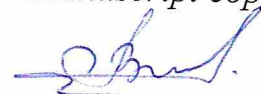


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**PRINCIPLES OF LAW IN THE NATIONAL LEGAL SYSTEMS OF THE
RUSSIAN FEDERATION AND THE REPUBLIC OF ARMENIA
(COMPARATIVE LEGAL RESEARCH)**

Specialty 5.1.1. – Theoretical and Historical Legal Sciences

**Abstract dissertation
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Rationale of the Research. From the 2nd half of the 20th c. to the 1st quarter of the 21st c., the issue of principles of law gained ground with a theoretical and a practical aspect. Currently, it became apparent that any law branches, their aggregate and legal regulation in general are rooted in certain ideas corresponding to the historical frame and level of social relations' development. The effectiveness of law regulation and quality of administration of law depend on the level of those ideas' meeting society's demands, extent of prior research, unambiguousness, and specific language in regulatory legal acts' texts. The disconnect between principles of positive law and legal reality, as well as the doctrine reflecting the latter, leads to review of legislation comprising the system of principles of positive law by excluding from it ideas fading into insignificance and including new principles of law.

A distinction is to be made between principles of law as those of positive law and doctrinal principles of law as a phenomenon of legal consciousness, by their role in the system of law widely (S. S. Alekseyev, M. V. Zakharova, V. N. Kartashov, N. I. Matuzov, V. N. Sinyukov, V. V. Oksamytny et al.), entrenchment source, and some other parameters. Unfortunately, they are often confused in science literature and even in practice of administration of law. Hence, the issue of clear distinction between principles of law and doctrinal principles of law important both for the theory and process of law is topical.

Principles of law and doctrinal principles of law do not exist *per se* in an abstract space-time continuum but are expressed and function in specific systems of law. To learn more about one's own system of law, one should compare it with other systems of law, for it is in the process of comparison that common and special features of compared objects are shown most clearly. The above fully applies to the study of principles of law and doctrinal principles of law. We believe that currently, a comparative analysis of principles of law in the systems of law of the Russian Federation and Republic of Armenia is reasonable.

Any comparative study needs to explain why some or other of phenomena of legal reality encountered namely in particular two or more countries are compared. Hence, the context of the issues of this work requires answering two questions: 1) *Is it*

possible at all to compare principles of law of the Russian Federation and the Republic of Armenia? and 2) *Why are principles of law of these particular state compared?*

In terms of theory, comparability or incomparability of principles of law is specified, in our opinion, by the following circumstances:

- firstly, by the belonging of particular systems of law to one legal family;
- secondly, by the similarity of historical development in general or in a definite period close to the present;
- thirdly, by relative geographical (territorial) proximity.

Russia and Armenia have travelled long ways of historical development, partially in common: first within the confines of the Russian empire, and then within the confines of the USSR. Before the Russian empire dissolved, both Russia and Armenia (as culturally, ethnically, and, in a way, *de jure* separate parts of the empire) had gravitated towards the continental (Romano-Germanic) legal family, and borne some of its characteristics.

Despite the fact that the Roman law *per se* has never been critical for the systems of law of Russia and Armenia, there was a quite fairly established hierarchical system of sources of law here, with the dominance of normative legal acts, similarly to the Western European countries, as early as in the period of the empire. Before the judicial reform of 1864, there had been no court practice in the modern sense in Russia. After the judicial reform of 1864, the Directing Senate regularly summarized the court practice and provided instructions concerning the latter; however, the matter of the role of the same in the system of sources of law is open to debate. In any case, the precedent, as it exists in the Anglo-Saxon legal family, was of no importance here. Despite the certain specificity, the Russian empire was characterized by division of law into branches and presence of codified laws.

After the appearance of Soviet Russia, later – of the USSR, and still later – of the Soviet Bloc nations, the Soviet law family became a separate one. The main representative of the latter was the USSR with its constituent republics, including the RSFSR and the Armenian SSR. In the Union Republics, there were their own codified laws, to a certain extent reflecting the regional peculiarities, but in general very similar

to each other. With the disintegration of the USSR, Russian and Armenian law returned to the fold of the continental legal family. At the same time, the fact that currently, Russia and Armenia do not share borders is not an obstacle for close contacts between these states. All the more so because, territorially, they are sufficiently close to each other, too.

These days, the Russian Federation and the Republic of Armenia are separate independent states with their own systems of law, with a history of joint development and a certain similarity. This enables us to conduct comparative research not only out of purely academic interest (that does happen sometimes in comparing systems of law which are too far apart), but also with a view to mutually use each other's national experience.

It should also be noted that the legal science of Russia and that of Armenia have been close to each other since as early as the Soviet times and that there are close scientific contacts between modern researchers from the Russian Federation and the Republic of Armenia. As only one of the examples of integration of the science of two states, let us name the works by the Russian-Armenian scientist specializing in theory of state and law, philosophy of law, and history of political and legal studies Academician of the Russian Academy of Sciences (RAS) V. S. Nersessyants. With his textbooks, repeatedly published in Russian and Armenian¹, the students of higher educational establishments of Russia and Armenia still study. V. S. Nersessyants has formulated the libertarian legal theory, further developed by his disciples, within which the original teaching about principles of law was created. The presence of a specific conception of principles of law, developed just in the science of Russia and Armenia is an additional argument for comparison of principles of law in the systems of law of Russia and Armenia.

In general, the principles of law in the legislation of Russia and Armenia, as well as doctrinal principles, are comparable phenomena. This is specified by the belonging

¹ See, e. g., Nersessyants V. S. General Theory of State and Law: Textbook for Higher Educational Establishments (Obshchaya teoriya gosudarstva i prava: uchebnik dlya vuzov). M.: Norma; INFRA-M, 2023; Nersessyants V. S. Theory of Law and State. Yerevan: Nayiri, 2001 (Ներսեսյանի Վ.Ս. Իրավունքի և պետության տեսություն. Երևան; Նայիրի, 2001).

of Russia and Armenia to the continental legal family, by a certain historic cultural similarity, by the shared Soviet past, by the close economic, political, and cultural relations, by the accession to the Eurasian Economic Union, as well as by the similar approaches of the legislator to law-making and entrenchment of the principles of law in the texts of regulatory legal acts. We believe that both complex and branch comparison of principles of Russian and Armenian law and comparison of separate principles of law holds a huge potential in terms of practical improvement of the legislation of both of the states, as well as statement of reasons for its partial unification within the Eurasian Economic Union.

