

Collisions and Competition of Legal Rules: General and Differences

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Abstract: *The problem of the relationship between the concepts of “conflict” and “competition” in law is considered.*

The purpose of the article is to substantiate the existing differences in legal conflicts and competition of legal norms. To achieve this goal, the following tasks have been set: 1) to reveal the etymology of the concepts “conflict” and “competition”; 2) analyze the views of legal scholars regarding the concept of conflict in law and its characteristics; 3) critically evaluate the positions of the authors who give examples of norms in which conflicts and competition in law are identified; 4) define the concept of competition in law, giving examples of criminal law norms; 5) objectively assess conflicts and competition in law from the point of view of legal regulation. The author of the study comes to the following conclusions: 1) legal conflicts and competition of legal norms are independent legal phenomena; they are united only by the fact that in both conflict and competition, the law enforcer must choose one of the norms to regulate the actual relationship; 3) legal conflicts and competition of legal norms differ: a) from the point of view of their assessment; b) from the point of view of their connection with the actual circumstances of the case: competition cannot exist in isolation from the actual circumstances of the case; conflicts of legal norms exist regardless of whether there are specific facts falling under these norms; 4) the problem of the relationship between legal conflicts and competition of legal norms has not only theoretical, but also practical significance.

Keywords: *collisions in law, competition of legal norms, legal regulation, law enforcement, difference between legal conflicts and competition in law*

I. Introduction

It seems that when resolving the problem of the relationship between legal conflicts and competition of legal norms, it is advisable to first resort to terminological tools. In philological sources, “collision” (from Latin collision) is a collision of opposing forces, interests and aspirations [1]. In relation to collision in Russian language dictionaries, “collision” is a dispute based on disagreements” [2], “opposite” is absolutely not the original contradictory to another [2].

Thus, a collision is a contradiction that exists between incompatible phenomena and objects. In a collision, a collision occurs between contradictory forces, as a result of which one excludes the other, which is incompatible with it; this is an inconsistency between objects [2].

Competition is understood as “rivalry, the struggle to achieve greater, highest benefits, advantages”; to compete means to compete, to compete, to achieve advantages” [1]. In turn, “rivalry” in relation to competition is revealed as a struggle with someone, a competition between phenomena, objects of equal dignity, identical properties” [2].

II. Research Methods

When preparing a scientific article, the following methods were used:

1. General philosophical (dialectical-materialistic), which is used in all social sciences;
2. General scientific (analysis and synthesis, logical and historical, comparisons, abstractions, etc.), which are used not only by the theory of state and law, but also by other social sciences;
3. Special methods (philological, cybernetic, psychological, etc.), developed by special sciences and widely used for the knowledge of state and legal phenomena;
4. Private scientific (formal legal, interpretation of law, etc.), which are developed by the theory of state and law.

III. Result and Discussion

3.1 The Concept of Legal Conflict

In modern legal literature, conflict is understood mainly as a discrepancy or contradiction between individual legal acts regulating the same or related social relations, as well as contradictions that arose in law enforcement and the exercise by competent authorities and officials of their powers [3; 4]. From a formal legal point of view, Marat Viktorovich Baglay interpreted collisions as contradictions between legal norms [5], Nikolai Aleksandrovich Vlasenko - as “a relationship between norms, appearing in the form of a difference or contradiction in the regulation of one actual relationship” [6; 7]. Sergei Sergeevich Alekseev considered collisions as a collision of regulatory legal acts in connection with their effect on a particular territory with the competence of law-making bodies and the time of publication [8].

Yuri Aleksandrovich Tikhomirov proposes considering legal conflicts as contradictions between the existing legal order and intentions and actions to change it [9]. Assessing this understanding of legal conflicts, scientists note that “a legal conflict is thus presented as a clash between the claims of the subject and the existing legal order in the state” [10].

