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АДМІНІСТРАТИВНЕ ПРАВО І ПРОЦЕС. ФІНАНСОВЕ ПРАВО

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THE MAIN FEATURES OF LEGAL CONFLICT AND LEGAL DISPUTE

Research article provides an analysis of legal conflicts and legal disputes. It has been stated that a large number of disputes, such as occurring between people, have a legal character. It is outlined that disputes often turn into conflicts that lead to the use of force and weapons.

Paper underlines that the concept of the legal conflict is not fixed in the legislation. It exists only in the dictionaries.

The notion of the legal dispute is used in the legislation

Keywords*: legal conflict, legal dispute, classification of legal conflicts, basis of legal conflicts and legal disputes, several forms and methods of resolving legal conflicts and legal disputes.*

The divergence of public interests creates conflicts and contradictions in the social environment [1, p. 52]. Conflicts, disputes as a social phenomenon explore many different fields of science (philosophy, anthropology, history, psychology, sociology, political science, jurisprudence, ethics, economics, mathematics, management, game theory, etc.). In the literature there are many definitions of the concept of "conflict", generalizing them, we can distinguish certain general aspects, in particular: the presence of contradictions, counteraction of subjects, the desire to cause harm, to receive compensation and so on.

For philosophers, the category of conflict is an integral part of being alive on earth. Historians are interested in the development and certain stages of conflict, their preconditions, manifestations and consequences throughout human existence. Sociologists and anthropologists examine conflicts in society: their numbers, causes, and outcomes. Political scientists study conflicts in society, how they affect them, and how they are resolved.

Lawyers study legal conflicts and investigate the peculiarities of their judicial and extrajudicial settlement. Psychologists are exploring how a person can resolve interpersonal and internal conflicts in society. Ethics and morality, for their part, set boundaries in the form of customs and certain rules that people must follow when

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dealing with conflict situations. Management scientists examine managerial and organizational conflicts. Analysts and those interested in game theory research the analytical component, form models and complicate conditions, attracting new participants in the conflict from different sides. The study of conflicts in all these fields enables us to comprehensively analyze this concept and get a general idea of their origin, development and settlement.

It is significant that the scientific literature uses not only the concept of conflict, but also the concept of dispute, so it is worth to analyze these concepts and determine their relation. The social sciences are more likely to use the concept of conflict, including such a unit as conflict resolution. Instead, legal science uses both concepts and contains a section on "dispute resolution" [2, p. 25]. It should be noted that in today's world no society can exist without an effective dispute resolution system, as evidenced by research by scientists [3, p. 17, 19].

The Great Encyclopedic Dictionary under "Conflict" (from the Latin conflict – "collisions") understands the clashes of parties, thoughts, forces etc [4, p. 625].

The Cambridge Dictionary defines conflict as an active disagreement between people with opposing opinions or principles or fighting between two or more groups of people or countries [5].

It should be noted that in philosophy, conflict is considered as "a last resort of exacerbation of contradiction" [6, p. 55]. The psychological vocabulary defines conflict as "a contradiction that is difficult to resolve because it is associated with acute emotional experiences" [7].

In the New Interpretative Dictionary of the Ukrainian language, conflict is defined as a clash of opposing interests, opinions, views; serious differences; acute dispute, friction, collision [8, p. 885]. Most often, conflict arises through controversy, but not every contradiction leads to conflict. So we can talk about the dispute, which is the primary stage of the conflict. But dispute is not always the first stage of conflict. It can be such a stage only when it arises from certain relationships. For the emergence of conflict, it is necessary that individuals (social groups) who compete, first, realize the opposite of their interests and goals; secondly, they began to actively counter the rival [9, p. 101].

There are quite a few classifications of conflicts in the scientific literature. In this case, the classification of conflicts is carried out by different criteria: forms of progress (peaceful, violent); duration (short, long); scale (local, regional, interstate); the subject (internal, external); reality (real, potential); stages of development (nascent, flowing, fading); distribution of losses and gains (symmetrical, asymmetric); manifestation (open, latent); consequences (constructive, destructive); organizational position of the parties (vertical, horizontal); number of reasons (one-factor, multi-factor); spheres (political, economic, social), method of regulation (legal, moral, religious).