Extent of Prior Research of the Issue. The issue of principles of law in the pre-revolutionary period of Russian and Armenian history was practically neglected. It was specified by the fact that the legal drafting methodology of that period had no idea about the concept of *principle of law*, and therefore principles of law lacked intentional normative entrenchment and were not marked. As a result, scientists lacked interest in principles of law as an abstract category out of relation to the actual legal regulation of social relations and without practical significance for the administrator of the law. However, on the level of the doctrine, principles of law (there synonyms were *fundamental principles*, or *governing principles*) were perceived as some ideas reflecting certain values and underlying legal norms and law in general (P. V. Vinogradov, M. N. Kapustin, S. A. Muromtsev, P. I. Novgorodtsev, V. M. Khvostov, B. N. Chicherin, G. F. Shershenevich et al.).

In the Soviet period of Russian and Armenian history, scientists' attention to principles of law became purposeful. Within the positivist legal understanding, combined with the socialist legal consciousness, the problems of the concept of *principles of law*, their contents, essence, classification, meanings, etc. were worked out and separate principles of Soviet law were characterized both at the general-theoretical level (N. G. Aleksandrov, S. S. Alekseyev, M. N. Alshuller, N. A. Apiyan, A. M. Vassilyev, D. A. Kerimov, Ye. A. Lukasheva, N. S. Maleyin, N. I. Matuzov, T. N. Moskalkova, V. A. Mussakhanyan, M. S. Strogovich, V. S. Tadevossyan, F. F. Tretyakov, K. P. Urzhinsky, L. S. Yavich et al.) and at the level of the branch

(M. G. Avdyukov, V. Berutovich, A. T. Bonner, S. N. Bratus, V. S. Bukina, V. V. Gorodilov, M. A. Gurvich, S. V. Dolgorukov, P. F. Yelisseykin, V. N. Kudryavtsev, A. S. Koblikov, G. A. Sverdlyk, V. M. Semenov, V. V. Tikhonovich, A. A. Ferens-Sorotsky, P. A. Fefelov, N. A. Chechina et al.). In this respect, all the researchers, to a greater or lesser extent, were influenced by the applied hard-and-fast ideological guidelines, which led to political nature of scientific research, narrowed the field of the issues tackled and methodological tools for their solution.

Currently, both in the general-theoretical aspect and the branch one, the issue of principles of law is paid a huge attention to. On this theme, about 100 doctoral and candidate's dissertations have been defended: general-theoretical ones (A. L. Assatryan, A. A. Bazhanov, K. V. Vedyakhina, I. Ye. Vinnitsky, L. V. Volossatova, A. L. Vyazov, T. S. Grachev, Ye. A. Derbysheva, A. V. Derevesnikov, S. D. Dmitriyev, A. V. Dolzhikov, Z. A. Dulluyev, A. F. Yefremov, A. L. Zakharov, K. S. Zakharova, V. Yu. Zubakin, L. Yu. Kazantsev, G. N. Komkova, I. A. Kretova-Alyoshina, S. Ye. Kuzakhmetova, S. Yu. Lavrus, A. B. Lissyutkin, P. R. Magomedova, T. A. Malash, M. A. Milkin-Skopets, V. M. Reuf, T. R. Sabitov, A. I. Sidorenko, A. S. Sidorkin, A. V. Smirnova, O. Ye. Surkova, S. Ye. Frolov, K. A. Chernov et al.) and branch-specific ones (A. V. Arendarenko, N. N. Babayan, Yu. R. Baryshnikova, S. S. Bezrukov, Z. G. Brtsiyeva, N. M. Vaguina, T. Yu. Vilkova, I. Yu. Voronov, G. V. Grigoryan, Ye. V. Gubenkova, D. I. Dedov, S. V. Dolgorukov, K. V. Dyadyun, A. S. Yegorova, A. F. Zakirov, V. A. Ivanov, S. A. Ivanova, V. A. Kanubrikov, N. A. Karpunina, S. V. Kozhushko, M. V. Kolossova, Ye. G. Komissarova, D. L. Kondratyuk, A. V. Konovalov, R. N. Korablev, R. V. Korolev, I. V. Korshikov, A. S. Kossach, A. V. Kubassov, A. A. Kupriyanov, A. Yu. Laktayeva, S. V. Mazurenko, A. V. Malyukina, M. A. Mitrofanova, S. V. Moyisseyev, I. A. Niftaliyeva, A. V. Ovod, O. V. Oleynik, A. S. Ostrovsky, P. S. Pastukhov, N. Yu. Polyanskaya, O. A. Potapova, T. N. Prokhorko, S. A. Sapozhnikov, M. V. Sidorenko, D. A. Smirnov, V. M. Stepashin, A. V. Tatarnikov, I. V. Teleguina, A. S. Fedina, N. S. Sherstneva, L. G. Shcherbakova, M. V. Yuyukina, T. V. Yaroshenko et al.), several dozen monographs by one author (I. A. Aleshkova, S. S. Bezrukov,

V. A. Belov, M. M. Brinchuk, T. Yu. Vilkova, A. F. Voronov, G. A. Gadzhiyev, A. S. Gambaryan, A. F. Yefremov, A. L. Zakharov, G. N. Komkova, O. A. Kuznetsova, A. V. Konovalov, S. A. Mossin, K. V. Nam, I. A. Niftaliyeva, A. A. Pilipenko, A. Ya. Ryzhenkov, Ye. V. Ryabtseva, T. R. Sabitov, Ye. A. Sizaya, Ye. V. Skurko, D. A. Smirnov, Ye. G. Strebkova, A. S. Fedina, V. D. Filimonov, D. A. Fursov, G. R. Khabibullina, L. G. Shcherbakova et al.) and by several authors² have gone out, devoted to principles of law in general, principles of one or several branches of law, and separate principles, and more than 1,000 articles have been published. Periodically, representational events of different levels are held being specially dedicated to principles of law and collections of articles following them or just thematic collections

