interaction, Thus, legal dispute is understood as the legal relationship that resulted from presentation by the person believing that its interests contradict interests of another person, the requirement to the specified person and/or to the disinterested third party being in process of permission.

CONCLUSION

Above, we described the approaches to the understanding of the categories "legal conflict" and "legal dispute" existing in the theory of legal process. Generalizing the existing approaches, it is possible to conclude that both categories reflect the condition of the contradiction between privies. At the same time, the question of the ratio of legal dispute and the legal conflict cannot be carried on the most developed questions of the theory of legal process. Now in forensic science, it is possible to allocate the following approaches to the ratio of the categories "legal conflict" and "legal dispute".

The concept of the originate of the actual social conflict according to which the social conflict that gradually originate and comes to the end of dispute on the right is primary.

The concept of the conflict as a certain stage of development of dispute according to which dispute can develop in severe disagreements with bigger acuteness which represent the conflict. The concept of understanding of dispute as contents of the legal conflict according to which the legal conflict is the situation where the parties argue and resist each other concerning the rights and legal obligations.

The concept according to which legal dispute along with the offense is kinds of the legal conflict. The legal conflict represents the counteraction of persons of law connected with the availability of inconsistent social interests at the parties of dispute in which the parties base the behavior and requirements or refusal in satisfaction of needs of the existing positive law or work contrary to the established legal bans and legal obligations.

The concept of understanding of dispute as an external and formal manifestation of the conflict in which the parties make the dependent claim or one party declares the right and makes the certain demand and other party denies at the first availability of such right and refuses satisfaction of such requirement.

We believe that all above approaches are based on philosophical interpretation of the concepts "dispute" and "conflict". Reasonings on the ratio of the above categories are reduced to the empirical perception of outer effects, the emotions arising in the course of existence of a dispute or the conflict. However, such understanding of the studied phenomena is not based on the procedural legal theory. For anybody, not the secret, those internal contradictions are immanently inherent in any legal relationship. Despite, recognition by many scientists of that as the legal conflict and legal dispute is shown in the form of active counteraction of the parties, the specified categories continue to be considered as absolutely different concepts as stages of the uniform process and so on.

At the same time, we believe that all procedural categories "the legal conflict" and "legal dispute" correspond among themselves as the general and private. Legal dispute represents the kind of the legal conflict and respectively, possesses the main lines of the category, patrimonial for itself and distinctive signs. Legal dispute differs from the legal conflict in availability of certain features in the material component that are shown in possibility of presentation of the requirement not only to the subject with inconsistent interests but also to the third party (the specified feature is not always displayed); availability of the procedural component which is shown in the procedural interaction of privies directed on the conflict resolution. Thus, despite the uniform legal nature of the conflict and dispute, the last possesses certain features.

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