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General features of the system of principles of agrarian law

Volodymyr M. Yermolenko*

Full Doctor in Law, Professor, Corresponding Member of the National
Academy of Legal Sciences of Ukraine
National University of Life and Environmental Sciences of Ukraine
03041, 15 Heroiv Oborony Str., Kyiv, Ukraine

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In this article, it is discussed the features of the system of modern principles of agrarian law. The attention is paid to the lack of unity and significant differences between the author's individual positions when formulating a system of such principles, both in the qualitative and quantitative aspects. It is revealed the reason for this situation, which consists in the opposition of objective-subjective beginnings in the nature of the agrarian law principles. It is the predominance of the subjective component that leads to the diversity of principles proposed by scientists, which need to be discovered, rather than invented. The discrepancy between the subjective vision of scientists and the objective nature of the principles causes the inefficiency of norms, which are the result of implementation of such principles in the normative array. Insufficient level of disclosure of the theoretical aspects for the formation of the agrarian law principles leads to their identification

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*Corresponding author

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with the tasks of agrarian law as a branch. It is stated that the majority of scientists introduce a two-level differentiation of the principles of agrarian law into the general and sectoral (special) ones. Attention is also paid to the lack of principles of inter-sectoral level in most of the systems proposed today, which leads to unnecessary duplication at the level of sectoral (special) principles. At the same time, it is criticized the identification of general legal and constitutional principles used in the theory of agrarian law. It is substantiated the introduction of a six-level structure of the system of principles of agrarian law in the context of general one (international and national (constitutional), inter-sectoral, sectoral, sub-sectoral, institutional and sub-institutional principles)

Keywords: agrarian law, principle, principle of agrarian law, system of principles of agrarian law, structure of principles of agrarian law

Introduction

Legal principles gained a well-deserved recognition as one of the fundamental categories of legal science. Having an objective nature, the principles of law are the basis for the formation of a normative array, its structuring and further improvement. In other words, the principles of law are a pointer that a rule-maker of any level (without exception) should strictly follow, because otherwise the created norm will have an excessive subjectivity, not responding to the social relations that it is intended to regulate. The consequence will be the absolute ineffectiveness of such a rule. The agrarian law is no exception in this mechanism, which provides the research on the principles of agrarian law with an extraordinary level of relevance.

The following scientists and lawyers in agricultural sector turned to the topic of principles of agrarian law: A.M. Stativka [1], G.I. Savchenko [2], M.Ya. Vashchysyn [3], V.V. Knysh [4], N.V. Kravets [5] and

other. However, when starting to cover the problem of principles of the modern agrarian law, first of all it is worth paying attention to the lack of unity and significant differences between the author's individual positions when formulating a system of such principles, both in the qualitative and quantitative aspects.

Therefore, the purpose of the article is to reveal the general features of modern principles of agrarian law

Results and Discussion

V.I. Polyanska [6] explains the specified position of the uncertainty of the agrarian law principles due to the dynamicity of agrarian relations, on the basis of which these principles arise. However, the problem lies primarily in the opposition of objective-subjective beginnings in the nature of the agrarian law principles, as well as legal principles in general. According to the conceptual conclusion of A.L. Zakharov [7], the principles

of law are objective in content and subjective – in form, because they are the product of the conscious creativity of legislator, and the task of science is only to “discover” the principles embedded in the law, rather than to “invent” them, as well as to show their role, meaning, content and functioning. The formal side of subjectivity is the formation of principles by scientists, based on their qualifications, life experience and situational vision, which are different for everyone. It is also worth considering the scientist’s desire to invent something own original.

That is why, there is such a discrepancy in the formation of system of the principles of agrarian law, when the objective reality is passed through the subjective filter of the researcher’s personal legal culture. At the same time, if the subjective form does not correspond to the objective content (i.e. when a legal principle is formed contrary to the requirements of objectivity), such a principle cannot be realized in a normative activities. The current norms (but inactive ones) will be the result of normative activities, as it has been mentioned above.

