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THE BALANCE OF PRIVATE AND PUBLIC INTERESTS IN THE CIVIL LAW

The article is devoted to the problem of the private and public interests' balance and its systematic role in the law sphere. The satisfaction of the public interest is one of the state function, which in the different ways satisfices and private interests. In the modern society the legal state realizes the private interest by serving to needs of the society's members that is why the one of the interpretation of the public interest's definition is the concemment of the state bodies in the private interest's realization.

Key words: *legal interests, private legal interest, bublic legal interest.*

Problem setting. Traditionally, private in law is interpreted as the sum of rules, which regulated property and non-property social relation with individual or group (not state) interests of separate persons and corporations, and also the relationships in which the state appears not as public power holder, but as a subject of civil relations where the parties are equal in their rights and their interests are fulfilled and protected solely on their own initiative.

The **purpose** of the article is finding the ways to make a conception of the balance private and public interests for the prevention of its contradiction.

Modern Russian researchers propose the conception «private» through the term «share» (it came from the etymology of russian word – they have the same root), i.e. something which makes whole: «Essential attribute of share is seperation from the whole, relative independense, autonomous its being. Any seperate keep itself traits of individuality, unique and general signs and properties, which inherent in other components of whole. ... This terms complement one another, bringing about opotunity different approuches to reseach of private» [1, p. 24]. But if this conclusions are correct, they are extended to this phenomenon as a legal category, irrespective of legal system, in which they are implemented. Categories «right» and «interest» don't change their nature or essence according to the country. Changed only forms of its consolidation and implementation. Moreover, the category «interest» is paramount, the starting point for other legal categories. In the other languages we can't proceed from such etimology and examine it through the part and whole is illogical and wrong. So, this conclusion may not extend even to the same legal system. It does not get universal character and therefore in scientific interpretation is false.

Analysis of resent researches and publications. The problem of legal interest and their balance as private and public interests was touched by lawyers and scientists. The main known works are works of D. Gorshunov, A. Kurbatov, O. Vinnyk, Y. Tikhomirov and others. But the role of the balance of private and public interests in the sphere of the civil law is still opened.

Article's main body. D. Gorshunov considers that private interest is based on the recognition of freedom individual subjects to make certain acts, to express attitude to par-

ticular object, process or phenomenon [2, p. 82]. And, if the behavior in a certain situation is programmed in the imperative contained in legal norms, then also will be given the opportunity to determine the nature of own acts by own will. Besides admission legal power in such decisions about private interests of subjects the relationships, its legal meaning is reflected also in its providing by the state in the form of guarantees to protect legitimate private interests.

A. Kurbatov defines private interests as the interests protected by law of individual persons or social groups [182, p. 74]. O. Vinnyk gives the notion of private interests in the same direction. According to her, «private interests is the interests of individual person, family, group of persons, corporation (if it made by persons and doesn't belong to public sphere – state or municipal property)» [4, p. 45]. However, we think, that privacy doesn't relate to the individual subject. Individual interest can has and private and public character. «Disregard these "subtlety" in the conception of private interest fraught with serious differences in opinion and assessment of its role in various spheres of public life» [1, p. 26]. Interests can be public by subjects and private by content. Thus, the same interest can be public (for a formal sign) and private (for a substantial sign).

There is a position that the realization of legitimate interests in the sphere of private law has the character of both claim to possession of particular social weal and demand to concrete persons (or indefinite circle of persons), depending on the nature of relationships (to have certain behaviour or to refrain from certain actions) and can also be defined as a hope of realization own plans, which is supported by its accordance to the law and occupation certain legal niche in the mechanism of lawful regulation.

Constitutive features of private legal interests are follows: 1) it belongs to a separate, autonomous and concerning independent object and is associated immediate with it; 2) it's determined by individual characteristics, aspirations, motives, goals, needs of a subject or group of subjects; 3) in a certain way it resists the public interest with its special meaning; 4) as a rule it's implemented by norms of private law; 5) it's implemeted voluntarily and at own initiative; 6) violated private interest is protected by active actions the person and proceeds from him; 7) for society as a whole, usually it's not widely accepted and priority.