² See, e. g., Implementation of the Constitutional Principle of Equality of All Before the Law in Modern Russia (Realizatsiya konstitutsionnogo printsipa ravenstva pered zakonom i sudom v sovremennoy Rossii) / ed. by G. N. Komkova. Saratov: Volga Region Academy of Public Administration, 2005; Constitutional Principles of Equality Before the Law (Konstitutsionnyye printsipy ravenstva pered zakonom) / ed. by V. V. Volodin. M.: Sputnik+, 2007; Principles of Russian Law: a General-Theoretical and a Practical Aspect (Printsipy rossiyskogo prava: obshcheteoreticheskiy i otraslevoy aspekty) / ed. by N. I. Matuzov and A. V. Malko. Saratov: Saratov State Law Academy, 2010; Principles of Modern Russian Criminal Proceedings, a Monograph (Printsipy sovremennogo rossiyskogo ugolovnogogo sudoproizvodstva: monografiya) / academic editor: I. V. Smolkova; publishing editor: R. V. Mazyuk. M.: Yurлитinform, 2015; Issues of Implementation of Principles of Law in Entrepreneurial Activity, a Monograph (Problemy realizatsii printsipov prava v predprinimatelskoy deyatel'nosti: monografiya) / publishing editor: V. A. Vaygan and M. A. Yegorova. M.: Yustitsinform, 2016; Principles of Civil Law and Their Implementation, a Monograph (Printsipy grazhdanskogo prava i ikh realizatsiya: monografiya) / ed. by T. P. Podshivalov and G. S. Demidova. M.: Prospekt, 2017; Principle of Legality: Modern Interpretations, a Monograph (Printsipy zakonnosti: sovremennyye interpretatsii: monografiya) / gen. ed. by M. A. Belyayev, V. V. Denissenko and A. A. Malinovsky. M.: Prospekt, 2019; Principled of Public Law, a Monograph (Printsipy publichnogo prava: monografiya) / ed. by Ye. V. Titova and T. P. Podshivalov. M.: Prospekt, 2019; Principles of Russian Criminal Proceedings: Contents and Issues of Implementation (Printsipy rossiyskogo ugolovnogogo sudoproizvodstva: soderzhaniye i problemy realizatsii) / ed. by N. G. Manova. M.: Yurлитinform, 2019; Principles of Criminal Process, a Monograph (Printsipy ugolovnogogo protsessa: monografiya) / gen. ed. by G. S. Rusman and S. M. Darovskikh. M.: Prospekt, 2022; Principle of Formal Equality and Comity of Nations, a Monograph (Printsipy formal'nogo ravenstva i vzayimnoye priznaniye prava: monografiya) / gen. ed. by V. V. Lapayeva, A. V. Polyakov, and V. V. Denissenko. M.: Prospekt, 2022; Principles of Private Law, a Monograph (Printsipy chastnogo prava: monografiya) / ed. by T. P. Podshivalov, V. V. Kvanina, and M. S. Sagandykov. M.: Prospekt, 2023; Issues of Implementation of the Principles of Civil Proceedings in the Activity of Administration of Law, a Monograph (Problemy realizatsii printsipov grazhdanskogo sudoproizvodstva v pravoprimenitel'noy deyatel'nosti: monografiya) / publishing editors: V. M. Zhuykov and S. S. Zavriyev. M.: Institute of Legislation and Comparative Law under the Government of the Russian Federation; Norma; INFRA-M, 2024.

of articles are published³.

The peculiarity of the modern phase of research of principles of law became their study from the points of view of different types of legal understanding: the natural-law one (R. Dworkin and A. V. Konovalov), the libertarian one (V. S. Nersessyants, N. A. Varlamova, V. V. Lapayeva, M. A. Milkin-Skopets, V. S. Nersessyan, A. S. Sidorkin, and V. A. Chetvernin), and the integrative type (J.-L. Bergel, J. Daci, T. Cankorel, Y. Stoilov, I. Yu. Voronov, V. V. Yershov, Ye. A. Yershova, S. V. Mazurenko, A. V. Skorobogatov et al.). Most scientists adhere to different variants of the positivist legal understanding (to name a few, H. Hart, J. Raz,

