

BEZPALOVA, O.; KHAR, I.; ILCHYSHYN, V.; ISAIENKO, Y.; DOROSHENKO, K. Principles of Law: methodological approaches to understanding in the context of modern globalization transformations

**PRINCIPLES OF LAW: METHODOLOGICAL APPROACHES TO  
UNDERSTANDING IN THE CONTEXT OF MODERN  
GLOBALIZATION TRANSFORMATIONS**

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**ABSTRACT**

The purpose of the research is to highlight methodological approaches to understanding principles of law in the context of modern globalization transformations. Main content. Their ontological, epistemological and axiological nature are revealed, in particular, links of the principles of law with human existence, science and other ways of world perception are being traced. Methodology: The methodological basis of the research is the dialectical method of scientific knowledge, through the application of this method considered were legal, functional, organizational and procedural aspects of methodological approaches to understanding of principles of law in the context of

modern globalization transformations. Conclusions. The classification of the principles of law was singled out and a brief description of their types — universal principles, civilizational principles, and right-family principles and possibilities of separating principles of the national legal system was provided.

**Keywords:** principles of law; ontological nature; epistemological nature; axiological nature; science; classification; universal principles.

## **PRINCÍPIOS DE DIREITO: ABORDAGENS METODOLÓGICAS PARA COMPREENDER NO CONTEXTO DAS TRANSFORMAÇÕES DA GLOBALIZAÇÃO MODERNA**

### **RESUMO**

O objetivo da pesquisa é destacar abordagens metodológicas para a compreensão dos princípios do direito no contexto das transformações da globalização moderna. Conteúdo principal. Revelam-se a sua natureza ontológica, epistemológica e axiológica, em particular, vão-se traçando ligações dos princípios do direito com a existência humana, a ciência e outras formas de percepção do mundo. Metodologia: A base metodológica da pesquisa é o método dialético do conhecimento científico, por meio da aplicação deste método foram considerados os aspectos jurídicos, funcionais, organizacionais e processuais das abordagens metodológicas para a compreensão dos princípios do direito no contexto das transformações da globalização moderna. Conclusões. Destacou-se a classificação dos princípios do direito e fez-se uma breve descrição de seus tipos — princípios universais, princípios civilizacionais e princípios de direito-família e possibilidades de separação de princípios do ordenamento jurídico nacional.

**Palavras-chave:** princípios de direito; natureza ontológica; natureza epistemológica; natureza axiológica; ciência; classificação; princípios universais.

### **1 INTRODUCTION**

Principles of law are one of the fundamental and, along with legal norms, most commonly used notions of the general theory of law and specialized and interdisciplinary legal sciences. They are mentioned almost in all monographic legal studies. As a rule special attention is paid to them also in numerous training manuals and textbooks in any sphere of legal knowledge.

Despite this, the problem of principles of law can be classified as one of the most complex, contradictory, and ideologically and methodologically unintelligible problems in the domestic, as well as in the post-Soviet, general theoretical jurisprudence. According to the previous Soviet-positivist tradition, principles of law often continue to be defined as initial, guiding, fundamental ideas (standards) of law, which are enshrined in laws and other normative acts either directly (textual enshrining) or derive from their content (contextual enshrining) and are derived from the

system of legislation in a logical and inductive way. Depending on whether or not they are formally enshrined in normative acts distinguished are principles of law and principles of legal awareness, principles of law and legal principles, principles of general social law and principles of legal law, norms-principles related to specialized constitutional norms, and principles of law, etc. Relations of principles of law with values in general and legal values in particular, with science and other forms of reality (morality, religion and art) are not explicitly interpreted. Principles of law (even general ones) are often “tied” exclusively to the characteristics of the national legal system of Ukraine, and their classification covers ideas quite diverse in their nature and purpose (from political, ideological, religious, aesthetic ones to special legal ones).

