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***THE SYSTEM OF PRINCIPLES AND THEIR OPERATION
IN THE CIVIL LAW OF RUSSIA AND CHINA***

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Introduction: the article provides a comparative legal analysis of the principles of civil law in Russia and China. The importance of this problem is due to the similarity of certain processes taking place in these countries. In addition, although Chinese civil law has borrowed many legal constructions from a number of countries in Western Europe and the United States, it managed to preserve its cultural and historical traditions. This experience of China may be of interest for Russian legislators, who continue to reform civil legislation, including by borrowing foreign norms and principles existing in Europe and the United States. **Purpose:** to identify a number of common and distinctive characteristics of the principles of civil law in Russia and China and to compare the legal rules which are connected with the civil law principles. **Methods:** the research is based on empirical methods of comparison, description and interpretation, theoretical methods of formal and dialectical logic, and specific scientific methods, such as legal dogmatic method and interpretation of legal rules. **Results:** the principles of civil law in Russia and China appear to be similar, however a clearer understanding of the principles of civil law has been formed in Russia both at the level of doctrine and at the level of practice. **Conclusions:** a number of principles of civil law of China, in particular the legal equality of the parties, freedom of contract, are in the process of development and improvement, which is determined by socio-economic and cultural particularities.

Keywords: principles of civil law; civil law of China; principle of good faith; principle of legal equality of the parties in a civil legal relation; principle of discretion; freedom of contract; norms-principles

Information in Russian

**СИСТЕМНОСТЬ ПРИНЦИПОВ И ИХ ДЕЙСТВИЕ
В ГРАЖДАНСКОМ ПРАВЕ РОССИИ И КИТАЯ**

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Введение: статья посвящена сравнительно-правовому анализу принципов гражданского права России и Китая. Внимание к данной проблематике вызвано общностью некоторых процессов в указанных странах, а также тем, что китайское гражданское право заимствовало многие правовые конструкции из ряда стран Западной Европы и США, сохранив при этом самобытность и верность культурным и историческим традициям. Данный опыт Китая может быть в некоторых моментах интересен российскому законодателю, который продолжает реформировать гражданское законодательство, в том числе путем заимствования иностранных конструкций, существующих в Европе и США. **Цель:** выявить ряд общих и отличительных характеристик принципов гражданского права России и Китая, а также сопоставить правовые нормы, в которых наиболее ярко отражаются цивилистические принципы. **Методы:** эмпирические методы сравнения, описания, интерпретации; теоретические методы формальной и диалектической логики. Применялись частнонаучные методы: юридико-догматический и метод толкования правовых норм. **Результаты:** анализ гражданского законодательства России и Китая показал, что в целом имеет место общность подходов законодателя России и Китая к вопросу о формировании принципов гражданского права, хотя при этом в России сформировано и на уровне доктрины, и на уровне практики более четкое представление о принципах гражданского права. **Выводы:** ряд принципов гражданского права Китая, в частности юридического равенства сторон, свободы договора, находятся в стадии развития и совершенствования, что обусловлено особенностями социально-экономического и культурного характера.

Ключевые слова: принципы гражданского права; гражданское право Китая; принцип добросовестности; принцип юридического равенства сторон гражданского правоотношения; принцип диспозитивности; свобода договора; нормы-принципы

Introduction

The role of principles in the formation of the domestic legal system is difficult to overestimate: private law establishes the necessary restrictions on the autonomy of the will of the subjects in accordance with the principles of fairness, good faith and reasonableness in order to prevent abuse and provide a real balance of independence and fair order.

In civil law principles, conceptual normative and ideological guidelines are expressed, which provide specific methods and means of legal regulation. Thus, these principles have a special status and significance in any legal system.

The problem of the principles of law and, in particular the principles of civil law, is not new or insufficiently studied. It is constantly in the center of attention of scientific searches and discussions. The list of issues that scientists discuss with reference to the principles of civil law is extensive. These include the concept, the essence of the basic principles, their list, the content of individual principles, the possibility of the existence of unnamed

principles in legislation, and many other problems. As an example, we can offer some of the latest dissertations on general issues of civil law principles [6; 8]. Individual principles of civil law also become an object of study quite often.