³ See, e. g., Principles of Law: Proceedings of All-Russia Scientific-Theoretical Conference (Printsipy prava: materialy Vserossiyskoy nauchno-teoreticheskoy konferentsii), St. Petersburg, 30 November 2006 / gen. ed. by D. I. Lukovskaya; prep. by S. V. Volkova and N. I. Maysheva. St. Petersburg: Publishing House of Saint-Petersburg University, 2007; Principles of Law: General-Theoretical and Branch Aspects: Proceedings of the Inter-University *Round Table* as Part of the 70th Conference of Lecturers and Persons Working for Doctor's Degree of Baikal State University of Economics and Law (BSUEL) (Printsipy prava: obshcheteoreticheskiye i otraslevyye aspekty: materialy mezhvuz. *kruglogo stola* provodimogo v ramkakh 70-y konferentsii prepodavateley i doktorantov BGUEP). Irkutsk, 25 March 2011 / ed. by Yu. V. Vinichenko and I. A. Minnikes. Irkutsk: BSUEL Publishing House, 2011; Principles of Law, a Collection of Articles Following the Round Table in Moscow Institute of Public Administration and Law (Printsipy prava: sb. st. po itogam kruglogo stola v Moskovskom institute gosudarstvennogo upravleniya i prava) / ed. by D. A. Pashentsev and A. G. Chernyavsky. M.: Rusayns, 2015; Principles of Criminal Proceedings and Their Implementation in Proceedings in Criminal Cases, Proceedings of the IV International Research-to-Practice Conference on 5–6 April 2016 (Printsipy ugolovnogo sudoproizvodstva i ikh realizatsiya pri proizvodstve po ugolovnym delam 5–6 aprelya 2016 g. (g. Moskva)). M.: Russian State University of Justice (RGUP), 2016; Principles of Law: Issues of Theory and Practice: Proceedings of the XI International Research-to-Practice Conference: 2 Parts (Printsipy prava: problemy teorii i praktiki: materialy XI mezhdunarodnoy nauchno-prakticheskoy konferentsii: v 2-kh ch.) Moscow, 18–22 April 2016. M.: RGUP, 2017; Principles of Law, a Collection of Articles of the XV International Student Research-to-Practice Conference *Law and Justice Nowadays* (Printsipy prava: sb. st. XV Mezhdunarodnoy studencheskoy nauchno-prakticheskoy konferentsii *Pravo i sud v sovremennom mire*). Moscow, 25–26 February 2016 / ed. by A. Ye. Kirpichev. M.: RGUP, 2017; Annual Book of Public Law 2018: Principles of Administrative Procedures and Administrative Proceedings, a Collection of Research Papers (Yezhegodnik publichnogo prava 2018: Printsipy administrativnykh protsedur i administrativnogo sudoproizvodstva: sb. nauchn. tr.) / ed. by J. Pudelek. M.: Infotropic Media, 2018; Principles and Values in Law: Doctrine, Law-making, and Implementation: Third Prokopiev Readings: Proceedings of the International Research-to-Practice Conference (Printsipy i tsennosti v prave: doktrina, pravotvorchestvo, realizatsiya: Tretiy Prokopyevskiy chteniya: materialy Mezhdunarodnoy nauchno-prakticheskoy konferentsii), Kaliningrad, 6 December 2019. Kaliningrad: Immanuel Kant Baltic Federal University, 2020; System of Principles of Russian Law: Technique of Entrenchment, Interpretation, and Implementation (Sistema printsipov rossiyskogo zakonodatelstva: tekhnika zakrepleniya, interpretatsii, realizatsii) // Yuridicheskaya Tekhnika. 2020. No. 14; Principles of Civil, Arbitration, and Administrative Proceedings: Issues of Theory and Practice, a Collection of Scientific Articles (Printsipy grazhdanskogo, arbitrazhnogo i administrativnogo sudoproizvodstva: problemy teorii i praktiki: sb. nauch. st.) / prep. And ed. by L. V. Voytovich. St. Petersburg: Asterion, 2021.

S. S. Avetissyan, A. S. Gambaryan, L. Malkhassyan, G. V. Petrossyan, S. S. Bezrukov, N. A. Vlassenko, N. N. Voplenko, A. A. Demichev, M. L. Davydova, A. L. Zakharov, V. N. Kartashov, O. A. Kuznetsova, S. Yu. Lavrus, Ye. V. Timoshina, and D. A. Fursov).

Unfortunately, today, many researchers (their names are not included herein) do not ask themselves from the point of view of what methodology they consider principles of law. This, particularly in combination with non-acquaintance of the historiography of the issue, sometimes leads to fragmentariness of research on principles of law, illogicality of conclusions, and absence of novelty. The superfluity of the scientific literature on principles of law, exaggerated adherence to pluralism in approaches to their study, and, which is much worse, a number of authors lacking a formed researcher's position, have led to a methodological-cognitive collapse in this sphere. Practically anything now is sometimes referred to as principles of law (and, in addition, separately to them, there are principles of the system of law, of policy of law, of law formation, of legislation issuing, and of legal drafting methodology, of the constitutional order, state structure, arrangement of central and local authorities, justice, judicial system, etc.): at the same time, ideas entrenched in the texts of normative legal acts as principles of law (which is the correct approach, according to our reckoning), ideas entrenched in the texts of normative acts but not marked as principles, or *principia*, ideas derived by researchers from interpretation of normative acts, provisions formulated in court practice, as well as different ideas out of relation to the actual contents of normative legal acts or to court practice, which are the products of the authors' theoretical reasoning on some ideal matters. The concept of *methodological-and-cognitive collapse* refers only to the description of the historiographic situation associated with principles of law, but not to the actual regulation of social relations. There is not any collapse in the modern regulation of social relations, however, the legislation in force, although it does 'work', needs improving for enhancement of the quality of practice of the administration of law.

In the situation defined above, as N. A. Vlassenko has very truly observed, "the problem of studying principles of law in legal science requires methodological

consistency and logical sequence, as well as deliverance from ideological and political traditions.”⁴ We believe that currently, when studying principles of law, we need not *posit plurality* (formulate new concepts, introduce new categories, suggest new classifications of principles of positive law, etc.), but, on the contrary, using Ockham’s razor, cut off anything that is duplicated many times in different variations or characterizes the same phenomena with the use of different terms, systematize the existing concepts and approaches and apply them and other methodological tools to study not an abstract legal matter but the actual principles of law in particular systems of law.

Due to these circumstances, it seems important to conduct a research on principles of law and doctrinal principles of law in different systems of law in terms of the comparativistic approach, more specifically – in the systems of law of the Russian Federation and the Republic of Armenia. All the more so because no ad hoc research of this type has been conducted thus far.

Purpose of the Research. The purpose of the research is to find the common and the special in the understanding, mechanism of entrenchment, and practical importance of principles of positive law and doctrinal principles of law in the national systems of law of the Russian Federation and the Republic of Armenia on the basis of comparative analysis of the legislation and practice of administration of law of the within-named states.

To achieve the said purpose, we must cope with the complex of **tasks** to do the following:

- to find the specific features of the approaches to the concept and essence of principles of law in natural-law, libertarian, positivistic, and integrative legal understanding;
- to characterize the main theoretical and methodological issues of classification of principles of law;

⁴ Vlassenko N. A. Methodological Basis of a Legal Values Research, a Monograph (Metodologicheskkiye osnovaniya issledovaniya pravovyykh thennostey: monografiya). M.: Norma, 2023. P. 75.