But at the same time, interest is so comprehensive and universal category that we can say about at least four subjects of interest: person, group, society, state. Consequently, we can talk about individual, group, social and state interests. And all of them can be both private and public. Not possible to divide interests only by subject and attribute individual and group interests to the private but social and state – to the public. The state also can pursue private interest – the interests, which are not covered by the competence of state bodies, and also separate person can pursue public interest.

The boundaries of private and public law are already eroded. And if we can't «cut» from each other not conquered part of another law, the private and public interests are clearly different and can be detailed and analyzed separately. And, moreover, primary presence whether private or public interest may qualify relations as relations private or public law.

However, Y. Tikhomirov sees inconsistency between private and public interests and, even makes their structure by arising possible situation. The scientist attributes follow problem models of coexistence of private and public interests: the advantage of public interest; transformation to the state interest and suppression of private interest; exaggerated

value of private interest and abasement of public interest; negative pressure of unlegitimate interest; positive pressure of interest unrecognized by law [5, p. 10]. Imbalance can be deepen by different, sometimes opposite understanding of public and private interests.

The contradictions and conflicts between public and private law not always mean that private interests should conflict with public interests. Objectively expressed legal norms are generalized social interest and therefore can't arrange everybody, that stimulate contradictions between private and public. However, the existence of guarantees and defence interests protected by law compensates possible conflicts.

Speaking about the coexistence private and public interests, their agreement and balance, we must note that the criterias for establishing such balance, as well as imbalance of these interests are not defined neither in legislation nor in doctrine. Besides these criterias can be located not in sphere of law, and its scope and content are different in each case. A. Kurbatov offers the following ways of interests' coordination: 1) formation of interests hierarchy of subjects in different sphere their activities; 2) determination of boundaries of interest realization, including inadmissibility abuse of the rights; 3) establishment of a special legal regime of individual objects; 4) separation consequence of agreements to civil (private) and public; 5) making the procedural mechanizm of realization and implementation legal norms; 6) making the corporaions of definite legal form; 7) creation the guidelines to resolve the conflicts in law [6, p. 90]. According to point of view of this scientist, interests are always in certain hierarchy both in terms of interest holder and in terms of authority. Ignoring of this hierarchy always will lead to conflicts, including the conflicts of interests. We should pay attention that public interests are always legitimate, private interests are not always.

The problem of balance in the ratio of private and public interests arose from the begining of systematic understandig of the role of law and is open till now. One of the state function is satisfying private interests. In modern society lawful state implements the private interest by satisfying the needs of socity's members, that's why as one of the interpretation of public interest can take the interest of public authorities in the implementation of private interests. The consequence of such balance in public relations, private and public interests becomes law and oder. It is a conglomerate of incorporation, defence and protection legitimate interests, the existence of effective mechanizm for their implementation and optimal satisfaction. Discipline, legality, law and oder have an interrelationship with legal interests. Iterest protected by law is one of conditions of full development of all three institutions (discipline, legality, law and oder) in legal reality. At the same time their existence and guarantee of realization depend on this categories.

An economic processes play not minor role in the ratio of private and public interests. This coordination and as a result coordination of public and private methods of regulation during human evolution have changed depending on conditions and quality development of economical relations in the society – crisis situation demanded the defence mainly public interests with using public methods of regulation; state striving for stimulation certain economic activities demanded private initiative with using private methods of regulation. In first case the priority is given to the public interests, in second – to the private interests. There is the regularity of making conditional law upon economy and economic interests, which should reflected in the internal consistency of law, optimize public and private interests as a characteristic of law in general, not its separate parts.