Among the little studied but at the same time currently relevant aspects in studying the principles of civil law is the problem of comparing the fundamental principles of different legal systems. The principles of civil law of different countries are often close and sometimes identical by their common characteristics and names. For example, the principles of equality of participants in civil legal relations, freedom of contract, freedom of will exist in virtually all legal systems. At the same time, the rules in which particular principles are implemented may differ in different countries, which causes different understanding of principles that at first sight seem to be similar in their essence.

Speaking about the current relevance of the proposed research work, we can name at least the following reasons. First, it provides a better

understanding of the essence of the principles of domestic civil law and the issues of their implementation. It is no secret that the essence of similar phenomena is revealed to a greater extent when comparing them and revealing their differences. Second, consideration of the principles in a comparative legal aspect will help to identify the problems and imperfections of the current Russian legislation and suggest mechanisms for its improvement.

The relevance of a comparative study of the principles of civil law in Russia and China is determined, first of all, by the socio-economic aspect: some processes taking place in these countries under consideration are of a similar nature. The Chinese civil society is undergoing reformation of the socio-economic sphere, and many problems it is facing now are familiar to Russia. The modern era of reforms and openness means for the PRC a serious breakdown of old economic and ideological foundations, reorientation from a centralized economy to private law relations. In this situation, the principles of civil law are becoming the basic ideological postulates necessary to form an effective law and order system. Chinese jurists argue about the need for a well-established, ethically verified legal and regulatory framework, reasonable internal legal restrictions in establishing the institution of private property, and at the same time about the impossibility to express all the values of civil society in the letter of the law [9, pp. 20–27]. Nevertheless, the attempts of the Chinese colleagues to achieve this are original and deserve the closest attention.

Furthermore, the experience of China can be useful in terms of lawmaking. Civil legislation of this country has borrowed many legal constructions from a number of countries in Western Europe and the US, which could not but touched on the fundamental principles. However, the Chinese legislators managed to work out such an approach that combines legal dogmas generally recognized in the world and specific legal features of the country. The problem of creating effective legal rules is also of current interest for our country.

Attempts to compare the principles of law in different countries have already been made in many foreign studies. For example, it was concluded that there are a number of similar principles governing Chinese and American family law: the principles of

individual freedom, family autonomy, state intervention in family affairs only in cases directly provided for by law. At the same time, it is highlighted that each state implements the listed principles in different ways [17, p. 95; 23].

Thus, the principles of civil law of Russia and China, their system, as well as the implementation of individual private law principles are of particular interest.

Methodological Framework of the Research

From the methodological perspective, it is necessary to resolve a number of issues on terminology. The term “principles of civil law”, which is regarded as the object of this study should be understood as the fundamental regulatory and leading principles that characterize civil legislation, express fundamental trends in its development.

In the case of the law of the People’s Republic of China, a false idea may arise that the special act entitled “General Principles of Civil Law of the People’s Republic of China” of 1986 [18] is devoted to principles. This act establishes not only the principles of civil law of China but also other rules for regulating civil relations, for example, the legal status of citizens and legal entities, the rights and obligations of subjects, responsibility.

Thus, it is methodologically correct to compare categories having common generic features embodying the phenomenon “fundamental, basic principle of civil law”. These provisions are characterized by a number of relevant characteristics, among which are the supreme imperativeness, universality and general validity.

The supreme imperativeness is manifested in the requirement to exercise rights and perform duties in the form and manner determined by the principles. From the perspective of law enforcement, codified principles stand above the prescriptions of a private character, since they are the supreme imperatives and must predetermine a judicial decision, while norms are discretionary in nature.

The universality of the principles presupposes their regulative role at all stages of legal relations and is also manifested in the fact that the change of individual norms does not necessarily entail a change in the principle, but the transformation of principles inevitably leads to a radical restructuring of the entire legal system. The general validity

of these principles is predetermined by their significant law-orientational influence on all participants in the relationship. The essential features of these fundamentals also include the ability to determine the limits of the exercise of law.