From the side of significant subjectivity of the author’s formulations, it is advisable to once again return to the remarks expressed by G.I. Savchenko [2] regarding the discrepancy between the principles proposed by individual scientists and their essence and level. It is worth agreeing with the proposal regarding the recognition of the following tasks of agrarian law: the completeness of legal regulation of agrarian relations, the continuous improvement of the mechanism

of legal regulation of agrarian relations and the increase in the efficiency of state regulation of the agrarian sector of the economy. As for the other components of the proposal by G.I. Savchenko [2], it is worth mentioning the precaution. Indeed, the listed principles are not special, but at the same time, they are not the tasks of agrarian law. According to the results of dissertation research by A.L. Zakharov [7], he refers the following principles to inter-sectoral ones: the principles of freedom of contract, freedom of labor, legal protection of entrepreneurship, recognition and protection of all forms of ownership, dispositivity, freedom of economic activity, support and protection of competition. The security of subjective rights of participants in agrarian legal relations, the comprehensive protection and strengthening the forms of ownership in the agro-industrial complex and organizational and legal forms of managing of agricultural producers should be allocated to a subsystem of inter-sectoral principles.

At the same time, almost all of the above-mentioned approaches at its best provide for only a two-level differentiation of the principles of agrarian law into the general and sectoral (special) ones (except for M.Ya. Vashchyshyn [3], who refers the principles of land law mainly to inter-sectoral ones), which are designed to ensure the rational use and protection of agricultural land. In the field of agrarian and labor relations, M.Ya. Vashchyshyn proposes to consider the principle of optimal combination of unity and differentiation of legal

regulation. According to this scientist, the private law sphere is characterized by the principle of granting the agricultural producers the right to freely participate in contractual, entrepreneurial, economic and other relations, unless this is prohibited by the law [3]. Certainly, not all inter-sectoral principles are considered, but the fact itself regarding the proposal to single out another classification rubric is acceptable, which allows regularizing both the scope of sectoral principles due to their redistribution to the inter-sectoral level, and also objectifying the general structure of the principles of agrarian law.

For example, the principle of equality is positioned as one of the fundamental constitutional requirements [8], which is confirmed by the content of the provisions of the Constitution of Ukraine regarding equality: human and citizen rights (Articles 21, 24), associations of citizens (Article 36); types of entrepreneurial activity (Article 42), choice of profession and labor activity (Article 43), forms of ownership (clause 5 of Article 116), etc. Thus, the principle of equality, being general, becomes inter-sectoral when projected on a separate sphere of social relations.

In addition to equality, the general principles include justice, freedom and humanism [9]. All these principles have been widely used in the author's individual approaches, and as a result, in different variations of the sectoral principles of agrarian law. In particular, the principle of justice has been differentiated into the following

principles: ownership of land that belongs to agricultural producers; real guarantee of the subjective rights of country people as citizens of Ukraine and as subjects of agrarian relations; the priority of social development of the village. Accordingly, the principle of freedom was embodied at the sectoral level in the principles of freedom of agricultural entrepreneurship, economic and legal independence, self-management of production and economic activities, expansion of the system of legal guarantees for the freedom of agricultural entrepreneurship, non-interference of government authorities in the production and economic activities of agricultural producers, etc. In turn, the general principle of equality became the basis for highlighting the sectoral principles of equality of participants in agrarian legal relations, equality of the ownership forms and organizational and legal forms of management. Finally, the principle of humanism was implemented in the agrarian and legal principles of ensuring the right of citizens to adequate, high-quality, environmentally safe nutrition in accordance with medical standards, as well as ecologization of agriculture.

Certainly, the allocation of general principles of the law with further implementation in constitutional legislation is clearly not enough for objectification of features of agricultural production, which logically requires further differentiation at the levels of inter-sectoral and sectoral principles. The question arises only about the boundaries of such differentiation, that

is, the determination of sufficiency or insufficiency of the inter-sectoral principles for the creation of effective arrays of norms of agrarian legislation, which, accordingly, will entail the need to form and implement the next sectoral level.