Lack of proper world-view and methodological understanding of principles of the law negatively affects legal practice, in particular, activities of courts.

The purpose of this article is to highlight methodological approaches to understanding principles of law in the context of modern globalization transformations.

## **2 METHODOLOGY**

The research is based on the work of foreign and Ukrainian researchers on methodological approaches of understanding principles of law in the contexts of modern globalization transformations.

The essence of methodological approaches of understanding principles of law in the context of modern globalization transformations was determined by the use of the gnoseological method; with the help of the logic-semantics method the conceptual apparatus was deepened, and the essence of the concepts of principles of law in the context of modern globalization transformations was determined. By means of using the system-structural method investigated are components of methodological approaches to understanding of principles of law in the context of modern globalization transformations. The structural-logical method was used to define the basic directions for optimization of methodological approaches to understanding of principles of law in the context of modern globalization transformations.

## **3 LITERATURE REVIEW**

Principles of law cannot be reduced to outwardly expressed symbolic forms that exist independently of the subject (a person), as well as the law itself, just like the law itself cannot be

reduced to a closed, logically non-contradictory system of norms formulated in laws and other state regulatory acts. The ontological nature of principles of law is much more complicated. As rightly stated in the “Conclusions and Recommendations from the Nationwide Legal Discussion” regarding principles of law, this nature cannot be adequately explained based on legal-positivist theoretical positions (POHREBNIAK, 2007).

Genesis of the principles of law is not related to normative-state expression of will, as is commonly believed according to these positions. These principles (just like the law itself) are a product of human activity. Their formation took place in the process of interaction, communication between people, mutual coordination of their behavior and mutual responsibility for this behavior alongside with formation of the law itself, i.e. “from below”, within the limits of a single integral process, and not through state’s generalizations of already functioning customary legal norms that arose earlier. As evidenced by historical and anthropological research, formation of customs themselves took place under a significant (and often decisive) influence of transcendental sources that went beyond the “world of phenomena” and cannot be verified by experience myths, religious ideas, etc. (such sources include myths, religious ideas, etc.).

Therefore, the roots of principles of law should be sought in mythology, under the determining influence of which numerous taboos on incest, marital (primarily female) infidelity, theft, etc., were formulated (NORBERT, 2005). In religion, in particular, they were formulated in such divine commandments typical of all religions, such as “do not kill”, “do not steal”, “do not commit adultery”, etc., which became the foundation of virtually all legal systems, despite significant differences between them; in social morality they were formulated, in particular in such its principles as “give everyone according to his/her merits”, “caring for your own good, do not harm others”, “don't be a judge in your own case”, etc., which have not lost their significance even today.

At the same time, the formation of principles of law was subordinated to the decision of practical tasks (making decisions in specific life situations, i.e., principles of law were established first of all due to the practice of ancient arbitrators (judges who solved legal disputes).

The same historical-anthropological studies show that customs as a source of law often arose later than the principles and the decisions of ancient judges based on such customs. Their adoption was influenced by the ideas of justice, correctness, truthfulness, integrity and other moral values prevailing in the society.

Thus, principles of law, as well as the law itself, have a non-governmental origin. The state (government) joined formation of such principles only at certain historical stages of legal

development when the purely empirical procedure of law-making and the oral form of transmission of legal information turned out to be unable to provide reliable statutory and legal regulation in the conditions of complicated social relations and their growing dynamism. In this connection, there was a need for written expression of legal norms and principles in the form of state normative acts, which would not limit with fixing existing typified relations (legal relations) and judicial decisions, but which would try, on the one hand, to regulate them in advance, ahead of the dynamics of public life (which led to an increase in the level of abstraction, generalizations of normative formulas) and , on the other hand, to provide greater definition of rules and principles of law (which would eliminate elements of subjectivity in their application) (CHYZHMAR *et al.*, 2019).