In another work, Yuri Aleksandrovich Tikhomirov cites the following basic concepts of conflict of laws. This is, firstly, disagreement - a divergence of interests, assessments and positions of government bodies and their representatives; secondly, a conflict is a contradiction between laws and other normative legal acts, a deviation from the norms of laws, fixed in acts or actions of government bodies; thirdly, a conflict situation is the moment or period of the emergence and development of legal conflicts between public authorities and other subjects of law; fourthly, dispute proceedings in the manner prescribed by law and by the authorized body of the case, regarding which there are disagreements between the authorities and other subjects of law; fifthly, a conflict situation is a period of open confrontation between government bodies and officials, social movements and organizations and the commission of illegal actions; sixthly, the conflict is anti-constitutional and open confrontation between government bodies and organizations, accompanied by social unrest and massive violations of public order; seventhly, procedure is a normatively established procedure for actions of public authorities, performed consistently and in mutual connection [11].

Among the most essential categories of conflict of law, Yuri Aleksandrovich Tikhomirov places emphasis on the category of claim, which has a threefold meaning: firstly, a guaranteed opportunity to legally defend one's status; secondly, the desire to realize a legitimate interest; thirdly, the intention to disobey the requirements of the current law in order to achieve the realization of one's interests [11].

Scientists, specifying these provisions, draw attention, firstly, to the fact that the first two forms of claims are positive, legal, and the last are negative, quasi-legal in nature; secondly, that the presence in the field of law enforcement of claims aimed at changing the current legal order makes necessary the very existence of conflict of laws [10].

Within the framework of legal conflictology, collisions are considered in a broader form, linking them with deformations of legal reality, emerging defects of the legal system, individual dysfunctions of legal institutions, imperfect legislation, judicial law enforcement practice, as well as with an imbalance in the organization, functioning and competence of state legal bodies and officials persons [12].

In the actual legal sense, collisions should be interpreted as contradictions, inconsistencies, and inconsistencies within the current regulatory material and in its operation [13]. At one time, Sergei Sergeevich Alekseev believed that a contradiction expresses the essence of a collision: contradictions may arise between individual regulatory acts, which are called collisions [14].

Tatyana Anatolyevna Shchelokaeva, understanding by a conflict of legal norms such a situation in objective law when there are two or more legal norms regulating the same relationship, emphasizes that "in the event of a conflict, the subject of implementation always finds himself in a situation of choosing a legal norm"[15]. Zinaida Aleksandrovna Neznamova, defining the conflict of criminal law, notes that, firstly, it arises between the rules of law; secondly, it arises regarding the regulation of the same factual circumstance; thirdly, when relations are regulated by two or more rules of law [16]. According to the authors of the legal encyclopedic dictionary, "a conflict of laws is a divergence in the content (clash) of two or more formally valid regulations issued on the same issue"[17].

Vladislav Valerievich Denisenko defines conflicts of legal acts as "discrepancies or contradictions between norms of law, between norms of law and acts of interpretation, as well as between individual legal regulations governing the same social relations"[18].

3.2 Unreasonable Identification of Legal Conflicts and Competition of Legal Norms

The reason for writing this scientific article was the very dubious statement of theoreticians that at the level of law enforcement, the relevant authorities and officials, when detecting conflicts, are guided by the following rule: "If general and special legal acts of the same level diverge, then the latter is applied; if at different levels (vertically), then a general legal act is applied" [19]. Nikolai Ignatievich Matuzov and Alexander Vasilyevich Malko give the following example in this regard: "In the Constitution of the Russian Federation there is a rule on the irremovability of judges (Part 1. Article 121), and in the Federal Constitutional Law of July 21, 1994 "On the Constitutional Court of the Russian Federation » a certain term of office of a judge of the Constitutional Court is established (Article 12). The Federal Constitutional Law is in force"[20].