We are absolutely agree with O. Vinnyk that private and public interests are pair philosophical categories as variety of «separate – general» or «part – whole». Dialectics of separate and general reveals itself in its indissoluble connection. General (public interests) doesn't exist in pure condition. It connects with separate (private interests). Private intrest (as interest of individual person) reflects the «general» – interests of social groups and society in general. Private and public interests are just different parts of the same phenomenon – social life. Neither private nor public interests can't exist in itself, because each of this categories can be defined only on other's background (private on public background and on the contrary).

To avoid the conflicts between public and private interests the state should create such conditions, when maintenance the public intrests would be profitable to all holders of private interests, and by maintenance of public interest private interest will be realized. Thus universal interest would be created as a certain symbiosis of public and private. Such trends and transformation exist in consisting of points when public interest transforms to the private interest with universal character, and private interest transforms to the public.

Greate importance of public interests for balanced social development consists in the fact that they are directed to the ensuring interests protected by law of every person and that's why they should be subordinated to individual private interests. Although, in reality we see another picture, when private interests depress for public interests' satisfaction. However, this is the question of interests' priorities in certain situation. If public interest realization let many legitimate individual interests will implement, then possible «to make a donation» some interests protected by law in private sphere. But «sacrifice» doesn't mean the ignoring every private interest that would be opposite to fundamental principles of objectively existing law in general. Law reflected in legal norms should coordinate public and private interests. Variability and movement of borders between private and public law, private and public interests are reflected in the fact that social interest can has a sence only as private interest. But absolutely possible another situation when private interest recocnized in general social importance and elevating it to the rank of public. In any case public interests serve for achievement the goals of private law, which certainly is great value in the civil society.

Conclusions and prospects for the development. The issue of coordination private and public interests in the law, establishment of their optimal balance exists constantly. The balance of private and public interests is not definitely meaning as the equilibrium of these interests, because in certain circumstances should be established a priority of one interest and therefore – to limit another. The problems of establishment and revelation balance of public and private interests in legal regulation should be solved in serious theoretical studies.

In no case impossible to separate and contrast public and private interests. In a certain situation any private interest can be reduced or represented or considered as public interest. On the other hand, public interest is senseless when it's not needed and doesn't carry the value of realization for certain person. On stages of lawmaking the contrasting and even the division on public and private interests loses any sense: private interest that falled to the legislator's field of vision gets in the same time well-known public recognition, without which it couldn't find the reflection in the law. Everything which is consolidated by the legislation corresponds with both public and private purposes.

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БАЛАНС ЧАСТНЫХ И ПУБЛИЧНЫХ ИНТЕРЕСОВ В ГРАЖДАНСКОМ ПРАВЕ

В статье проанализирована проблема соотношения частных и публичных интересов и их систематизирующей роли в правовой сфере. Удовлетворение публичного интереса – это одна из функций государства, при исполнении которой удовлетворяется и частный интерес. В современном обществе правовое государство осуществляет частный интерес, обеспечивая потребности членов общества, что, в свою очередь, является одной из интерпретаций определения публичного интереса через реализацию частного.

Ключевые слова: *охраняемые законом интересы, частные охраняемые законом интересы, публичные охраняемые законом интересы.*

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БАЛАНС ПРИВАТНИХ ТА ПУБЛІЧНИХ ІНТЕРЕСІВ У ЦИВІЛЬНОМУ ПРАВІ

У статті проаналізовано проблему співвідношення приватних та публічних інтересів та їхньої систематизуючої ролі у правовій сфері. Задоволення публічного інтересу – це одна із функцій держави, при виконанні якої задовольняється і приватний інтерес. У сучасному суспільстві правова держава здійснює приватний інтерес, забезпечуючи потреби членів суспільства, що, у свою чергу, є однією з інтерпретацій визначення публічного інтересу через реалізацію приватного.

Ключові слова: *охоронювані законом інтереси, приватні охоронювані законом інтереси, публічні охоронювані законом інтереси.*