At the same time, these elements are far from being declarative, and their regulatory potential depends on how adequately the legislator used certain legal and technical methods. It is necessary to analyze the ability of these institutions to form certain instruments of private law and determine what factors increase their effectiveness in regulating economic relations and what circumstances prevent it.

As we see, comparative legal study of the principles of civil law in Russia and China should be preceded not only by proving a certain phenomenon in the law of China but also by the justification of a possibility for its being considered as a principle.

The System of Principles of Civil Law in Russia and China

The problems concerning systematization of the principles of civil law have often been raised in scientific research. The difficulty of this task is due to many reasons, in particular the vagueness of the term “system”, the lack of consensus in understanding what refers to basic principles of civil law, the existence of various classifications of principles proposed in civil science, the absence of a unified methodology for their identification.

The definition of such a category as “system”, the features of its construction are very ambiguous. In science, there is no unity of opinions on this problem. Back in the middle of the last century, there were more than thirty different definitions of the term “system” [13, pp. 103–118].

In its most general understanding, a system is a set of elements that are in relationships with each other, which forms a certain integrity, unity. It should be noted that not every simple set of elements is a system [1, p. 56]. Therefore, in order to build a system of principles of civil law, it is necessary to establish its elements (i. e. a list of principles) and construct the required system in accordance with the general criterion of systematization.

In Russian civil legislation, the following principles are distinguished: equality of participants in civil legal relations, inviolability of property, freedom of contract, inadmissibility of arbitrary interference of anyone in private affairs, inadmissibility

of abuse of right, the need for unimpeded exercise of civil rights, ensuring of the restoration and judicial protection of violated rights, acquisition and exercise of civil rights by citizens and legal entities in accordance with their will and in their interest (discretion). The legislator has enshrined all the listed principles in Ch. 1 and 2 of the Civil Code of the Russian Federation.

In scientific literature, there are offered different classifications for the principles of civil law in Russia. The systematization that seems the most general, clear and oriented towards law enforcement practice is the one made in accordance with the system of law. In this regard, it is possible to identify branch-wise, sub-branch-wise, interinstitutional and institutional principles of civil law. Such a systematization was first fully justified and deeply investigated by G. A. Sverdlyk [11].

Other authors also offered their own vision of the system of principles of civil law in Russia, based on certain aspects of the phenomenon under consideration. For example, E. G. Komissarova differentiated between the principles that are major for the whole sphere of branch regulation in the form of the basic principles of civil legislation and other civil law principles [6, p. 7]. O. A. Kuznetsova established a system of norms-principles of civil law which includes regulatory and protective ones [8, pp. 83–84, 132–244]. One of the latest conclusions on the systematization of civil law principles is the view that there are two levels of principles: goal-setting principles and principles-methods [3, p. 11]. There are also some other approaches to the definition of the system of principles of civil law in Russia.

It should be noted that the study of principles-methods as a system has an important law-enforcement application. For example, the Supreme Court of the Russian Federation stated that the provisions of the Civil Code of the Russian Federation, laws and other acts containing civil law norms are to be interpreted in a systemic relationship with the main principles of civil legislation, as enshrined in art. 1 of the Civil Code of the Russian Federation¹. Thus, according to the Supreme

¹ Decision of the Plenary Session of the Supreme Court of the Russian Federation No. 25 “On Application of Some Provisions of the Section I of Part One of the Civil Code of the Russian Federation by Courts” of June 23, 2015. *The Bulletin of the Supreme Court of the Russian Federation*. 2015. Issue 8.

Court of the Russian Federation, the principles should be applied in the system, and a correct understanding of the norms of civil law is only possible in their interrelation with the very system of principles, and not with some separate principles of civil legislation. This is the only way to offer a correct interpretation of civil law norms. In brief, in most cases the principles of civil law are applied by courts not separately but as a complete system. In connection with the foregoing, the study of the principles of civil law should be viewed not as a purely theoretical and fundamental issue but also as a special practical problem, important at the law enforcement level.

The establishment of the system of principles of civil law of the People's Republic of China is impossible without a brief reference to the question of the peculiarities of the civil law of this country.

