

Law Principles as a Means of Limiting Legal Discretion

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Abstract- The abstract indicates a summary of the article and the main research results. The article reveals the concept content of "legal discretion". Issues related to the law principles as a means of limiting legal discretion are considered. The law principles are one of the central categories in legal science. They are the link between the philosophical and legal law interpretation. The law principles are aimed at the insight into law, concretizing its general concepts. The legal nature of regulatory, its consistency and stability are ensured through the law principles that underlie regulatory directions.

Keywords:— *legal discretion, law principle, justice, humanism, legality, criminal procedure*

I. INTRODUCTION

It is generally accepted to consider the law principles as certain ideas in the legal theory, which in different eras were given ambiguous content. The practice also considered the law principles formally, listing them in the legislative acts on which the regulation of the relevant sphere of relations is based.

The law principles are of regulatory importance in western science, being in a priority position about specific regulatory directions. It should be noted that in some cases the principles are laid based on the judgment. In the modern Russian legal system, the Constitutional Court of the Russian Federation uses the law principles in its lawmaking. Their list largely coincides with international standards but differs radically from the interpretation in the scientific literature on the legal theory. The law principles are the leaderships of the legal system; they are regulatory elements of the structure. Therefore, one of the tasks of principles in modern society is to develop and operate the legal system as a whole, in the ability to overcome inaccuracies in law and the adoption of new norms [1]. For example, such law principles as the equitable principles, principles of humanity are certain self-regulatory mechanisms in the legal system.

The law principles are important in legal theory and practice in the matter of legal discretion. This is because the judge uses his discretion within the framework of the law principles.

TABLE I. CLASSIFICATION OF LEGAL PRINCIPLES

Classification of legal principles based on normative consolidation	
Consolidated principles	Consolidated principles
included in the content of law	included in the content of law

Based on judicial practice, we will distinguish the classification of legal principles based on normative consolidation. Accordingly, there are enshrine and non-enshrine legal principles in the legislation. We will try to characterize the given classification more specifically. The enshrine law principles are the starting points and included in the content of the right. They are presented in the form of norms. Here is an example. In article 1 of the CCRF of the main beginning of civil legislation is the civil method of regulation of property relations and personal non-property relations, based on the legal principles.

Loose legal principles are fixed as an element of legal consciousness or in the legal provisions of litigation practice. For example, the scientificity principle is not enshrined in law but it is confirmed by science [2].

II. MATERIALS AND METHODS (MODEL)

Note that the law principles are not rules of conduct, respectively, they do not have a compulsory nature. On the other hand, they represent the legal base on which the judicial decision is formed. In other words, the law principles affect social relations. The application of the principles in litigation practice limits the use of legal discretion.

All law branches include the following principles: justice, reasonableness, humanism, legality, aimed at regulating social relations. The criminal procedural discretion of the court as a functional system includes both law-enforcement discretion at all stages of pre-trial and trial proceedings and directly procedural discretion at a specific

stage of the criminal procedure. This is because each stage of criminal procedure is relatively independent and ends with the issuance of an interim or final decision on an unlawful (lawful) juridical fact (criminal case). The current criminal procedure scheme allows us to say that the law-enforcement discretion of the court (criminal procedural discretion) as a system of objective and subjective factors rests (as a superstructure) on the general legal regime (as the basis) of all stages of pre-trial and trial proceedings of the criminal procedure.

TABLE II. BASIC PRINCIPLES OF LAW

Law principles as regulatory elements of the structure			
Principle of justice	Principle of humanism	Principle of legality	The principle of reasonableness

Since the court trial of a criminal case in the court at first instance is central to among the stages of the criminal procedure, consider what is the legal discretion at this stage and determined with the discretion system concept in the criminal procedure, i.e., with the criminal procedural discretion of the court in general and private understanding.

So, let us ask ourselves: What is the legal discretion at the stage of a court trial? How does it relate to the criminal procedural system of legal discretion at all stages of the criminal procedure? In the general sense, judicial law-enforcement is at its core the criminal procedural discretion of the court. The concept definition of discretion given above have drawbacks, but also has its advantages confirming our hypothesis about the presence of criminal procedural discretion of the court in the law-enforcement activities of the judicial authorities in the criminal procedure.

The first thesis of the definition that discretion in the judicial stages is an integral part of the criminal procedural activity of the judge, it is true only in part since such activity is common at the stage of pre-trial proceedings. The antimony of this thesis is that the criminal procedural activity of the judge is limited to legal procedure, while the criminal procedure retains its mixed form, i.e. includes both accusatory and adversarial proceedings [3]. In the indictment (pre-trial) proceedings, the criminal procedural activity of the court, although limited to the control function in the field of violation of the rights of participants and parties to a legal process, but in essence, remains criminal procedure. The following thesis includes the statement that such activity is carried out at the occurrence of the following conditions to which the developed problem situation or other situation which arose during a criminal procedural activity of the judge belongs. The movement of the criminal procedure is regulated by the regime of the criminal procedure stages, the movement suspension at a specific stage (for example suspension of the pre-trial investigation), finish off the final stage of the criminal procedure. This is confirmed by the content of the general regime of criminal procedure, by proceeding regimes in the form of accusatorial (pre-trial) and adversarial (trial) procedures and

the corresponding categories of specialized regimes of stages as separate types of criminal procedure parts.