Based on the fact that agricultural production activity is a special type of economic activity along with industry, trade, transport, etc., the principles of economic law are the inter-sectoral ones in agricultural law. Among the latter ones, it is advisable to distinguish between the principles of freedom of economic activity, initiatives and enterprises within the state economic order, equal protection of the rights of all economic entities by the state; limiting the intervention of state authorities in economic activity [10]. The existence of these inter-sectoral principles deprives it sense to separate the relevant sectoral principles, as it has been done in many of the aforementioned classifications, given the lack of their agrarian legal specificity. In addition, there is no need for the principle of freedom of agricultural entrepreneurship, which is fully covered by the inter-sectoral principle of freedom of entrepreneurial activity; although in the civil encyclopedic literature, it is referred to the constitutional principles [11]. At the same time, despite the external inter-sectoral nature, the principle of agriculture ecologization is not such, and moreover, the sectoral principle of ensuring the right of citizens to adequate, quality, environmentally safe and sufficient nutrition is not a subject to any replacement for the

principles of higher levels. The deep and indispensable agrarian legal specificity is the criterion for the necessity of distinguishing the stated principles at the sectoral level. This specificity is a kind of conditional line of differentiation between the inter-sectoral and sectoral principles: the latter ones have the right to exist only if it is available. In view of this criterion, the following principles are indispensable: the sectoral principles regarding the consideration of features of agricultural activities, ensuring the food security of the state and ensuring the innovative development of agriculture.

The list of principles of the EU agrarian law presented in the agrarian and legal publications is indicative:

- common market;
- preferences for Community farmers;
- financial solidarity;
- stability of legal regulation;
- non-discrimination;
- proportionality;
- open market economy with free competition;
- caution [12].

Considering the above-mentioned, the stated principles of the EU agrarian law are inter-sectoral, common to all branches of material production, since they are devoid of any agrarian legal specifics.

The identification of general legal and constitutional principles [1] used in the theory of agrarian law causes certain remarks, because the latter ones are important only for the national system of law, while the general principles extend beyond the national

boundaries. Thus, as it is stated in special studies, the understanding of general principles appeared for the first time precisely in the international law [13]. At the national level, they really find their embodiment, first of all, in the Constitution of Ukraine. However, at the same time, they deepen significantly due to the fragmentation into a much larger number of national principles. In particular, S. Pogrebnyak [9] illustrates this trend on the example of general principle of equality, implemented in the Constitution with the help of four interconnected principles: equality before the law, equality before the court, equality of rights and freedoms of person and citizen, equality of duties of person and citizen. This predetermines the need to differentiate the general array of principles of agrarian law at the international and national levels. Moreover, only in this case, the national level of general principles will acquire identity with the constitutional one.

As for the structural-hierarchical structure of the system of principles, it should be mentioned the following: according to M.Ya. Vashchyshyn [3], the structure that combines the general legal and sectoral (special) principles is the traditional structure for each branch of law. At the same time, the undoubted positive factor is the expansion of this structure proposed by it, due to the inter-sectoral principles, in particular the land law, designed to ensure the rational use and protection of agricultural land, agro-labor, in which the optimal combination of unity and differentiation

of legal regulation is considered, as well as the private-legal principles of freedom of participation in the contractual, entrepreneurial and economic relations [3]. At the same time, the institutional principles are not mentioned for some reason. N.V. Kravets [5] has made an attempt to unify different approaches, she demonstrated her vision of the system of principles of agrarian law through a four-level structure that combines general legal, inter-sectoral, sectoral (special) principles of agrarian law and the principles of individual agrarian legal institutions. In general, this is a logical structure that generally reflects the internal structure of the legal system, except for the sub-branch level. Moreover, in some few publications devoted to sub-sectors as the elements of the system of law, the presence of the own principles is perceived as one of the signs of the law sub-sector [14]. The ignoring of sub-sectoral principles is explained by the insufficient study of this issue both at the general-theoretical and sectoral levels. In addition, it was accompanied by the development of principles of the agrarian-innovation legislation [4]. Without resorting to a content-related analysis of these principles, it should be pointed to a certain logical incompatibility between the sub-branch of law and the principles of legislation intended to constitute it, instead of bringing precisely the principles of law of the sub-branch level.