- to make a comparative classification of the principles of law of Russia and Armenia in accordance with the source of entrenchment;
- to formulate, on the basis of the positivist legal understanding, a definition of principles of law and doctrinal principles of law;
- to formulate classification of doctrinal principles of law in accordance with different bases;
- to establish the place of principles of law and doctrinal principles of law in the systems of law of the Russian Federation and the Republic of Armenia and determine their role in law-making and administration of law;
- to analyze the history of the legal drafting methodology of entrenchment of principles of law in legislative acts;
- to find and characterize the existing variants of entrenchment of principles of law in the legislation of Russia and Armenia;
- to create a universal model of entrenchment of principles of law in codified acts;
- to characterize the main issues of entrenchment of principles of law in uncodified branches of law;
- to find the specific features of genesis and history of general-legal and other constitutional principles of law RSFSR and the ArmSSR;
- to determine the areas of concern in identifying constitutional principles of law in the legislation of the of Russia and Armenia in force;
- to identify and characterize the role of constitutional general-legal principles in the systems of law of the Russian Federation and the Republic of Armenia.

Object of the Research. The object of the research is principles of law (in the positivist legal understanding) and doctrinal principles (as a phenomenon of legal consciousness) in the national systems of law of the Russian Federation and the Republic of Armenia. Since this work is theoretical-legal, the object of the research does not include principles of international law, the study of which is an individual scientific problem, besides, it is within the sphere of another scientific specialty, as well as principles of constitutional law as a specific branch essential to any system of law.

Subject of the Research. The subject of the research is normative legal acts, first of all, codified ones, in which principles of Russian and Armenian law are entrenched, as well as materials of practice of administration of law and other sources allowing to conduct a comparative research on principles of positive law and doctrinal principles of law in the systems of law of Russia and Armenia.

Theoretical Basis of the Research. The theoretical basis of the research consists of works by scientists from Russia (N. G. Aleksandrov, S. S. Alekseyev, V. K. Babayev, M. I. Baytin, V. M. Baranov, M. V. Baranova, N. V. Varlamova, A. M. Vassilyev, V. M. Vedyakhin, N. A. Vlassenko, N. N. Voplenko, M. L. Davydova, A. A. Demichev, V. V. Denissenko, S. D. Dmitriyev, A. V. Dolzhikov, V. V. Yershov, A. L. Zakharov, V. N. Kartashov, D. A. Kerimov, S. V. Koval, A. V. Konovalov, S. Yu. Lavrus, V. V. Lazarev, V. V. Lapayeva, Ye. A. Lukasheva, N. S. Maleyin, G. N. Manov, N. I. Matuzov, M. A. Milkin-Skopets, V. S. Nersessyants, V. V. Oksamytny, I. V. Ponkin, V. M. Reuf, A. S. Sidorkin, V. N. Sinyukov, Ye. V. Skurko, A. V. Smirnova, V. M. Syrykh, Ye. V. Timoshina, Yu. A. Tikhomirov, G. R. Khabibullina, L. S. Yavich et al.), Armenia (N. A. Apiyan, A. L. Assatryan, A. S. Gambaryan, L. G. Dallakyan, L. Malkhassyan, V. A. Mussakhanyan, B. S. Tadevosyan et al.), and other countries (H. Avila, R. Alexie, J.-L. Bergel, J. Daci, R. Dworkin, T. Cankorel, J. Mackie, R. Poscher, J. Raz, Y. Stoilov, and H. Hart), who are representatives of the science of theory of law. The work is also based on research by specialists from Russia (M. G. Avdyukov, S. S. Bezrukov, V. A. Belov, A. T. Bonner, M. M. Brinchuk, T. Yu. Vilkova, A. F. Voronov, G. A. Gadzhiyev, D. I. Dedov, Ye. A. Yershova, N. A. Kolokolov, G. N. Komkova, V. N. Kudryavtsev, O. A. Kuznetsova, V. V. Kulakov, S. V. Mazurenko, S. A. Mossin, D. A. Plotnikov, T. P. Podshivalov, I. V. Reshetnikova, A. Ya. Ryzhenkov, T. R. Sabitov, V. M. Semenov, A. A. Ferens-Sorotsky, D. A. Fursov, N. A. Chechina et al.) and Armenia (G. P. Avaguyan, S. S. Avetissyan, Yu. V. Ayrapetyan, K. Bisharyan, G. V. Grigoryan, A. G. Davtyan, G. Daniyelyan, V. Yessayan, A. Karslyan, G. V. Petrossyan et al.) in branch legal sciences.

Methodological Basis of the Research. The work is based on the dialectic

approach allowing to study principles of law and doctrinal principles of law in their interrelation in the context of the dynamics of historical development and evolution in the modern systems of law of the Russian Federation and the Republic of Armenia, comparative-legal approach allowing to find the common and the special in different interpretations of understanding of principles of law, mechanism of entrenchment of principles of law in the legislation of Russia and Armenia, structure and contents of separate types of principle of law and separate principles of law, and system-structure approach allowing to shape a vision of a system of principles of law and interrelation of its elements, including the hierarchy and competition of principles of law.

An essential role in the research is played by the legalistic method allowing analyzing normative legal acts and their structure, as well as identify in them principles of law, and the method of interpretation of law contributing to clarifications of the contents of principles of law. In the study of the legal practice of the Russian Federation and the Republic of Armenia, the content analysis method has been used resulting in finding the frequency of mention of specific principles of law and doctrinal principles of law in the reasoning for the judicial acts made.

The application of the method of abduction has determined the choice of the positivist legal understanding among other types of legal understanding as most properly reflective of the legal reality in the problematic field under study. The use of the methodological tool called Ockham's razor has allowed to make the conceptual framework available in scientific literature on the matter of principles of law more specific and avoid doubling some concepts.

The method of special significance to a great extent specifying the structure of our research work is the method of classification. The method referred to has been used in two aspects: 1) we have applied classifications for a comparative analysis of principles of law of the Russian Federation and the Republic of Armenia, already formulated by other authors, and 2) as a tool of study of doctrinal principles, the author's classifications of them have been formulated.

Since some principles of law are of chrono-discrete nature, to study them, the

methodology of chrono-discrete mono-geography comparative law has been applied⁵.

