Principles of Law

Resume

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Soudce Okresního soudu v Olomouci

Key words:

Law principle – positivism- ius naturae.

The question of the law principles or law doctrine is a current question. Principle is the general sentence which serves the solution for additional explanation and proof. If we should proceed correctly, we have to give principle even a self-evident or proven reason. Principle thus…. Is the leader law idea, origin of the law, source of law. In the case of ius naturale, is the origin of the law the human nature. In the case of positive law is the origin the will of populár sovereign- state. Nowadays is the meaning of theese two words interchangabled. They are ment as synonyms. Principle means origin, basic, basic idea, basic universal law, from which we resuld by derivation other knowledges. Principles of law are the term generic theoretical principles creation and realization of the law.

By formulation of the content of law principles and determination their position in law, in legal order is to distinguish, which stream of law author prefere. Wheather positivism or ius naturale. Law-positivism spread in 19.th century several forms and contributed the consolidation and of the formal law-peace and liberal law age.From the beginnging of the 20th century its critised for its formalis,althought this is the one of the most widespread directions of law theory and practice.Positivism is known as the leader direction by the czech law theory school aswell. Followers of the ius naturale read law as substantiality confirmed law, which follows from the frame of life and human nature,which is in its merit constant. From the second World war is rating up the tendency of revival of the ius naturale way of thinking and argumentation.

Ronald Dworkings work could be consider as the fundamental work. Dworking define the term of principle as specific mark of the whole standard-set others, that mean different rules. (tady asi to od neplati, ze). Principle is the standard, which should be adhere not because of its positive influence, in the utilitare meaning, from the point of view of individuals or section, but because justice, fairness, morality requires it.For example no-one mus not have bendit from his injurious conduct. Principle determines reason, which leeds specifice way, no concrete solution is invoked. Every principle has its weight, if it comes to a conflict between them, the judge has to take account of the importace of both of them. Principles have the key-role in the court argumentation.

Also positivisms realize the existence of principles. H.L.A.Hart, Robert Alexy, Ota Weinberger handeled with theese questions. All of them supose existence of principles. Alexy criticises Dworkings approach.Logical diference between the rule and the principle could be therefore set by in the time of conflict. If the solution is given by comparation of the two in colision standing regulations we talk about principles. Principles are for Alexy orders to optimilizate. If it comes to a colision of two principles, it is necesary to adjudge and that so, that both aplicable principles are to apply in maximum way. Alexy ranks to principles common wealth aswell. Weinberger puts principles into a set of law-rules. Principles could and should be express explicitlly, educe from the set of valid law rules.

Constitutional court of the czech republic nowadays prefferes the conclutions followed from reflection of above mentioned positivisms. It supose principle-existence. Principle-origin is czech republic´s constitution, declaration of basic rights,from which we can deduce the existence of principle. Through this roots of constitutional law soak through the principles into others law regulations which create legal order (of course as well into the civil law). From the conception of principles, proporcionality principle follows, that it is a process, through which we achieve our drift (larger sense), procedure we choose to achieve theoretical knowledge, eventually to class and codify into a scientifical unit (narrow sense). Is it a reduction of an idea to a method?

In the case of conflict between the regulation of so called simple law and constitution is the common court obliged to propound this to the constitutional court. It is obvious that common court can not argue in solution of any concrete civil law dispute by constitution against law regulation (regulation of common law), only constitutional court can . It is a

procedural regulation, so it forbids any other procedure. We can only use the interpretation of the regulation of the so called common law by the constitutional conformal interpretation and not by the interpretation with the constitution not conformal. Now it comes the question, if only this way of interpretation gives the common law courts sufficient space for claiming the principles in its resolution.

From all above mentioned is clear, that beside the law in the form of the set of law (however continental or anglosass) the law philosophy has its place. This term was first used by a law-theoretican and historian G. Hugo in his textbook, which he named textbook of common law like philosophy of positive law (to si najdi v originále). He wanted to poin out, that law- research has to go deeper. We can not consider only on ius naturale.this access, which treat both of the law-forms (positive, ius naturale)pari passu named Hugo law-philosophy.

Instead of the conclusion questions: do we stay by genesis of a new law-theoretical paradigma? Can we reach a better law systém by syntese of the best components from both of them, ment positivism and ius naturale-theory? Is here again this all-society need of positivism-conception in the ¨form of unit europian law? Does positivism have still his space?and last but not least is here the highly practice question of how to follow in the process of rule-making to the law-continuity in legal-order in time, in that it was interrupted? Is it possible, in the light of the fact, that last seventy years, this was not the question of the day, because as we know, it was interrupted in 1939? Is it not better to make a deeper reflection nowadays´s stadiums and renault from it? Simple link-up leeds to a deep revision in the consequence of the development of law-philosophy. This development allready begann.

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