It seems that the so-called substantive conflicts that arise between general and special norms, that is, between norms regulating the type and type of social relations, should also be critically assessed. Anastasia Nikolaevna Golovistikova argues that "if there are contradictions between normative legal acts of a general and special nature that have the same legal force, then an act of a special nature is applied"[21]. Lyudmila Aleksandrovna Morozova, analyzing substantive collisions, argues that "this type of collision arises in the same space and at the same time between norms of equal legal

force. But the difference between them is the scope of regulation. The general norm is intended to regulate social relations as a whole, and special norms are a subtype or part of these relations. The special norm seems to exclude individual circumstances from the operation of the general norm. To overcome this type of conflict, there is a rule: a special norm cancels the effect of the general norm"[22].

3.3 Competition of Legal Norms

Conflicts of legal norms should be distinguished from their competition, when two, three or more norms that do not contradict each other regulate the same circle of related social relations, only with different degrees of specificity and detail in scope. In such cases, the norms compete with each other; in principle, this is normal. Here it is necessary to emphasize that competition between norms arises in the case when two or more norms of law with different degrees (or volume) of legal regulation claim to regulate the same social relationship, that is, competing norms do not conflict with each other, do not are mutually exclusive. For example, in the Criminal Code of the Russian Federation in part 3. Art. 17 of the Criminal Code of the Russian Federation stipulates that "if general and special norms provide for a crime, there is no totality of crimes and criminal liability arises according to the special norm," there is a fact of general competition.

A negative and undesirable phenomenon is precisely collisions, when not only inconsistent, but often mutually exclusive instructions collide with each other. Many scientists pay attention to the negative aspect of legal conflicts. Thus, Anastasia Nikolaevna Golovistikova believes that they create "certain difficulties in the process of subjects exercising their rights and obligations." They interfere with the normal, coordinated work of the legal system, often infringe on the rights of citizens, affect the effectiveness of legal regulation, the state of legality and order, legal consciousness and legal culture of society; they create difficulties in law enforcement practice and make it difficult for citizens to use legislation"[21]. Ivan Yakovlevich Kozachenko and Zinaida Aleksandrovna Nikolaeva, discussing intersectoral conflicts of criminal and penal legislation, believe that "this creates significant difficulties in the process of law enforcement activities..."[23].

Nikolai Ignatievich Matuzov and Alexander Vasilyevich Malko, speaking about legal conflicts, believe that in this case "different norms seem to come into conflict with each other, intersecting at one point in the legal space and "claiming" to regulate the same relations." Scientists do not exclude an option in which "a conflict can also be expressed in the form of a legal impasse, when there is no way out of the current situation provided for by law" [20]. Scientists representing criminal law especially emphasize that "... the phenomenon of conflict in criminal law is explained by the fact that it is one of the types of defects in the legislative system that arose due to the inconsistency and excess of regulatory requirements, violation of legal and technical rules for constructing legislation in general and specific norms in particular"[16].

In fairness, there is also a position in which legal conflicts are not always assessed as purely negative phenomena indicating flaws in the legal system and in the practice of laws and other acts. Thus, Yuri Aleksandrovich Tikhomirov, in this regard, draws attention to the fact that, firstly, a legal conflict reflects the deformation of the legal system or its individual components, state institutions, forms of management; secondly, a legal conflict acts as evidence of natural contradictions, normal development and functioning of state legal institutions; thirdly, a legal conflict can express a fair claim to a new legal order or protection of the constitutional order, and then legal opposition to arbitrariness, illegal acts and actions is indisputable [24]. In another work, scientists emphasize that "... legal conflicts should also have a positive meaning, since in certain situations they open the way to finding new legal solutions"[25].

Vladimir Alekseevich Rybakov equally agrees with this position, who sees positive things in legal conflicts, "because they point to shortcomings that have arisen in the legal system"[26]. Irina Vasilyevna Alenina, highlighting the informative function of positive collisions, wrote that it is expressed in the impact of collisions on the consciousness of the subjects of rule-making and the law enforcement process by informing the legislator about the need for

changes and additions to legislation, the activation of legal science, which stimulates the improvement of legislation [27].