Besides, the work rests upon such scientific methods of obtaining knowledge of reality as analysis, synthesis, induction, deduction, modelling, formalization, concretization, generalizations, etc.⁶

In the aggregate, the use of the methodological tooling referred to has allowed to conduct a complex comparative-law research on principles of law and doctrinal principles of law in the national systems of law of Russia and Armenia.

Information Base of the Research. The information base of the research consists of normative legal acts and materials of practice of administration of law in Russia and Armenia. The work is based on a study of all the existing and a number of historical codified acts and other normative legal acts of the Russian Federation and the Republic of Armenia, normative legal acts of the Russian empire, the USSR, the RSFSR, and the Armenian SSR (a total of more than 100), case materials of the Supreme Court of the USSR, of Russian Constitutional Court, of Russian Supreme Court, of Russian arbitration courts, courts of general jurisdiction, and magistrates (more than 160 court acts specifically used in the text of the work and more than 10 thousand judicial acts viewed), Armenian Constitutional Court, Armenian Cassation Court, and Armenian Arbitration Court (more than 20 judicial acts specifically used in the text of the work, and more than 500 viewed judicial acts).

Scientific Novelty of the Work. The scientific novelty of the work is to form a new research direction in legal science, *a complex comparative research on principles of law in different systems of law*.

The scientific novelty of the research is also expressed in the following:

– on the basis of the positivist legal understanding, the author's conception of principles of law has been formulated, which implies a clear distinction between

⁵ See: Chrono-Discrete Mono-Geography Comparative Law: Issues of Methodology, a Monograph (Khronodikretnoye monogeograficheskoye sravnitelnoye pravovedeniye: problemy metodologii: monografiya) / ed. by A. A. Demichev. M.: Rusayns, 2021.

⁶ See the characteristic of the named a number of other methods: Ponkin I. V. and Lapteva A. I. Methodology of Scientific Research and Applied Analysis, a Textbook. 4th Edition, Revised: in 2 Volumes (Metodologiya nauchnykh issledovaniy i prikladnoy analitiki: uchebnik. 4-ye izd., dop. i pererab.: in 2-kh t.). Vol 2: Scientific Research (Nauchnyye issledovaniya). M.: Buki Vedi, 2023. P. 404–619.

principles of law (principles of positive law) and doctrinal principles of law;

- the functional role of principles of law and doctrinal principles of law in the systems of law of Russia and Armenia has been determined;

- a comparative classification of principles of a number of branches of law of Russia and Armenia in accordance with the source of their classification has been conducted and on the basis of it the common and the special in the system of principles of the states under study have been found;

- classifications of doctrinal principles of law on different grounds have been first developed in legal science;

- the main routes of transformation of doctrinal ideas into principles of law have been found;

- the existing variants of entrenchment of principles of law in codified acts of the Russian Federation and the Republic of Armenia have been determined and characterized;

- on the basis of the conducted comparative-law research on principles of law in systems of law of Russia and Armenia, universal model of entrenchment of principles of law in the texts of codified acts has been offered, which is applicable not only to the Russian Federation and the Republic of Armenia, but also to any other state the system of law of which refers to the continental legal family.

Validity and Credibility of the Results. The validity and credibility of the results are specified by its rich representative database, corresponding to the purpose and tasks of the methodology, by citation of other authors, normative legal acts, materials of court practice, and other sources, and by evaluation in publications and in speeches during representative scientific events of different levels.

Provisions of Scientific Novelty to be Defended:

1. In keeping with the positivist legal understanding, analysis of legislation, legislation issuing, and practice of administration of law of the Russian Federation and the Republic of Armenia, a multi-aspect definition of principles of law has been formulated, based on identifying their essential, axiological, and legalistic features.

Principles of law are:

- root (basic, determinative, underlying, etc.) ideas behind all legal regulation, the aggregate of branches of law, or a separate branch of law in a particular state;
- expressly entrenched in the text of normative legal acts;
- clearly marked by the legislator as principles (principal provisions, or *principia*);
- being a variety of norms of law and serving as an immediate legal regulator of social relations;
- being of mandatory nature for the legislator and other legal subjects;
- serving as a criterion and being a reference for the legislator in adopting new normative legal acts and improving those in force;
- reflecting the system of values and priorities having historically evolved by the moment of their normative entrenchment and expressing the essence of law in a particular period of time;
- being dynamic in a system of law both in terms of introduction/abrogation and scope of contents (para 16 of Passport of Scientific Specialty 5.1.1 *Theoretical-Historical Legal Sciences*).

2. It has been established that the system of principles of law includes a total of two levels:

- 1) constitutional principles of law;
- 2) branch principles of law entrenched only in branch legislation.

General-legal, inter-branch, and branch principles of law entrenched in the Constitution refer to principles of the first level. Branch (inter-branch) principles of law, entrenched only in the branch legislation and not repeated in the Constitution refer to principles of the second level. The hierarchy of the system of principles of law lies in the fact that in the competition of principles of the first level and the second level the priority rests with principles of the first level. At the same time, there is no internal hierarchy between principles of one level. The competition of principles of one level may be permitted not by the legislator but only by the administrator of the law, according to circumstances of a particular case (para 16 of Passport of Scientific Specialty 5.1.1 *Theoretical-Historical Legal Sciences*).

3. On the basis of a comparative analysis of the Constitutions and codified acts of the Russian Federation and the Republic of Armenia, the patterns of normative entrenchment of principles of law have been established expressed as follows:

- in predominance in systems of law of Russia and Armenia of constitutional (first of all, general-legal) principles, not repeated in branch codes;
- in presence in systems of law, along with general-legal principles, characteristic of all branches of law, of constitutional inter-branch and branch principles;
- in the opportunity of entrenching one and the same principle in different branches of law at different levels: only at the constitutional one, simultaneously at the constitutional one and at the branch one, and only at the branch one;
- in the most similarity (a content- and quantity-related one) of principles of law in criminal, penal, civil, family, administrative procedure, and civil procedure legislation of Russia and Armenia;
- in the most difference of principles of law in labour and civil procedure legislation of Russia and Armenia, expressing themselves, first of all, within specific branch principles entrenched in codified acts (paras 16 and 21 of Passport of Scientific Specialty 5.1.1 *Theoretical-Historical Legal Sciences*).