Thus, the scheme of the regime of criminal procedure is a structure which excludes as a general regime of movement through implementation stages to implement the criminal procedure, existing in two forms of the procedural regime, which resolves the tasks of a particular stage and purpose of criminal procedure.

Further, the definition reveals what is meant by discretion as a criminal procedural activity of the judge – it is the choice of the most appropriate procedural decision or procedural action. The commitment fallacy of many supporters to this interpretation of the question of the content of the expediency motive of the legal (judicial) discretion has already been considered earlier, so we will not give the relevant critical arguments here. A.A. Haidarov is defined judicial discretion as a basis for decisions and actions at the discretion of the court lists as internal belief and conscience (as subjective factors), as well as the limits of discretion, where objective factors are the permits of the criminal procedure law.

The main internal contradiction is that in the structure of the criminal procedure code, there is a part of the fifth, which is in its content, a related legal institution of criminal procedure, regulating international criminal procedural cooperation (interaction) in the field of interstate proceedings.

At the same time, the question of legal discretion admissibility when making decisions at the court trial stage and the other stages of the proceedings subject only to the Russian Federation Code of Criminal Procedure and therefore to use other legal procedures of foreign state practically impossible. The same applies to the rule of substantive law in part of the qualification of crimes and imposition of penalty the defendant when the sentencing at the trial stage or other judicial decision on further instances of criminal procedure.

We will summarize: the law principles within the framework of legal discretion are the regulators of social relations. We have understood that at present of social development such principles as justice, legality and humanism are considered in their connection with law enforcement. The first feature that is worth highlighting is justice. We agree with the opinion of many researchers that justice is the basis of law [4]. Therefore, the justice principle ideas should be in law enforcement activity.

All decisions rendered by the court must be justified in letter and spirit. In legal science, it is often pointed out that the concepts of legality and justice are not always identical.

In modern society, the legislator cannot provide for absolute rules of conduct and, accordingly, sanctions for violation of these rules. By the Criminal Code of the Russian Federation: the court has great opportunities in making decisions, based on the justice principle [5]. Consequently, the law principles are directed to more precise legal discretion. Thus, the research of the relationship between the law principles and legal discretion is aimed at the effective work of the judicial system as a whole.

The term "judicial discretion" is ambiguous. For example, K. P. Ermakova in her work notes that judicial discretion is the competence of the court, provided by the law regulations, aimed at resolving the case, proceeding from alternative decisions [6]. Another researcher A. Barak considers discretion as an analogue of granting authority to a person [7]. According to another interpretation, judicial discretion is considered a process of granting the authority to the court to make decisions based on the principles of law [8]. Judicial discretion is seen as a process that uses the principles of law to solve the case. The court, in accordance with Russian law, is the decisive body. Therefore, one of the tasks of judicial discretion is to clarify the legislative language. At different stages of the criminal process it is possible to identify the main features of judicial discretion, based on the principles of law.

TABLE III. THE MAIN FEATURES OF JUDICIAL DISCRETION

Attributes of judicial discretion	
1. Being at liberty to make a judicial decision in accordance with the criminal law	1. Being at liberty to make a judicial decision in accordance with the criminal law
3. Judicial discretion is limited by general and special metes and bounds.	3. Judicial discretion is limited by general and special metes and bounds.
5. The decision at the court discretion is made based on the internal conviction of the judge.	5. The decision at the court discretion is made based on the internal conviction of the judge.

Many researchers consider this concept from two positions. On the one hand, discretion is a conclusion, an opinion. On the other hand, it is a process related to law [9]. the reasons influencing the functional nature of judicial discretion [10]. As the author notes, modern dynamic processes in society lead to the fact that the legislator faces difficulties regarding long-term legal norms.

Judicial discretion is aimed at resolving this problem, as it allows the court to react to constantly changing living conditions [11].

The next reason relates the complexity of bringing to life some legal norms, so the law enforcement officer introduces elements of discretion in making decisions.

It should be noted that the most common inaccuracies regarding the following principles of law, justice, hooligan motives, humiliation of human dignity. Elimination of uncertainty in legislative prescriptions is carried out applying the law according to its tasks.

Summing up the results, we will note that judicial discretion, on the one hand, is necessary to achieve the main purposes of legal proceedings. But on the other hand, the use of discretion will avoid miscarriages of justice [12].

III. RESULTS AND DISCUSSION

Thus, in modern litigation practice, there was a need to analyze the law principles as a means of limiting legal discretion [13].

The legislator establishes rules that exclude judicial outrage, but on the other hand, the court has the right to see the individual peculiarities of the lawbreaker, for example [14].

Accordingly, in modern judicial practice, there was a need for the lawfulness of the legal discretion, the establishment of its limits and means of limitation [15].

IV. CONCLUSION

The judicial procedural discretion is a systemic element of the legal regulation of the trial stage including both the procedural issues of the stage and the process of evidence in the criminal case and acting as the law enforcement discretion of the court based on the results of this stage and subsequent stages of the adversarial process. As the above definition shows, the legal regime of evidence at this stage ends with a final enforcement act that is a court sentence. Therefore, the judicial discretion at this stage is closely interconnected with the evidence process and the adoption of the final decision, while this link is direct and mutually constituent and considers the activities of the court in the criminal process.

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