It should be noted that legal conflicts are those that are often discussed in the scientific literature. This is due to the fact that the vast majority of conflicts involve violations of the rights of a party. However, as noted above, conflict may arise from a dispute over law.

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Scholars pay particular attention to legal (legal) conflicts [10, 11], which in turn can be divided into different types. In particular, Barabash proposes to deal with conflicts in the state-legal sphere in one system with labor, inter-ethnic, family, inter-state conflicts and conflicts related to human rights [11, p. 67].

Some authors propose to refer to legal conflict as any conflict in which the dispute is in one way or another related to the legal relations of the parties (their legally significant acts or states) and, as a consequence, the subjects (motivation of their behavior) or object conflict has legal features, and the conflict itself has legal consequences [12, p. 100]. The above mentioned definition does not make it possible to clearly identify the essential features of the phenomenon under study and to distinguish it from other similar ph enomena. With this approach, almost all conflicts can be characterized as legal, since most relationships are regulated by law, the parties to the conflict have some legal status, and conflicts themselves can lead to legal consequences.

A more specific definition is proposed by S. Bobrovnik. To his opinion: "Legal conflict is a state of bilateral communication between entities, which is based on a legal contradiction, characterized by a violation or obstruction in the realization of their interests and is the cause of development or crisis of social relations" [13, p. 29]. G. Klimov argues that legal conflict is the highest, most civilized form of social conflict, and it proceeds within a certain procedure; its logical basis is rather rigid argumentation; resolution of legal conflict, as a rule, formalized and sanctioned by the will of the state [9, p. 102].

Without objecting to such a characteristic of legal conflict, we do not agree only with the thesis that the resolution of legal conflict is, as a rule, formalized and sanctioned by the will of the state. Such a conclusion will be correct only for a judicial settlement of a legal conflict. It is noteworthy that the legal conflict is defined as contradictory by the social interests of the subjects of law, in which they substantiate their claims or refusal to satisfy claims in accordance with the current legislation or act contrary to established legal prohibitions and legal obligations [10, 19].

Legal conflict is a kind of social conflict. Yu.O. Tikhomirov stated that in the life of mankind there were always quarrels, reconciliation, disputes, agreements, conflicts, harmony, wars, peace stages etc. People have always been looking for ways to prevent then contradicting each other. Both law and legal acts were parties to these relations – as a pretext and purpose, as an arbitrator and a judge, as a means of reconciling these interests [14, p. 3].

A sign of today is the aggravation of the problem of legal contradictions and conflicts. This is due to the significant expansion of the "field of legal development". The shared and conflicting interests of states, private national and transnational structures, individuals lead to clashes and conflicts in this field.

In our study, in terms of general theoretical analysis, the concepts of "law conflict" and "legal conflict" are regarded as equivalent (synonyms), although within the framework of special studies they may differ because they reflect different phenomena of legal reality.

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Conflicts are usually characterized as social phenomena, which is why most scholars regard legal conflict as a kind of social conflict and define it as a clash of opposing interests of legal entities in order to change their status [15; 35]. Others argue that legal conflicts can be not only social but also political.

In our opinion, legal (law) conflicts can arise in any area (political, economic, social), but not every conflict in these areas can be characterized as legal. D. Davydenko emphasizes that conflict is, first and foremost, a philosophical, sociological, psychological concept and implies contradictions between individuals or their groups. Moreover, such a contradiction is not necessarily legal. The dispute, in his opinion, is an external and formal manifestation of the conflict, when the parties make mutual claims to each other or one of the parties claims the other and formulates certain claims, and the other denies the presence of such right in the first party and refuses to satisfy a certain claim. Consequently, the conflict is a broader concept than dispute [17].

Contrary to conflict, a legal dispute is also considered a conflict, but it can be resolved through negotiation.