4. In keeping with the fact that doctrinal principles of law are socially important ideas formulated by scientists, practitioners, and politicians in scientific papers and other texts (including court acts), as well as in public speeches, and not normatively entrenched, the following essential differences between principles of law and doctrinal principles of law have been identified:

- principles of law are entrenched in normative legal acts and doctrinal principles, without normative entrenchment, are formulated in the texts of scientific works, court acts, or other texts;
- the number of principles of law is limited, and there may be any number of doctrinal principles;
- principles of law are of mandatory nature, and doctrinal principles formally have no legal significance;
- doctrinal principles may contradict with the legislation in force, and principles

of law are part of the legislation;

- principles of law are understandable by the administrator of the law and there is a real possibility of their implementation in legal relations, and doctrinal principles can be formulated howsoever, their implementation in practice is far from always;

- principles of law are a variety of legal norms, element of a body of laws and a system of law, they may be used as a tool of correcting legislation deficiencies and legal deficiencies, and doctrinal principles are not an element of a body of laws but are an important element of a system of law, play a certain role in law-making and in court practice, and some of them may serve as a regulator of social relations (paras 16, 17, and 18 of Passport of Scientific Specialty 5.1.1 *Theoretical-Historical Legal Sciences*).

5. The role of doctrinal principles in the legal system of Russia and Armenia has been determined, which lies in the fact that they:

- are the basis of novational changes in law, being the driving force of development of legislation, and hold the potential for law-making;

- serve as means of correcting legal deficiencies;

- have a regulatory influence on social relations, along with principles of law, are actively used by the courts of Russia and Armenia in the argumentation of the judicial acts made. The frequency of reference to a doctrinal principle confirms its relevance in solving specific real-life situations and signals about the potential opportunity and reasonability of its normative entrenchment and transition into the number of principles of positive law (paras 17 and 18 of Passport of Scientific Specialty 5.1.1 *Theoretical-Historical Legal Sciences*).

6. In keeping with the idea that doctrinal principles of law are a variety of ideas existing at the level of legal consciousness, classifications of doctrinal principles of law have been formulated: 1) in accordance with the source of origin and the source in which the doctrinal principle has been formulated; 2) in accordance with the recognition by the scientific community; 3) in accordance with the sphere of social relations to which the doctrinal principle is applied or may be applied.

In accordance with the source of origin and the source in which the doctrinal principle has been formulated, the following principles are identified:

1) doctrinal principles formulated in narratives by scientists, politicians, and other subjects, and reflected in court practice:

- doctrinal principles derived from the contents and sense of a normative legal act and/or their aggregate by the author's interpretation of the text;

- doctrinal principles derived from the general idea of proper law and existing law, justice, reasonableness, and other ethical and moral categories;

2) doctrinal principles derived by separate authors from general analysis of legislation, a doctrine, and their own vision of law;

3) doctrinal principles named only in judicial acts.

In accordance with the recognition of a doctrinal principle by the scientific community, the following principles are identified:

1) doctrinal principles recognised by the scientific community, being a part of a scientific doctrine in general or doctrine of separate branches of law;

2) doctrinal principles neutrally perceived by the scientific community, not seriously criticized nor supported;

3) doctrinal principles not recognised by the scientific community, ignored by it, or disapproved by it:

- out-of-date principles, which used to be normatively entrenched or a part of a doctrine but have been abrogated due to changes of concrete-historical conditions;

- principles not corresponding to traditional moral and spiritual values.

In accordance with the sphere of social relations to which a doctrinal principle is applied or may be applied, the following is identified:

1) general doctrinal principles of law;

2) inter-branch doctrinal principles of law;

3) branch doctrinal principles of law.

Since any classification is a formalisation of the study and what it involves is classification of ideas, the reference of any doctrinal principle of law to a certain type is conventional (para 17 of Passport of Scientific Specialty 5.1.1 *Theoretical-Historical Legal Sciences*).

7. On the basis of the study of the legislation of the Russian Federation and the

Republic of Armenia, it has been established that there is no uniform approach to entrenchment of principles of law in codified acts and uncoded normative legal acts.

The following variants of entrenchment of principles of law in codified acts of the Russian Federation and the Republic of Armenia have been identified:

1) the principles of law are entrenched in a separate chapter of a codified act devoted to them;

2) the principles of law are entrenched in a separate article (separate articles) of a codified act:

- the principles of law are just enumerated without their subsequent definition;
- the principles of law are enumerated in one article and defined in subsequent articles;
- the principles of law are enumerated in one article, and a separate paragraph, point, or part of an article are devoted to each principle, but with that, principles are not defined;
- the principles of law are enumerated in one article and a separate paragraph, point, or part of an article are devoted to each principle, and with that, each of the principles is defined;

3) there is not any element in a codified act in the name of which the term *principles* is used:

- in the text of a codified act, there is not any structural element with the name *principle/principles*, however, a number of fundamental provisions of a particular branch is entrenched in the articles of the first section of the code, *General Provisions*;
- the principles of law are not in any way entrenched in a codified act (paras 16, 22 of Passport of Scientific Specialty 5.1.1 *Theoretical-Historical Legal Sciences*).

8. In the system of law of Russia and Armenia, constitutional principles of law, which may be general-legal, inter-branch, and branch ones, are the framework of branch principles and, simultaneously (in particular, general-legal constitutional principles), the basis of all the system of law. At the same time, they are characterized by the following specific features:

- take precedence over all the other norms;

- may be the basis of formulation of principles of law in branch codified acts;
- have a complex mechanism of entrenchment, which entails the problem of recognition of separate constitutional provisions as principles of law (paras 16, 21 of Passport of Scientific Specialty 5.1.1 *Theoretical-Historical Legal Sciences*).