The specific nature of the PRC's legal system are determined by several circumstances. Firstly, the legal culture of China goes back to the postulates of the Confucian doctrine, which nourished the state ideology of the Chinese empire before the 1911 revolution and which is characterized by the prevalence of moral norms over the rules of law.

Secondly, China's law and order is a combination of ancient legal traditions and modern legislation, which is built on the ideas of "socialism with Chinese characteristics" and certain principles of Romano-Germanic law. This means that moral and ethical norms existed as supra-legal ones, as a positive variant of the development of relations, and legislation emerged as a means of resolving conflicts. Therefore, the first Chinese codes only contained administrative regulations or norms relating to criminal law. Civil law rules were formed in them only to establish criminal sanctions as a result of violation of custom rules.

The modern civil legislation of China is based on the principles enshrined in the "General Principles of Civil Law of the People's Republic of China", which were adopted on April 12, 1986 at the 4th session of the National People's Congress of the 6th convocation. Scientists of the time noted that adoption of this document was an important milestone in the history of Chinese society, there appeared a theoretical and legislative basis for the

development of civil relations regulation based on the rule of law [30, p. 669]. Currently, objects of the General Principles of Civil Law of PRC are private relations between individuals, legal entities, as well as between individuals and legal entities having equal status.

Since the reforms of the civil legislation were started, the social and economic situation in the state has changed significantly, and on March 15, 2017, at the closing meeting of the annual session of the National People's Congress, amendments were made to the "General Principles of Civil Law", which came into force on October 1, 2017. Legislators reviewed most of the General Principles of Civil Law of 1986 and introduced a number of provisions that protect the rights of individuals and organizations more effectively [15].

The general principles of civil law of China in the new wording establish the basic principles for regulating civil relations. In addition to the principles of equality, voluntariness, honesty and reliability, the new version of the law underscores the importance of the principles of environmental protection, energy saving and harmonious coexistence between man and nature. The principle of environmental protection is an innovation, although even before 2017 it was implied by the legislator and stemmed from the spirit of legal acts.

The new version of the Chinese act on civil law also states that in resolving a civil dispute, if there are no relevant provisions prescribed by law, ordinary laws such as business practices may be applied. The Law on the contract in the PRC had already established the same principle, which is observed when interpreting agreements between parties [15].

Commenting on the General Principles of Civil Law of China, the Chinese authors come to the conclusion that this document highlights the fundamental principles that have a special purpose. It is noted that the Chinese legal system is codified, and, unlike common law jurisdictions, previous court decisions do not automatically have an obligatory effect. As a result, almost all the major legislative acts in China are built on the basis of its general principles. If there is any ambiguity in understanding of a legal norm, then the relevant

general principles of civil law will be used by judicial practice for the correct interpretation of an unclear or ambiguous rule of law.

In this regard, there are no exceptions to China's civil law. On the whole, Chinese legal scholars believe that in the legislative process of civil law, judicial decisions and relevant civil disputes the basic principles of civil law should be applied.

Thus, before analyzing any particular concept, it is important to understand the general principles of Chinese civil law. At present, China has a basic law, which establishes all the basic principles and concepts of civil law in China. However, a detailed interpretation of the basic principles of civil law is still the subject matter for Chinese researchers. For example, one of them identifies five most important general principles, which are usually cited by legal scholars in theoretical and practical work: legal protection of civil rights, equal status, freedom of contract, good faith and public policy [28, p. 4].

Based on the foregoing, we can say that a general analysis of the legal provisions of Chinese law in the current version allows one to identify the basic principles of civil law. It is possible to name the following principles that are distinguished in Chinese civil law science and correlate with the principles of the civil law of Russia:

- 1) the principle of equality of parties in civil activity;
- 2) the principle of voluntariness;
- 3) the principle of justice;
- 4) the principle of equivalent compensation;
- 5) the principle of sincere trust;
- 6) the principle of protecting the legitimate interests of citizens and legal entities;
- 7) the principle of lawfulness in conducting civic activities;
- 8) the principle of prohibition of abuse of civil rights.

The legal tools and means that ensure the implementation of the proclaimed principles are also of interest.