As it is regarded there is no single approach of legal dispute in the legal literature and its definition are very often differ. E. Lupariev defines legal dispute as a type of legal relations, characterized by the presence of contradictions of the parties, which were caused by a conflict of interests or inevitability of views on the legality and validity of the actions of the subjects of legal relations [16, p. 50]. According to A. Zelentsov, a legal dispute as a legal phenomenon is not directly generated by a conflict of interests but by a conflict of rights arising from the violation of the rights and freedoms of citizens [18, p. 47]. N. Khamaneva points out that along with subjective law, the subject of legal dispute may include the interest protected by law [19, p. 11].

The definition of a legal dispute exists both in the legislation and in the legal literature [20]. Article 1 of the Law of Ukraine "On Financial Restructuring" states: "Dispute is a contradiction or dispute between the attracted creditors or between the attracted creditors and the debtor regarding the priority and size of creditors' claims" [21]. According to paragraph 2 of Part 1 of Art. 4 Code of Administrative Procedure of Ukraine: "Public legal dispute is a dispute in which: at least one party performs publicly-administrative management functions, including the exercise of delegated powers, and the dispute arose in connection with the performance or non-performance by such party of the mentioned functions; or at least one party provides administrative services under a law that authorizes or obliges to provide such services solely to the authority and the dispute arises in connection with the provision or non-provision by such party of such services; or at least one party to the electoral process or referendum process and a dispute arose over a violation of its rights in such a process by a party of authority or another person" [22].

An analysis of these provisions indicates that the legislator does not have the task of comprehensively characterizing or formulating the concept of "dispute", "legal dispute", but merely defines the dispute as a contradiction or dispute and outlines the subjective composition of these relations.

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In some publications, conflict and dispute are defined as synonyms. For example, in the Burtons legal dictionary, conflict is a dispute between somebody's about something, or opposition to the others [23, p. 1136]. In the Dictionary of Dispute Resolution, conflict and dispute are interpreted as a discrepancy, expression or manifestation of a state of incompatibility [24, p. 114]. At the same time, most experts distinguish these concepts.

However, the distinction between these concepts is to some extent based on the types of conflict and dispute resolution. Ivchuk S.V. considers that legal conflict is in most cases a conflict between a person and the established rules, that is, between a person and a state or government agencies. That is, a person violates the statutory rules, commits theft, causes bodily harm to another person, and thus he conflicts with the law [27]. A legal dispute arises in the event of disagreement between the parties regarding certain matters of economic or commercial activity. A legal dispute can be resolved through negotiation or arbitration, but the conflict can only be resolved by a court.

For example, J. Burton noted that the dispute involves the interests of the parties that may be the subject of discussion, while conflicts include principled positions that cannot be agreed, that is, issues that cannot be compromised [24]. Black's Law Dictionary defines: "A dispute is a conflict or contradiction, especially one that results in a lawsuit" [25, p. 2052]. The Dictionary of the Swiss Arbitration Association identifies the dispute as a dispute over a matter that is an arbitrary, that is, which can be resolved by a third party party (within its competence). This dictionary does not contain the concept of "conflict" [26, p. 17].

Analyzing the relationship between the concepts of "legal conflict" and "legal dispute", P. Astakhov argues that legal conflict has two significant in the legal sense of the form – legal dispute and offense. Offense as a form of legal conflict is predominantly negative, destructive in nature, but legal dispute is mostly positive, constructive. Beyond the legal properties of content and form, there can be no legal concept of conflict. According to the scientist, a legal dispute appears as an internal form of a legal conflict, while an external legal procedure is a legal procedure for its resolution, both substantive and procedural [8, p. 19].

At the same time, the proposal to distinguish two forms of legal conflict is debatable. Legal dispute can be considered as a form of legal conflict even in the case of an offense, since even then there can be disputes between the respective legal entities about the legality of mutual rights and obligations, which are expressed in mutual claims, objections within the established legal procedures. However, a legal dispute in the event of an offense can only be resolved by a court, because the offense entails a liability that is established by the relevant codes.

Summarizing the above mentioned arguments, we can conclude that legal conflict and legal dispute should be considered using the "form" and "content" categories. Thus, legal dispute is a form of legal conflict, that is, there can be no legal dispute without legal conflict, while not every legal conflict becomes a form of legal dispute.