#### 4 RESULTS AND DISCUSSION

As in many other issues related to principles of law, there is no unity of opinions in approaches to their classification. The most common is their division into general, inter-branch principles, sectoral principles and principles of law institutes (LEHEZA *et al.*, 2022). At the same time, in contrast to the Western theory of law, where general principles are understood as principles that operate in all legal systems (BERZHEL, 2000), in domestic general theoretical jurisprudence (BERZHEL, 2000), in the national general theoretical jurisprudence.

General principles of law are generally referred to as those that apply to the entire system of law of the country and apply to all branches and institutions, i.e., they are reduced, as have already been mentioned, exclusively to characteristics of the national legal system (BUHA *et al.*, 2022).

This limitation of the scope of general principles of law by the national legal system can obviously be explained by the inertia of the Soviet methodological approaches, according to these methodological approaches any universality of principles of law was denied due to incompatibility of the essence of the “socialist law” with the “bourgeois” law (KOLINKO *et al.*, 2021). However, for the sake of fairness, it should be noted that even in the Western world, the official recognition of the existence of principles of law common to legal systems (and that mainly within the framework of international legal systems) took place relatively recently (only after the Second World War) (LEHEZA *et al.*, 2020).

Other, more advanced classifications of principles of law are often proposed in the

domestic and post-Soviet literature. For example, in addition to sectoral and inter-sectoral principles of law P. Rabinovych defines universal human principles, typological principles and specific-historical principles. He defines universal human principles of law as “conceptual legal principles which are conditioned by a certain level of development of human civilization and embody the best progressive achievements of the world legal history and are widely recognized in international normative documents” (RABINOVYCH, 2007). In particular, among them the author refers to:

- Enshrined and protected by law fundamental human rights, freedom of people and their associations;
- Legally (formally-defined and mandatory) equality of the same-named subjects before the state and the law;
- Recognition of the law (as an act of normative will of the highest representative body of the state power or direct expression of the people’s will (referendum)) to be the original, primary official source of subjective rights and duties of individuals;
- Unity of legal rights and obligations;
- Regulating behavior of people and their associations according to the generally permitted type “Everything which is not forbidden is allowed by the law”;
- Regulating activities of state bodies and officials according to the specially permitted type: “Only what is expressly allowed by law can be done.” and so on (BEZPALOVA *et al.*, 2021).

According to P. Rabinovych typological principles of law include “its guiding principles (ideas), which are characteristic of all legal systems of a certain historical type and reflect its social and contextual essence” (RABINOVYCH, 2007).

Specific historical principles of law are defined as principles that reflect specificity of the law of a particular state in real social conditions.

Tribute should be paid to P. Rabinovych’s effort, firstly, to go beyond the traditional for Soviet jurisprudence tying principles of law to a specific legal system, and secondly, to focus attention precisely on legal (and not on political, ideological, etc.) foundations, which determine content and direction of legal regulation; at the same time, one cannot fail to notice vulnerable places in the classification of legal principles proposed by the author (RABINOVYCH, 2007).

According to him universal human principles include many principles that are a characteristic rather of the law of a separate civilization (in this case, European civilization) or

even a certain legal family (in particular, a continental one) and can hardly be extended to all civilizations and legal families, that is, to claim the name of universal civilizational ones or universal human ones (YUNINA, *et al.*, 2020).

Separation of typological principles of law would obviously be justified on the condition of preserving the formational approach to the typology of law, which today is far from indisputable, and specific historical principles of law (at least those named by the author) rather characterize peculiarities of law relationships with the state system and not law as a phenomenon (LEHEZA *et al.*, 2022).

In a broader context, depending on the level of public relations governed by law, principles of law are also viewed by O. Skakun. In the system of principles, she defines the following types: Universal human (international, civil) principles, regional-continental principles and national (domestic) principles. The latter, in their turn, are divided into general legal (general, basic) principles, inter-branch principles, sectoral principles, subsectoral principles and institutional principles (SKAKUN, 2005). According to O. Skakun universal human (universal civilizational) principles of law include principles that are valid within the international legal order and determined by the achieved level of mankind development. In her opinion, these are principles of humanism, legal equality, freedom, democracy, justice, legality (VASYLIEVA *et al.*, 2020).

