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PRINCIPLES OF JUSTICE AND EQUALITY, THEIR RELATION TO THE RULES-EXCEPTIONS

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Abstract

A characteristic feature of the modern stage of social development is the gradual modernization and improvement of public relations. The legislation of any state contains a significant number of special installations that regulate specific types of public relations. Rules-exceptions, being a special kind of technical rules, represent some deviations, departures from the typed rules of conduct, fixed in the general legal prescription in the form of privileges, advantage, immunities and exceptions. In the article, the author shows the correlation of the principle of justice, which is presented as a set of certain rules of behavior, norms, stereotypes and ideals for all subjects of public relations with the norms-exceptions. The author of the article pays special attention to certain categories of persons whose legal status has distinctive features related to legal regulation carried out by rules-exceptions. Rules-exceptions, on the one hand, increase the scope of the subjects' rights, and on the other, reduce the total number of obligations. Thus, the rules-exceptions are a phenomenon that ensures legal regulation and public administration. The legislator, when setting rules-exceptions, proceeds from the idea of justice, which can have many-sided manifestations. It is established that the rules-exceptions do not violate the principles of justice and equality, because justice and legal equality do not mean that the legislator can not establish various benefits and privileges, immunities and exceptions for individuals.

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Keywords: Norm-exceptions, justice, principle of equality, legislation, immunity, inviolability.



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1. Introduction

The legislation of any state contains a significant number of special installations that regulate specific types of public relations. Rules-exceptions, being a special kind of technical rules, represent some deviations, departures from the typed rules of conduct, fixed in the general legal prescription in the form of privileges, advantage, immunities and exceptions. Rules-exceptions, on the one hand, increase the scope of the subjects rights, and on the other, reduce the total number of obligations. Thus, the rules-exceptions are a phenomenon that ensures legal regulation and public administration. The legislator, when setting rules-exceptions, proceeds from the idea of justice, which can have multilateral manifestations (Malko & Khizhnyak, 2019).

2. Problem Statement

In this paper, we will try to assess the relationship between the legal categories of equality and justice. And we will try to characterize the approaches developed in legal science to the question of the correlation of norm-exceptions with the principles of justice and equality, too. In this paper, we describe the above-named questions.

3. Research Questions

- Define legal immunity as a form of expression of norm-exceptions. Norm-exceptions and their impact on the principle of justice.
- The ratio of the principle of justice as an evaluation category to the principle of equality. Determine the content of the concepts of "fair equality" and "fair inequality".
- Describe the approaches developed in legal science to the question of the correlation of norm-exceptions with the principles of justice and equality.

4. Purpose of the Study

The purpose of this research is to study the norm –exceptions that are established by the state in order to "reach" the equality regime, when a certain group of subjects is in special conditions of life and professional activity or differs in physiological and age characteristics. Show the correlation of norm-exceptions with the principles of justice and equality. To show the relation of rules-exceptions to the principles of justice and equality, as well as the balance in proportionality between the general establishment and the normative exception, on a retreat from which it is possible to call into question the existence of equality and justice.

5. Research Methods

In the process of writing this work, the following research methods were used: formal-legal (dogmatic) method, according to which we investigated the impact of rules-exceptions on the principles of justice and equality, defined their evaluation criteria , as well as a method of system analysis, which helped

to characterize the current situation, indicating the relationship of the principles of justice and equality with the norm-exceptions. The method of logical structuring helped to draw conclusions after the analysis.

6. Findings

In general, justice as the highest social value is a certain set of certain rules of behavior, norms, stereotypes and ideals in the system of real social relations. Having regulatory qualities, the requirements of fairness are General. At the same time, the requirements of justice can be applied not only to all subjects of public relations, but also to certain categories of citizens. The main thing is that these rules of conduct are applied impartially and objectively. Acting as a universally valid value, a morally justified criterion, justice measures social phenomena and actions of subjects, according to which everyone is rewarded for his actions in the form of the occurrence of certain consequences. Thus, justice is an evaluation category.

Historically, the content of justice was based on the idea of a combination of "fair equality" and "fair inequality". In other words, justice can be expressed in equal treatment of equal people and unequal treatment of unequal people.

In the first case, the content of "equal justice" is formed by such properties as:

- Proportionality and balance of interests of various members of civil society;
- Equal distribution of benefits among the subjects and the same reward for each of their actions in the form of the occurrence of certain consequences;
- Equality before the law and its equal application to all persons;
- Providing equal opportunities for the realization of rights, freedoms and legitimate interests, as well as equal grounds for their restrictions;
- Uniform distribution of rights and responsibilities.