S. Kivalov draws attention to the fact that the existing need to define a purely legal term "legal dispute" using the categorical apparatus established in jurisprudence

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has led to the formation of two approaches: legal dispute as a legal case and legal dispute as a protected legal relationship. In his opinion, their analysis makes it possible to conclude that they cannot be opposed to each other or considered in the "general" and "partial" dimension. Separate approaches, respectively, reveal the external expression of the legal dispute and its internal content, and collectively enable the fullest possible disclosure of the essence of this complex and so far unexplored category [28, p. 9]. This approach is quite productive and deserve the support, as it enables a comprehensive description of the legal dispute.

In the scientific literature, the following features of a legal dispute are distinguished:

a) participants are legal entities;

b) each party differently considers the scope of the rights and duties (both of his or her opponent);

c) the resolution of a legal dispute may be carried out by one or more bodies empowered by law (court, public administration body, arbitration court);

d) the legislation provides for a certain procedure for resolving the dispute (lawsuit in courts, pleadings in public administration);

e) the main task in settling a legal dispute is to protect or restore the rights, freedoms and legitimate interests of its participants, the interests of the state or territorial community [28, p. 9].

This list of signs of litigation looks a bit fragmentary. This is due to the traditional approach to the settlement of legal disputes in domestic jurisprudence, mainly in court or administrative order, so there is no mention of the possibility of an alternative (extrajudicial) resolution of them.

It should be noted that the signs of a legal dispute are:

a) the presence of contradictions, disputes;

b) their sphere of origin – relations governed by law;

c) participants – legal entities;

d) basis – legal causes of legal dispute;

e) formulation of claims, objections;

f) the efforts of the participants to resolve the dispute directly or through the mediation of a third party (court, public authority, arbitration tribunal, arbitration tribunal, mediator, expert);

g) adherence to a certain procedural procedure for the resolution of a dispute (defined by law, agreement of the parties);

h) settlement of a legal dispute by decision (court, public authority, arbitration court), conclusion of an agreement (peace agreement), etc.

The main task of resolving a legal dispute is to influence the conflicting parties to resolve the conflict (disputes, contradictions).

The word "solve", according to the interpretative dictionary, means:

a) drawing any conclusion;

b) to find any answer, to solve questions, to judge, to put to itself, to make the decision, to solve, to approve;

c) to bring to a certain result any action, condition, etc.;

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d) to perform, construct, place, select, etc. in some way [29, p. 249]. The above mentioned explanations of the essence of this word make it possible to form an idea of possible ways of influencing the conflict and the parties to the legal dispute.

There are two main ways to resolve a legal dispute:

1) compromise – agreement, understanding, reached through mutual concessions of the parties [30, p. 329]. In the explanatory dictionary, "compromise" is interpreted as agreeing with someone in something that is achieved by mutual action; concession for the sake of achieving the goal [29, p. 875]. The settlement of the dispute through compromise is not through unilateral imposition of will, but through the active interaction of both parties to the conflict. The result may be to maintain the parties' positions, or to agree on restrictions based on the rights and interests of the parties involved;

2) coercive reconciliation, the basis of which is to impose on one party (or third party to all participants) a relationship that can result in: a) an asymmetric solution (the result of which is the victory of one and the defeat of the other); b) symmetric solution (resulting in partial gain or loss on both sides).

Conflicts can be resolved through a variety of means, such as: force, the judiciary, appeals to state or local governments (depending on the level), through alternative dispute resolution. To settle conflicts is possible as a result of events that are not dependent on the will of the parties or otherwise, it is impossible to make a comprehensive list of them.

Resolutions of legal conflict and legal dispute are inherently different phenomena. Not always resolving a legal dispute leads to a resolution of a legal conflict, sometimes a court decision on a legal dispute can aggravate the conflict. Without removing the ontological content of the conflict, its subject matter and its causes, it can weaken or grow into another conflict.