Regional-continental principles of law operate within national legal systems that have created interstate associations on the continents of the world (for example, the principles laid down in the Treaty establishing the European Economic Community). O. Skakun believes that these principles usually coincide with universal human principles (SKAKUN, 2005).

Other domestic jurists are also inclined to recognize the universal nature of certain principles of law, their civilizational and right-family features. In particular in the system of general principles of law S. Pohrebniak determines a group of fundamental principles which are “laid in the basis of law and form its foundation” (POHREBNIAK, 2008). They are not just a concentrated expression of the most important essential features and values characteristic of a certain society, but they are “often a consolidation of those higher principles and values that form universal dimension of the society” (POHRREBNIAK, 2008). “Most of such principles are based on “natural justice” common to all legal systems” According to S. Pohrrebniak fundamental principles of law Pogrebniak, apart from justice, also include equality, freedom and humanism (POHRREBNIAK, 2008). Fundamental general legal principles of law common to all legal systems were described by S. Shevchuk (SHEVCHUK, 2007).

Summarizing these disparate and sometimes contradictory positions, it is possible to

propose the following classification (the following main types) of principles of law according to their scope:

- a) Universal (universal human) principles of law, i.e. fundamental, basic legal principles, formulated in the process of centuries-long history of progressive development of law, inherent in all legal systems;
- b) Civilizational principles of law that characterize certain legal cultures and traditions embodied in their respective civilizations;
- c) Right-family principles of law, i.e. the principles inherent in separate legal families (even within the limits of one civilization);
- d) National principles of law, i.e. principles formulated and operated within a certain national legal system, reflecting its peculiarities (LEHEZA *et al.*, 2022).

A relatively autonomous system of principles of law is formed by principles of international law, among which are also defined as general principles of international law (according to the formula presented in the Article 38 the Statute of the International Court of Justice of the United Nations (hereinafter the UN) — “General principles of law recognized by civilized Nations”), the sectoral principles and principles of the institutions of international law. Although there are many of these principles that extend their effect to national legal systems, it is not correct to fully identify general principles of law with generally accepted principles of international law, as is sometimes the case in the literature (LEHEZA *et al.*, 2022).

## 5 CONCLUSIONS

Based on the above it can be concluded that universal human universal values common to all civilizations and legal systems first of all include human rights.

The path to their universalization was rather complicated and controversial. For a long period of time, it was believed that conceptual ideas about human rights differ significantly in different civilizations, therefore rejected was any possibility of their universalization, at least at the level of an international document establishing minimum standards for provision and protection of human rights. They were viewed as an internal matter of each state or civilization, which can have their own view of their nature and the level of provision and protection. Attempts to conceptually “westernize” human rights, i.e. attempts to spread Western European ideas about them and their scope to other countries and civilizations, especially with the help of pressure, met



with sharp resistance and often ended in fiasco.

In spite of this human rights influenced by various factors gradually acquired a universal civilizational character while becoming an object of international legal regulation. As noted in the literature sources, today they are considered a normative standard that claims universal and unconditional reception throughout the world. Their universality grows all the more in the context of modern human-centered globalization transformations, which were discussed earlier.

For example, In Ukraine universal, civilizational and right-family principles of law are “passed” through the prism of both positive and negative factors inherent in it. Thus, functioning of principles of law in Ukraine is positively influenced by certain features genetically inherent to the Ukrainian people; such features include primordial desire for freedom, creation of their own independent state, tolerance, respect for human dignity, etc.

Agreeing with the fact that independent Ukraine and its legal system can exist only in the European civilizational and mental dimension, at the same time it should be realized that our state is currently only at the beginning of its return to Europe and European values.

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