9. The shared historical past, identity of root ideas formulated in Soviet Constitutions of Russia and Armenia, orientation to generally recognised principles and norms of international law (in particular, in the sphere of human rights) in adoption of post-Soviet Constitutions have led to practically full coincidence of general-legal principles of the Russian Federation and the Republic of Armenia. The exception is provided by principles of certainty and proportionality, which in Armenia are entrenched on the constitutional level (but, at the same time, are not repeated in any branch code) and are general-legal constitutional principles. In Russia, the principles referred to are not normatively entrenched in any normative legal act, that is why they are only doctrinal principles of law. At the same time, the doctrinal principle of legal certainty holds a substantial potential of transition into principles of law (para 16 of Passport of Scientific Specialty 5.1.1 *Theoretical-Historical Legal Sciences*).

10. On the basis of the study of the legislation and practice of administration of law of Russia and Armenia it has been established that separate general-legal principles play different roles in administration of law. Some principles, formulated in keeping with generally recognised principles and rules of international law, have to a great extent proved to be declarative: they are seldom repeated in branch legislation and are in low demand in court practice during the argumentation of judicial acts or references to them are formal. Nevertheless, in general, general-legal principles, both as directly applicable legal norms and guidelines in court practice, have proved to be an effective regulator of social relations in the national systems of law of the Russian Federation and the Republic of Armenia (paras 16 and 26 of Passport of Scientific Specialty 5.1.1 *Theoretical-Historical Legal Sciences*).

11. The analysis of Russian court practice leads to the conclusion that judges' vision of general-legal principles is often erroneous. It shows as follows:

- in judicial acts, branch and inter-branch principles are called general-legal

principles; in the corresponding sphere of social relations, the concept of *underlying* is substituted for the concept of *general-legal* with respect to inter-branch and branch principles;

– in judicial acts, ideas without normative expression being exclusively doctrinal principle of law are called general-legal principles; there is a confusion of principles of law and doctrinal principles;

– in judicial acts, ideas of another legal nature being out of relation to principles of law are called general-legal principles (paras 16, 17, and 26 of Passport of Scientific Specialty 5.1.1 *Theoretical-Historical Legal Sciences*).

12. On the basis of analysis of the existing variants of entrenchment of principles of law in codified legal acts in codified legal acts of the Russian Federation and the Republic of Armenia, a universal model of protection of principles of law in codified legal acts has been offered, the implementation of which will contribute to unification of legislation, uniformity of practice of administration of law, and facilitation of the perception of principles of law by subjects of legal relations.

Universal Model of Entrenchment of Principles of Law in Codified Legal Acts (for the Russian Federation)

Codified Act

Section 1. General Provisions.

Chapter 2. Principles of Legal Regulation ...

Article ... Principle of Legality.

Here and in the subsequent articles of this chapter, there is a definition of a principle. Where appropriate, there is a concretization of the application of a general-legal principle to the corresponding sphere of social relations (the effect of the principle of legality in legal criminal process relations, the effect of the principle of legality in legal family relations, the effect of the principle of legality in legal civil process relations, etc.).

Article ... Principle of Security of Rights and Freedoms of Man and Citizen.

Article ... Principle of Legal Equality.

Article ... Principle of Respect of the Person's Honour and Dignity.

Article ... Principle of Personal Privacy.

Article ... Principle of Privacy of Correspondence, Telephone Conversations, Other Conversations, and Postal, Telegraphic, and Other Messages.

Article ... Principle of Security of Judicial Protection of Rights and Freedoms.

Article ... Principle of Security of the Right to a Competent Legal Assistance.

Article ... Principle ... (Constitutional Branch/Inter-Branch Principle).

...

Article ... Principle ... (Specific Branch Principle).

...

(paras 16 and 22 of Passport of Scientific Specialty 5.1.1 *Theoretical-Historical Legal Sciences*).

Theoretical and Practical Relevance of the Research. The theoretical relevance of the dissertation lies in the fact that the groundwork for a new area of research in the modern theory of law and comparative law, a complex comparative research on principles of law in national systems of law of different states, is being laid in it. The developed methodological approaches allow conducting a complex comparative-law research on principles of law not only of Russia and Armenia, but also on those of any other states referred to the continental legal family, as well as simultaneously all the post-Soviet states in general. Besides, within the framework of the problematic field under study, the opportunities of a comparative analysis of separate types of principles of law (only general-legal ones, only inter-branch ones, or only branch ones) in different systems of law are offered.

The didactic relevance of the research lies in the use of its materials in the teaching and learning process not only in giving lectures and seminars when teaching courses in theory of state and law and comparative law, but also in teaching branches of jurisprudence.

The practical relevance of the dissertation research is that it develops a universal model of entrenchment of principles of law in codified acts, which can be used to

modernize the legislation not only of the Russian Federation and the Republic of Armenia, but also that of any other country of continental law. There are also isolated practical recommendations in the work in furtherance of improvement of separate normative legal acts of Russia and Armenia.

Evaluation of the Results. The general provisions of the dissertation research are reflected in 104 publications by the author, including 7 monographs, 44 articles in pre-reviewed scientific editions recommended by the Higher Attestation Commission of Russian Ministry of Science and Higher Education for publication of basic scientific results of dissertations for a Candidate's Degree and for a Doctor's Degree (including 9 articles in editions included in List of Journals recommended by the Board of Studies of RANEPa for publication articles on jurisprudence) and 3 articles in journals included in international citation databases, *Scopus* and *Web of Science*. The materials of the dissertation have been evaluated in the candidate's speeches during more than 60 representational events of different levels, including 35 international ones.

The candidate's scientific ideas have found didactic expression in textbooks on the arbitration process, civil process, and family law, with which students of many higher educational establishments of the Russian Federation study. The materials of the dissertation research are also used in the teaching and learning process of Nizhny Novgorod Institute of Public Administration, a branch of the Russian Presidential Academy of National Economy and Public Administration.

Structure of the Dissertation. The structure of the dissertation is specified by its purpose, tasks, the author's conception of principles of law, methodology, and information base of the research. The work consists of an introduction, three sections, including two chapters each (some chapters are also subdivided into paragraphs), conclusions, and recommendations, a list of basic abbreviations and a list of sources and literature used, including more than 950 names.