The principal ideas of Chinese civil law are specified in sub-branch regulatory legal acts: the laws of the PRC "On Contracts", "On Real Rights", "On Inheritance", "On Patents", "On Trademarks", "On Copyright" and some others.

Proceeding from the foregoing, we can assume the existence of a system of principles of civil law in China in the form of branch principles that apply to all civil law and which are enshrined in the General Principles of Civil Law of China, as well as sub-branch principles that operate only in a particular sub-branch of Chinese civil law.

A situation of this kind is observed in contract law. Chinese scholars write that there are three basic principles of politics and law operating in this area under the Law of the People's Republic of China "On Contracts": the principles of freedom of contract, good faith, and promotion of transactions and trade, which were embodied in the letter of law in the final wording [21, p. 1].

In the Russian Federation, there is also a certain system of principles of civil law. This system is not just a list of basic principles but also their distribution in a particular hierarchy. This system implies the existence of interrelated and interdependent elements that exist not in themselves but in a certain unity, complementing and developing each other. For example, the principle of autonomy of the will of a subject of civil law (discretion) is embodied in legislation, among other things, in the principles of freedom of contract and freedom of will. It should be particularly emphasized that the system of principles of civil law of Russia, formed by civil science, has a clear embodiment both in legislation and in law enforcement practice. In other words, scientific achievements in this area are of a special practical significance, for example, they can be applied for the improvement of civil legislation.

In the People's Republic of China, a list of principles of civil law has been formed, but neither legislation, nor scientific literature, nor the practice of applying civil law rules gives an unambiguous and clear idea of the system of principles. The most important reason for this imperfection in ideas about civil law principles in China seems to lie in the fact that the fundamental principles in the country, as well as the civil legislation as a whole, are at the stage of formation.

In China, there is a conditional system of principles of civil law in the form of branch principles that extend to all civil law and are enshrined

in the General Principles of Civil Law of China, as well as sub-branch principles that operate only in a particular branch of Chinese civil law.

The Principle of Discretion

The principle of discretion is considered both the most important principle of the civil law of Russia and a characteristic feature of its method. Interestingly, in foreign scientific literature principles as the main basis of the branch of legal regulation and the distinctive features of regulation are often used by the authors in a single context.

The role of the category “freedom” makes it possible to understand the essence of the division of the branches of law. In criminal law, the most important principles are legality, presumption of innocence and others. In civil law, they include freedom of contract, freedom of will and the principle of discretion. Analysis of different principles of law and the way they are used allows us to establish the following: in private law branches, these principles are united by the common idea of ensuring the freedom of subjects [22]. In brief, the principles that ensure the freedom of participants in the relevant relationship are a distinctive feature of private law in general.

One of the first to formulate the concept of discretion in the domestic doctrine was O. A. Krasavchikov, who understood it as the legal freedom of subjects of civil legal relations to exercise their legal personality and their rights at their discretion, based on the norms of civil law [7, p. 41]. V. F. Yakovlev is more specific, speaking of the possibility of subjects to acquire civil rights and obligations, to determine their content within certain limits, to exercise and dispose them at their discretion [14, p. 85].

The normative basis for the principle of discretion in its general form are the rules of cl. 2, art. 1 of the Civil Code of the Russian Federation, according to which citizens and legal entities acquire and exercise their civil rights according to their own will and their interest. The complete understanding of the principle of discretion is certainly not limited to the named rules. The principle of discretion includes a number of aspects, among which are the freedom to write a will, freedom of contract, freedom to choose the behavior of the owner of property, etc.

In the People’s Republic of China, the role analogous to the principle of discretion is fulfilled by the principle of voluntariness, which also implies the freedom of will of participants in civil legal relations. According to art. 4 of the General Principles of Civil Law of China, the principle of voluntariness is respected in civil activities.

The principle of voluntariness in Chinese civil law is embodied in specific legal norms. For example, according to art. 138, if a party decides to fulfill obligations voluntarily after the expiration of the limitation period, then such a right is not subject to restriction.

The general principles of the civil law of China contain norms of not only civil law but also some branches that are traditionally regarded in Russia as independent branches of law, in particular family and international private law. In these norms, the principle of discretion is also reflected.