The complex dissertation research performed by H.A. Grigorieva [15] looks

much more organic from this side. She proposed and substantiated the formation of a sub-branch of agricultural-protection law in the structure of agrarian law, as well as presented a system of its principles (systematic nature of state support, guaranteed state support, differentiation of state support, environmental priority, transparency of agro-protective procedures). This allows transferring the sub-sectoral level of principles of the agrarian law from theoretical stage to a practical one, which gives the grounds for introducing another level of organizing the system of the agrarian law principles. At the same time, it is worth considering in the theory of agrarian law the already completed development of a number of sub-institutional principles of legal regulation of the cultivation and sale of sunflower seeds [16], beekeeping [17], the development of housing and communal services in the village [18], the production and sale of milk and dairy raw materials [19], investments in the social development of village [20], insurance of agricultural products with state support [21], organic agricultural production [22], etc. Given the above-mentioned, as well as the

ever-increasing dynamism of the development of modern agrarian relations, accompanied by an adequate complication of the structure of the agrarian law system, the introduction of a six-level structure of the system of principles of agrarian law in the context of general ones (international and national (constitutional), inter-sectoral, sectoral, institutional and sub-institutional principles) is quite reasonable.

Conclusions

To date, it should be noted the lack of unity and significant differences between the author's individual positions in formulating the system of principles of agrarian law. The reason for this situation, first of all, is the predominance of subjective component in the formation of principles, which leads to their diversity. The structure of the system of principles of agrarian law has not been studied enough. Therefore, it is currently relevant to introduce a six-level structure of the system of principles of agrarian law in the context of general ones (international and national (constitutional), inter-sectoral, sectoral, sub-sectoral, institutional and sub-institutional principles).

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Загальні особливості системи принципів аграрного права

Володимир Михайлович Єрмоленко

Доктор юридичних наук, професор, член-кореспондент НАПрН України
Національний університет біоресурсів і природокористування України
03041, вул. Героїв Оборони, 15, м. Київ, Україна

Анотація

У статті розглядаються особливості системи сучасних принципів аграрного права. Звертається увага на відсутність єдності та значні розбіжності між окремими авторськими позиціями при формулюванні системи таких принципів як у якісному, так і у кількісному аспектах. Розкривається причина такого становища, яка полягає у протистоянні об'єктивно-суб'єктивних начал у природі принципів аграрного права. Саме переважання суб'єктивної складової й призводить до різноманітності запропонованих науковцями принципів, які треба не вигадувати, а відкривати. Невідповідність суб'єктивного бачення вчених об'єктивній природі принципів зумовлює недовіру до норм, які є наслідком втілення таких принципів у нормативний масив. Недостатній рівень розкриття теоретичних нюансів формування принципів аграрного права призводить до їх ототожнення із завданнями аграрного права як галузі. Констатується, що більшість учених запроваджує дворівневу диференціацію принципів аграрного права на загальні та галузеві (спеціальні). Загострюється також увага на відсутності у більшості пропонованих сьогодні системах принципів міжгалузевого рівня, що призводить до непотрібного дублювання на рівні галузевих (спеціальних) принципів. При цьому критикується застосовуване в теорії аграрного права ототожнення загальноправових і конституційних принципів. Обґрунтовується впровадження шестирівневої структури системи принципів аграрного права у розрізі загальних (міжнародні і національні (конституційні), міжгалузевих, галузевих, підгалузевих, інституційних і субінституційних принципів

Ключові слова: аграрне право, принцип, принцип аграрного права, система принципів аграрного права, структура принципів аграрного права