Vladimir Konstantinovich Babaev at one time believed that conflict has a positive significance for the development of the legal system if it is a form of expression of a fair claim to a new legal order or the preservation of the social order. In this case, such legal opposition to arbitrariness and violation of the rule of law, constitutional rights, and freedoms are some ways to preserve and protect constitutional law and order [28].

Bearing in mind the positive potential of legal conflicts, the literature emphasizes that they can be called a "litmus test" characterizing the qualitative state of the legal system; an increase in the number of collisions in a particular branch of the law indicates the inconsistency of legal regulation in this branch of law, differences in the legal positions of rule-making bodies, suggests the need to take measures to ensure the consistency of legal impact, and eliminate the causes that give rise to conflicts; the number of collisions can serve as an indicator of the effectiveness of ongoing reforms in the state [29].

From the position of Tatyana Anatolyevna Shchelokaeva, depending on the reasons for their occurrence and role in the legal system, collisions can be classified into positive and negative: if the first is a clash of legal norms that regulate the same social relations and which express the objectively formed needs of people, then the second - this is a clash of legal norms, one of which appears in the legal system as a result of an error by a law-making body (exceeding law-making powers, non-compliance with the rules of legal technology, etc.) [15]. The presented point of view is very unconvincing.

Alexander Rudolfovich Lavrentyev, despite the negative assessment of conflicts in law [30], indirectly still recognizes their division into positive and negative. In particular, he writes that "a special criterion for classification can be the peculiarities of the manifestation of the rules of law, based on which natural and anomalous collisions are distinguished" [30].

Supporters of the proposed classification believe that "in addition to its cognitive function, this classification is of great importance for legal practice. If positive collisions only need to be overcome when resolving legal cases, then negative collisions must be overcome and eliminated through lawmaking" [15].

Despite the above, it must be stated that most scientists recognize collisions as a negative phenomenon [31], because "firstly, the uncertainty and ambiguity of legal regulation leads to a situation of instability, and therefore, the law cannot be considered a reliable regulator; secondly, the absence of unified rules of behavior negatively affects people's attitudes towards legislative and executive authorities, which are unable to create a stable system of hierarchical legislation coherently" [32]. At one time, Nikolai Ignatievich Matuzov emphasized that competition between norms is regular, and "collisions are a negative, certainly undesirable phenomenon..." [4]. From the position of Nikolai Aleksandrovich Vlasenko, "competition of legal norms as a technical and legal means of legal regulation is not a defect of law and is unlikely to have anything to do with legislative imbalance" [33].

Moreover, scholars believe there is a natural necessity for creating and operating competing norms. From the position of Ivan Nikolaevich Senyakin, "It is due to the peculiarities of the legislative functions of the Russian Federation as a whole and its subjects, as well as the implementation of the legislation of foreign states and international law into the Russian legal system" [34].

3.4 The Relationship between Conflicts and Competition of Legal Norms

How do conflict and competition relate to each other in law?

According to Nikolai Aleksandrovich Vlasenko, competition of legal norms is recognized as a type of conflict of norms that arises when it is necessary to specify legal provisions that are abstract in nature about a specific type of social relations [7]. The author supports the point of

view of Alexander Fedorovich Cherdantsev, who believes that competition is only a particular case of a collision, namely: a clash of general and special norms, when these two norms claim to regulate the same situations. At the same time, it is noted that the concept of competition can be used to characterize the analyzed type of clash of legal norms [35]. Later Alexander Fedorovich Cherdantsev, speaking only about the competition between general and special rules of law, writes that "a special rule excludes the action of a general....; a universal rule applies here - *lex specialis derogate legi generali* (a special law cancels the action of a general one)" [36].

Vladislav Valerievich Denisenko, who believes that competition is a type of conflict of legal norms, focuses on the fact that "the unifying feature of these two categories is the presence of one legal relationship that is subject to several legal norms" [18].