For example, by virtue of art. 103, citizens enjoy the right to conclude and dissolve a marriage at their own discretion. Art. 145 establishes the most important rule of modern international trade – autonomy of the will of the parties: parties to a treaty with foreign interests may choose the law applicable to the settlement of their contractual disputes, except in cases provided for by law [27, p. 40].

As well as in Russia, in China legislation allows for the conclusion of agreements that entail not only civil but also procedural consequences. In particular, the principle of freedom to enter into arbitration agreements can be regarded as one of the special features of the principle of discretion [24].

In general, we can speak about the interbranch nature of the principle of discretion, which the Constitutional Court of the Russian Federation has already drawn attention to. Analyzing the essence of the arbitration agreement, the Court came to a conclusion about its interbranch nature. The principle of discretion, inherent in civil legal relations, also applies to procedural relations connected with the consideration of disputes in courts in the course of civil litigation. In civil legal proceedings, discretion means that procedural relations arise, change and terminate mainly upon an initiative of the direct participants of the material legal relations in dispute, who have an opportunity to dispose of procedural rights and the substantive right in dispute with the help of the court. This rule also

applies to the procedural relations arising in connection with contesting decisions of arbitral tribunals, because these procedural relations are based on a contract according to which the parties (individuals) trust the protection of their civil rights to the composition of the arbitral tribunal elected by them and recognize its decisions¹.

The principle of discretion has limits and limitations established by law, and their existence also characterizes the essence of the principle under consideration. Limitations of the principle of discretion should be directly specified in the rule of the law. For example, cl. 1 art. 1149 of the Civil Code, which secures the right to forced heirship, is in itself aimed at providing material support for those categories of persons who need special protection because of their age or state of health. Accordingly, it cannot be regarded as violating any constitutional rights of citizens².

In China, the authors distinguish an independent principle of public policy, which acts as a kind of “limiter” of the principle of discretion. It is stated that any civil activity must respect social ethics and should not damage the basic principles of state policy, violate the socio-economic order. In comparison with other principles, this principle is intended to impose certain restrictions on the autonomy of civil activity. Any civil activity that violates public interest is null and void.

At the same time, recent changes in the Chinese legislation show that the rights of the subjects of civil turnover are partially expanding, thereby reducing the role of this principle. For example, amendments were made which exclude a ban on activities violating the state’s economic plan [29, p. 6].

It may be concluded that neither in China nor in Russia there is an unambiguous idea of the prin-

ciple of discretion. In Russia the category of discretion is considered a principle, the main feature of the method of legal regulation of civil relations, and also a distinctive characteristic of the civil law branch. In China this category itself is rarely considered; however, there are references to separate manifestations of the discretion of subjects of civil relations.

Thus, the study of the principle of discretion can be conducted through identifying the elements that extend their effect to law of things, law of obligations and inheritance law, and the construction of a system of limits and restrictions on the freedom of discretion of subjects of civil relations. This approach is consistent with the trends in the development of civil law in Russia and China.

The Principle of Legal Equality of Civil Law Subjects

The principle of equality of parties in civil legal relations implies, above all, their legal equality. In the most general form, this provision is implemented in the recognition of the equal ability to have rights and obligations for all persons (art. 17 of the Civil Code of the Russian Federation). Art. 155 of the Civil Code excludes the possibility of one person to oblige another person to do something with his unilateral will, unless otherwise provided by law or by agreement with these persons.

However, it should be noted that in many cases Russian law allows for an unilateral repudiation of the contract if the counterparty violates its contractual obligations (art. 464, cl. 2 art. 467, cl. 2 art. 475, cl. 2 art. 480, cl. 3 art. 484, cl. 4 art. 486, cl. 2 art. 489, cl. 3 art. 503, cl. 2 art. 515, art. 523, cl. 2 art. 719 of the Civil Code of the Russian Federation), or in connection with the essence of contractual relations.

In other cases, an unilateral refusal to perform the contract is possible for one of the parties in order to restore equality of the parties to the contract (art. 495, 496, 500, 627, 717 of the Civil Code of the Russian Federation). However, these exceptions are only possible for the purpose of establishing a balance of interests of the parties, according to the Constitutional Court of the Russian Federation³.