Conflict resolution by force is one of the oldest one and means that the right side is stronger one. Today, oddly enough, many conflicts are resolved by force. In this regard, G. Klimov notes that for legal conflict the use of force, violence is not contraindicated.

Violence, when used with legitimate law enforcement agencies, may often be necessary to prevent or end a conflict or punish perpetrators. It is important that it is not transformed into an instrument of outrage and violation of citizens' rights, but rather a necessary and sufficient measure of order. Therefore, violent, coercive measures in many cases accompany the legal conflict throughout its development, for example, operative measures to detain the offender, selective measures of termination and other coercive actions (search, review, bringing), punishment imposed by the court [31, p. 105]. The following examples of violent, coercive measures as a way of resolving conflicts, in our opinion, are not sufficiently successful and convincing, but we will not deny the existence of forceful ways of resolving conflicts in modern society, since it is well-known that long ago one of such methods of resolving interstate conflicts is [30].

At the same time it should be noted that the settlement of legal disputes by force means is impossible. The use of force in the resolution of a legal dispute violates

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the established procedure, its mandatory component, which as a result negates the legal dispute itself. The above mentioned aspect shows quite clearly the difference between legal conflicts and legal disputes.

Litigation is a way of resolving legal disputes that the state provides as a sovereign in its own territory. Problems of resolving legal disputes by judicial authorities were investigated at the dissertations [32] and monographic [33] levels.

Administrative dispute resolution by administrative bodies [34] governmental and local government also goes beyond the scope of our study. It is necessary to recognize that this area is less developed and researched: scientists usually pay attention to the administrative procedure for resolving legal disputes sporadically, in the framework of other case studies.

Summary

1. Conflicts and disputes in society, which arise both between individuals and between companies and states play a very important role in the development of society.

2. Conflicts and disputes are now resolved peacefully in most cases, but there are cases of force and weapons.

3. The study of alternative methods of conflict resolution is very important, because their use can save money, time, and sometimes lives.

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ГОЛОВНІ РИСИ, ЯКІ ХАРАКТЕРИЗУЮТЬ ПРАВОВИЙ КОНФЛІКТ ТА ПРАВОВИЙ СПІР

У статті проводиться аналіз правових конфліктів та правових спорів. Доведено, що більшість спорів, які виникають між людьми, мають правовий характер. До того ж, спори досить часто переходять у конфлікти, які призводять до застосування сили та зброї.

Наводяться окремі характеристики конфліктів, які визначаються в науковій літературі. Водночас констатується, що в юридичній літературі існує досить багато класифікацій конфліктів. Здебільшого класифікація конфліктів здійснюється за різними критеріями: форми прогресу (мирний, насильницький); тривалість (коротка, довга); масштаб (місцевий, регіональний, міждержавний); предмет (внутрішній, зовнішній); реальність (реальна, потенційна); стадії розвитку (зароджується, триває, завершується); розподіл втрат і прибутків (симетричний, асиметричний); прояви (відкритий, прихований); наслідки (конструктивні, деструктивні); організаційні положення учасників (вертикальне, горизонтальне); кількість причин (однофакторна, багатофакторна); сфери (політична, економічна, соціальна), методи регулювання (правовий, моральний, релігійний).

Проте поняття юридичний конфлікт не закріплене в законодавстві.

На відміну від конфліктів, правові спори визначаються як у законодавстві, так і в юридичній літературі. У статті 1 Закону України “Про фінансову реструктуризацію” зазначено: “Суперечка (спір) − це суперечність або суперечка між залученими кредиторами або між залученими кредиторами та боржником щодо пріоритетності та розміру вимог кредиторів”.

Зважаючи на різні підходи до конфліктів та правових спорів, у статті проаналізовано і окремі форми припинення конфліктів та вирішення юридичних спорів. Констатується, що юридичні спори можуть також бути початком конфліктів, якщо вони вчасно не вирішуються.

Ключові слова: юридичний конфлікт, юридичний спір, класифікація юридичних конфліктів, база юридичних конфліктів та юридичних спорів, окремі форми і методи вирішення юридичних конфліктів та юридичних спорів.

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