Tatyana Anatolyevna Shchelokaeva argues that "within the framework of one legal system, positive collisions are a clash of legal norms that regulate social relations with varying degrees of detail.... In the literature, this type of conflict of norms is called competition" [15]. Marina Anatolyevna Zanina takes a similar position [37].

In criminal law, the position of identifying conflict with competition of legal norms is defended by Lyudmila Valentinovna Inogamova-Khegai [38], who expresses a very dubious statement about the identity of the method and elimination of competition [38]. She is also supported by Zinaida Aleksandrovna Neznamova: "This position is based on the fact that conflict, like competition, is nothing more than a problem of choosing a rule of law, that is these are identical concepts. Only different terms denote the same problem—the problem of choosing a norm from among several that regulate the same factual relationship" [39].

Irina Vladimirovna Dergacheva does not distinguish between conflicts and competition of legal norms, claiming that "competition of norms... lead to significant contradictions within national legal systems," although the earlier author believed that competition "is, in principle, a normal legal phenomenon" [40]. Judging by the content of the article, Lyudmila Aleksandrovna Morozova also identifies conflicts and competition of legal norms [41].

There is also a point of view according to which conflict is considered as a special case of competition [42]. Viktor Pavlovich Malkov, taking a similar position, believes that competition is a broader concept than conflict. The scientist believes that the competition of criminal law norms should be understood as such a relationship, "when, when qualifying a criminal act or resolving another issue, it is discovered that two or more criminal law norms, coinciding or diverging in content and calculated to regulate the issue under consideration with the same or different completeness, and the law enforcement agency needs to decide which of the existing norms has priority over the others" [43].

In our opinion, we should support the point of view of Ivan Nikolaevich Senyakin, who argued that "in law enforcement activities, we can talk about competition only when a single fact or case is covered by the signs of several norms, and these norms are interconnected" [34].

According to Vladimir Nikolaevich Kudryavtsev, conflict and competition in law must be considered independent phenomena. At the same time, a conflict of legal norms represents their contradiction, and competition is "a difference in the volume and degree of generalization of norms that are uniform in their essence and direction" [44]. Yuriy Vladimirovich Golik, giving an example of conflicts of norms enshrined in Part 2. Article 87 and Part 1 Article. 43 of the Criminal Code of the Russian Federation very reasonably emphasizes that "... competition as such will not be able to accommodate many existing conflicts in criminal law, if only because they do not have the inherent rivalry of different norms in them" [45].

The concepts of conflict and competition in law must be distinguished, considering both these arguments and the different assessments of these concepts outlined above.

The concept of competition of norms will be most successfully analyzed using the example of criminal law norms, since in both the science of criminal law and in the practice of its application this issue is the most developed, and at the same time debatable, because different views are expressed regarding the types of competition [46;47;48 ;49;50]

Most often, the following types of competition in criminal law are distinguished:

- 1) competition between general and special norms. An example is the rule on simple murder - intentionally causing the death of another person (Part 1 of Article 105 of the Criminal Code of the Russian Federation) and the rule on murder in a state of passion, that is, intentionally causing the death of another person in a state of sudden emotional solid disturbance caused by violence, bullying or a grave insult on the part of the victim, as well as other illegal or immoral actions of the victim, or a long-term psychologically traumatic situation caused by systematic illegal or immoral behavior on the part of the victim (Article 107 of the Criminal Code of the Russian Federation). In this case, the general rule is Part 1 of Art. 105 of the Criminal Code of the Russian Federation, and special - Art. 107 of the Criminal Code of the Russian Federation, since it regulates relations in murder in more detail than Part 1 of Art. 105 of the Criminal Code of the Russian Federation. When there is competition between general and special norms, the qualification of a crime is carried out according to a special norm (Article 17 of the Criminal Code of the Russian Federation);
- 2) competition of special norms. For example, competition between qualified and especially qualified crimes. Thus, liability for intentional infliction of grievous bodily harm with the use of weapons or objects used as weapons arises under paragraph "c" of Part 2 of Art. 111 of the Criminal Code of the Russian Federation - qualified personnel. And liability for intentional infliction of grievous bodily harm about two or more persons - under paragraph "b" of Part 3 of Art. 111 of the Criminal Code of the Russian Federation - a particularly qualified composition. If a person intentionally caused two or more persons serious harm to health with the use of weapons or objects used as weapons, then he will be held accountable under paragraph "b" of Part 3 of Art. 111 of the Criminal Code of the Russian Federation. The indicated compositions are in a relationship of subordination.
- 3) competition between the part and the whole. This type of competition arises if an act falls under the characteristics of two or more norms, where one norm covers the act as a whole, and the other only a part of it. For example, robbery committed with infliction of grievous harm to the health of the victim (clause "c" of Part 4 of Article 162 of the Criminal Code of the Russian Federation) is the whole, and the part here will be the intentional infliction of grievous harm to health - Art. 111 of the Criminal Code of the Russian Federation. Qualification occurs according to a norm that embraces the whole. These concepts are also compatible and are in a relationship of subordination to each other.