¹ Decision of the Constitutional Court of the Russian Federation No. 10-P “On the Case on the Verification of the Constitutionality of the Provisions of Paragraph 1 of Article 11 of the Civil Code of the Russian Federation, Paragraph 2 of Article 1 of the Federal Law “On Arbitration Courts in the Russian Federation”, Article 28 of the Federal Law “On State Registration of Rights to Immovable Property and Transactions Therewith”, Paragraph 1 of Article 33 and Article 51 of the Federal Law “On Mortgage (Pledge of Real Estate)” in Response to the Request of the Supreme Arbitration Court of the Russian Federation” of May 26, 2011. *Bulletin of the Constitutional Court*. 2011. Issue 4.

² Decision of the Constitutional Court of the Russian Federation No. 1513-O “On Refusal to Consider the Complaint of the Citizen Dozh-Yancheva Ksenia Petrovna on Violation of Her Constitutional Rights by Paragraph 1 of Article 1149 of the Civil Code of the Russian Federation” of June 23, 2015. Access from the legal reference system “ConsultantPlus”.

³ Decision of the Constitutional Court of the Russian Federation No. 9-P “On the Case on the Verification of the Constitutionality of Some Provisions of Paragraph 2 of Article 77 of the Federal Law “On Insolvency (Bankruptcy)” in Response to Complaints of “Tver Spinning Mill” Company” of June 06, 2000. *Bulletin of the Constitutional Court*. 2000. Issue 4.

According to another interpretation, this term means the position of the subjects of right operating under conditions of freedom of contract, that is, the situation in which relations of the subjects are built not on the basis of imperious subordination. This meaning is immanent to art. 1 of the Civil Code of the Russian Federation: it is inadmissible to grant one of the participants in civil legal relations with power over the other. The Russian Federation, its subjects and municipalities are on equal terms with all participants in relations (cl. 1 art. 124 of the Civil Code of the Russian Federation). It should be noted that under this principle, some differences in the scope and content of the rights of subjects of legal relations are allowed.

In addition, equality can be understood as equilibrium of the possibilities of the subjects of relations laid down in the norms. The essence of this principle can be understood as equality of the subjects of relations before the law. This idea was most clearly formulated by V. F. Yakovlev: "In fact, it is the equality in the original legal status of civil law subjects. And this equality is expressed in the fact that all participants of civil legal relations are endowed with civil legal capacity as a certain measure of social opportunities in the sphere of application of civil law" [14, p. 42].

In other words, it is necessary to ensure an equal opportunity to acquire civil rights and obligations for all participants of civil circulation. As practice shows, it is at this stage that equality is often violated.

Sometimes the inequality of the subjects of civil turnover is laid down in regulatory acts themselves. It is unacceptable to develop legal acts unjustifiably limiting the possibilities of one of the parties to civil legal relations.

Thus, the Law of the Vladimir region of December 27, 2005 No. 1-O "On Zones of Regulated Development", which determined the creation, functioning and liquidation of zones of regulated development on the territory of the Vladimir region, was justly recognized invalid. This regulatory legal act actually established special rules for the conduct of business entities in the entrepreneurial activity. The law of the Vladimir region regulated the procedure and conditions for the creation of a preferential regime for investment economic and entrepreneurial activity, the conditions for encouraging organizations operating in zones of regulated development through granting tax incentives. The court correctly stated that, in violation of the prin-

ciples of the unity of the economic space of Russia and the equality of the conditions for economic activity of all entities, the Law of the Vladimir region of December 27, 2005 No. 1-O "On Zones of Regulated Development" establishes a special economic regime, under which tax benefits are granted to legal entities that manage the zone of regulated development and have concluded a contract aimed at implementing plans for the development of the zone, in contrast to economic entities that have not concluded such a contract, whereby having no tax benefits¹.

In Russian law enforcement practice, the problem of equality before the court and law appears to be particularly acute in vindicating honor, dignity, business reputation, and inviolability of private life. For example, the Supreme Court of the Russian Federation has revealed cases of unreasonable underestimation by courts of the amount of compensation for moral damage, non-compliance with the requirements of reasonableness and fairness in cases on protection of honor and dignity, business reputation, as well as inviolability of private life of public persons considered by the courts of Russia in the period from 2004 to 2006². In the field of entrepreneurship, there is also a wide range of issues concerning the establishment of equality of economic entities.