However, people from birth are unequal in their mental and physical abilities, social and marital status. Therefore, a single legal scale is not applied to the behavior of people with different social status, and legal norms provide an opportunity to take into account the specifics of the circumstances of specific cases when applying the law. A system of inequality is only fair if it benefits everyone, but especially the less prosperous part of society. Inequality is unfair, as a result of which some move forward, while others lose in this development. If the inequalities introduced into the social system allow everyone to improve their situation in comparison with the hypothetical initial situation, then this inequality corresponds to the concept of "justice as honesty" (Rawls, 1995, p.532).

Thus, equality and inequality as the content of justice in their totality serve to protect the interests of each individual as much as possible and not to harm the public good, the interests of the people and the state, and the legitimate interests of others. At the same time, speaking about the ratio of equality and justice, it should be noted that almost all researchers do not think of justice without equality (Baranov, 1984). However, their ratio is determined ambiguously.

Some authors consider equality as a means to achieve justice. So, for example, Tsybulevskaya (2004) notes that "... it should be ensured not actual equality, but equality of all before the law, ...equality of human and civil rights and freedoms, as well as equal rights and freedoms of men and women" (p.219).

Others believe that equality is one of the components of justice, since justice is not only about equality, but in appropriate situations and in correct, progressive inequality (Bonner, 1992). In our opinion,

the position of the authors who note the independence of the categories "justice" and "equality" is more correct. However, the point of view of those researchers who consider the question of the ratio of justice and equality from the position of the supremacy of one of the compared phenomena is controversial (Byrdin, 2000). Of course, justice in law is impossible without legal equality, but it would be a mistake to consider justice and equality as identical.

These two phenomena can be distinguished, first, by the amount of content: justice is a more capacious, multidimensional phenomenon than equality. It is no coincidence that equality is one of the many aspects that characterize justice as an independent phenomenon in legal reality. Therefore, it is difficult to imagine justice without equality. These are complementary phenomena.

Secondly, if equality implies identity, mutual correspondence between phenomena, objects and subjects, and the same amount of rights and obligations in any public relations, then justice is expressed in the proportionality of the relations that arise between the subjects of law (Katomina, 2009).

At the same time, equality and justice have a unity of form, content and purpose. Therefore, the materialization of equality and justice occurs in the process of acquiring and implementing the rights, freedoms and duties of the individual. This provision is expressed in scientific publications (Tsybulevskaya, 2004) and current legislation.

Legislative introduction of rules-exceptions and improvement of existing ones depends on the current socio-economic and political situation in society. According to the fair opinion of Rep'ev (2012), "the intensity of establishing all the designated categories should be strictly proportional to the state and public needs in order to exclude deep social upheavals, public resonance, etc." (p.12). Therefore, it is necessary to observe the proportionality between the General establishment and the normative exemption. There should not be too many deviations from typed rules in society. Otherwise, the existence of equality and justice can be called into question.

In legal science, there are two approaches to the question of the correlation of rules-exceptions with the principles of justice and equality. According to one of the principles of equality and justice allow the use of special regulations for certain categories of persons. So, Lazarev (2001) on the example of benefits and advantages reveals the main purpose of standards-exemptions, namely, to overcome the existing de facto inequalities that have arisen due to age, physiological, etc. characteristics of some social groups. According to Bondar and Kapranova (2002) such special provisions "it should be considered as part of the regulatory impact of the constitutional principle of equality: legal advantages in the form of benefits and privileges have a stimulating effect on the behavior of a person and a citizen...", which means that " ... the socially significant result of their establishment justifies the permissible exclusion from the general regime of equality" (p. 190).

Therefore, the norm-exceptions are introduced by the legislator in order to best ensure fairness in the law. Rules-exceptions are established by the state in order to "reach" the equality regime, when a certain group of subjects is in special conditions of life and professional activity or differs in physiological and age characteristics.

Although there is a reverse position. In particular, Boikov (2002) believes that immunities as a kind of rules-exceptions. Baskov (1993) who hold the above specified position, seeing the purpose of legal immunities, the Department representatives of the government from ordinary citizens, concludes: "How far

we are from the constitutional principle of equality of everyone before law and court" (p.22-23) meanwhile, the representatives of this approach has never questioned the constitutionality of articles 91, 98 and 122 of the Constitution of the Russian Federation (adopted by popular vote December 12, 1993), which enshrines provisions on the immunity of the head of state, parliamentarians and judges, as contrary to the principle of equality of everyone before law and court, declared in article 19 of the Basic law of the country.

In our view, the exception rules do not violate the principles of justice and equality. After all, justice and legal equality do not mean that the legislator cannot establish various privileges and immunities, immunities and exceptions for individuals. On the contrary, by resorting to such special regulations, the state tries to protect socially important values.