Thus, we see that in competition, norms are in a relationship of subordination to each other. As for conflicts in law, from the above points of view regarding the definition of this concept and from the provisions of the legislation relating to this issue, it follows that we are talking about conflicts in law when rules of law or other legal phenomena collide with each other, while their simultaneous use is impossible. This happens when, for example, the norms of different states claim to regulate the same social relationship: if a Russian citizen committed, say, a murder on the territory of the Republic of Belarus, then the legislation of Belarus and the legislation of Russia claim to regulate the resulting relationship. It is only possible to apply the norms of both states at a time. The choice of the applicable rule must be made on the basis of a special rule for resolving the conflict that has arisen. These norms are mutually exclusive; from a logical point of view, they are incompatible concepts. In the example given, the concepts are in a relationship of opposition. Colliding norms will be in the same relationship (relationship of opposition) when they act at different times.

Thus, in competition, legal norms are compatible concepts and are in a relationship of subordination to each other, and in a conflict, legal norms are incompatible concepts, being in a relationship of opposition or contradiction. The preceding allows us to conclude that a conflict in law cannot be identified with competition; these phenomena are independent, and none of them is part of the other. The only thing they have in common is that in conflict and competition, the law enforcer must choose one of the norms to regulate the relationship [51].

One should agree with the opinion of Alexander Pavlovich Kuznetsov, who, drawing attention to the unequal significance of collisions and competition, including in relation to criminal legal phenomena, from the point of view of philological sources, draws attention to the following aspect: in competition, the norms do not contradict each other, they are about rivalry, competition cannot exist in isolation from the actual circumstances of the case, from the specific situation, however, a conflict can occur regardless of any situation. Its establishment is possible without reference to the relevant factual circumstances. The author especially emphasizes that "... competition is a state of application of the law; it always arises in a specific law enforcement situation, when an act is committed in which signs of two or more criminal law norms are seen"[52].

In fairness, we note that even earlier, Vladimir Nikolaevich Kudryavtsev noted that conflicts between two or more norms exist regardless of whether specific facts fall under these norms.

We are talking about competition of norms only in cases of application of the law, when it turns out that the committed act falls under the characteristics of two or more regulations. The scientist also wrote that in a certain sense, competition is a more complex phenomenon than conflict; it intertwines questions of fact with questions of law. It was noted that when competing norms, a deep knowledge of legislation and judicial and prosecutorial practice is required to correctly qualify the offense [44].

IV. Conclusion

In conclusion of this scientific research, the main conclusion should be made that, even though some authors believe that the discussion of the relationship between the concepts of "collision" and "competition" is unproductive, the disagreement of scientists regarding external forms is not of fundamental importance [53], we believe that this discussion allows, on the one hand, to correctly determine the nature of the relationship between these concepts, establish their legal nature, characteristics, and understand the essential characteristics; on the other hand, it will help officials make legal ones, because here we are talking about the correct choice of legal grounds, decisions in the process of law enforcement.

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