Thus, immunity is a special right not to obey certain General rules in the sphere of legal responsibility, granted to a certain number of persons (Sumenkov, 2002). At the same time, immunity is ambiguously perceived by the public consciousness. Often, this form of expression of rules-exceptions is associated with the presentation of unjustified advantages to specific individuals in order to improve their quality of life. However, the immune system performs special compensating and guaranteeing functions. The legislator, is based on the nature of the job duties performed by these entities, the increased qualification requirements imposed on them, legal prohibitions and restrictions related to the replacement of certain public positions. In this regard, the legislator has the right to establish certain guarantees of independence and inviolability in the exercise of state powers within the framework of special legal regulation. Although often the term "inviolability "is replaced by the concept of "non-responsibility" of an official for their actions and decisions.

It should be emphasized that legal immunity as a form of expression of rules-exceptions does not mean that judges, deputies and other public officials who perform public service functions avoid legal responsibility. On the contrary, like all subjects of law, they are not exempt from criminal, administrative, or disciplinary responsibility for their actions and decisions. However, "The Code of Criminal Procedure of the Russian Federation" dated 18.12.2001 N 174-FZ establishes a special procedure for making judicial decisions in respect of certain categories of persons (judges, deputies, etc.). However, a Deputy of the State Duma and a member of the Federation Council cannot be held legally liable for expressing an opinion or expressing their position when voting on a particular issue in the relevant chamber of the Federal Assembly of the Russian Federation. But here it is more appropriate to speak about the inadmissibility of prosecution for the expressed point of view, which is designated by the concept of "indemnitet".

It seems that immunity as a form of expression of norm-exceptions "provides increased legal protection in the sphere of legal responsibility-the area where any inequality is most acutely perceived, even if it is based on the law" (Iogolevich & Koneva, 2012, p. 34).

7. Conclusion

Based on the above, we emphasize that the exclusion rules are aimed at ensuring equality and justice in the socio-psychological sense, and therefore do not conflict with the principles of justice and equality. One of the most important goals of the society is achieved by means of rules-exceptions – cohabitation and interaction of people to ensure the highest level of development of each member of the civil society. Rules-exceptions are established by the state in order to "reach" the equality regime, when a certain group of

subjects is in special conditions of life and professional activity or differs in physiological and age characteristics.

References

- Baranov, V. M. (1984). *The truth of the rules of Soviet law. Problems of theory and practice*. Saratov: Saratov University Publishing House. [in Rus.].
- Baskov, V. (1993). Are all equal before the law and the court? On the constitutional principle of equality of citizens. *Soviet justice*, 9, 22 -23. [in Rus.].
- Boikov, A. D. (2002). *The third power in Russia. Book two-continuation of reforms*. Moscow: Yurlitinform. [in Rus.].
- Bondar, N. S., & Kapranova, Y.V. (2002). *Constitutional dimension of equality of citizens of the Russian Federation*. Rostov on Don: Rostov University Publishing House. [in Rus.].
- Bonner, A. T. (1992). *Law and justice in law enforcement*. Moscow: Russian Law. [in Rus.].
- Byrdin, E. N. (2000). Causes of legal inequality in the Russian state. *Lawyer*, 10, 2-5. [in Rus.].
- Constitution of the Russian Federation (adopted by popular vote December 12, 1993). Retrieved from <http://www.constitution.ru/> Accessed: 02.11.2019.
- Iogolevich, N. I., & Koneva, N. S. (2012). Legal immunities and the constitutional principle of equality before the law and the court. *Legal Science and Law Enforcement Practice*, 1(19), 34-41. [in Rus.].
- Katomina, V. A. (2009). *Justice and competition in Russian law: PhD thesis*. Saratov: Saratov State Academy of Law. [in Rus.].
- Lazarev, V. V. (Ed.) (2001). *Scientific and practical commentary to the Constitution of the Russian Federation*. Moscow: Spark. [in Rus.].
- Malko, A. V., & Khizhnyak, V. S. (2019). Prohibitions in social and legal regulation: International aspect. *Journal of the Siberian Federal University. Humanitarian Sciences*, 12(12), 2230–2240. [in Rus.].
- Rawls, J. (Ed.) (1995). *A theory of justice*. Novosibirsk: NSU Publishing House. [in Rus.].
- Rep'ev, A. G. (2012). Legal categories "immunity", "privilege", "privilege": Facets of contact. *University Proceedings. Volga Region. Social Sciences*, 2(22), 12-20. [in Rus.].
- Sumenkov, S. Y. (2002). *Privileges and immunities as general legal categories: PhD thesis*. Saratov: Saratov State Academy of Law. [in Rus.].
- The Code of Criminal Procedure of the Russian Federation dated 18.12.2001 N 174-FZ. Retrieved from <http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=LAW&n=341922&fld=134&dst=100000001,0&rnd=0.8832053622831526#06918677375732458> Accessed: 05.11.2019.
- Tsybulevskaya, O. I. (2004). *Moral foundations of modern Russian law*. Saratov: SGAP Publishing house. [in Rus.].