Thus, legal equality of participants in civil legal relations is a condition for the legality and guarantee of the exercise of rights and the performance of duties. The legislator provides for deviation from the principle of legal equality of the civil circulation subjects in those cases when one of the parties to the legal relationship is knowingly weak in material, organizational or other respects and needs special (additional) civil legal protection.

The principle of equality of parties is one of the basic foundations of the mechanism for exercising civil rights and performance of subjective civic obligations. According to this principle, the powers of the participants in civil relations should be equal.

The principle of legal equality of parties in civil relations is also one of the fundamental principles

¹ Decision of the Supreme Court of the Russian Federation No. 86-GO7-15 of July 18, 2007. Access from the legal reference system "ConsultantPlus".

² Review of Practice of Court Consideration of the Cases on Disputes on Protection of Honor, Dignity and Business Reputation, Privacy of Public Persons in the Spheres of Politics, Art, and Sport. *Bulletin of the Supreme Court of the Russian Federation*. 2007. Issue 12.

in Chinese civil law. For example, according to art. 3 of the General Principles of Civil Law, the parties to civil activity have an equal status. This provision appears to be highly relevant for the Chinese economy, since it is intended to reduce the administrative element, being the legacy of the socialist economy. Under Chinese law, the legal consolidation of rights and obligations in accordance with the principle of equality before the law is expressed in equal opportunities to protect rights and in equal liability for violation of rights of others, without any privileges, established for all citizens, regardless of their nationality, race, sex, occupation, social background, religious beliefs, education, property status, and the period of living in the country.

The law of China makes it clear that each party has equal status in any civil activity. Even if one of the parties to the legal relationship is a state body, there is a direct prohibition on establishing the terms of such an agreement against the will of the counterparty of the state. This rule applies, for example, when concluding a contract. The principle of equality is logically connected with the principle of freedom of contract. Unless otherwise provided by law, the parties can freely establish the conditions of civil activity between them.

The principle of equal legal status is especially important for the modern development of Chinese law. It plays a special role in the gradual transition from planned to market economy, since in a planned economy the principle of equality does not appear to be fundamental: in such an economy, the state and state bodies always have a more significant status than their counterparts [29, p. 5].

It is noteworthy that the principle of equality of participants in civil legal relations is valid not only by virtue of the General Principles of Civil Law of the People's Republic of China but also embodied in other legislative acts. For example, art. 4 of the PRC Law "On Real Rights" establishes an equal protection of real rights of the state, the collective, and individuals. However, this equality remains difficult to achieve in practice with respect to private property, when forced demolition of buildings being personal property of citizens takes in the course of expropriation aimed at the realization of public interests. This happens due to the contradiction between the law on real rights and the Statute on demolition of town houses, adopted prior to the enactment of the law. This statute allows a

building to be demolished before the completion of negotiations on compensation, although the Decree on compensation for forced demolition of buildings prescribes that the decision to demolish should be taken solely in court, and compensation must be paid before dismantling.

The right to compensation for damage is established by art. 37 of the Law on real rights, and art. 38 provides for the responsibility of the perpetrator for inflicting damage to the right holder, which, however, often does not relieve tension in this area¹. As practice shows, the principle of equivalent compensation quite often does not work in situations with forced seizure of property during expropriation. The main disagreement between rightholders and contractors in the demolition of residential premises or the withdrawal of land is associated with inadequate compensation. Obviously, it is necessary to legislatively determine as security measures the procedure for calculating equivalent compensation to rightholders for demolition of the house or land withdrawal. This is due to the socio-economic reasons against the background of the establishment of private property and the dissociation of private property of citizens from the state, as well as the lack of a system of appropriate civil, procedural, administrative standards.

Articles 3, 4, 5 of Chapter 1 of the PRC Law "On Contracts" establish and specify the status of equality of counterparties. It is determined by three circumstances: the parties cannot impose their will on each other; unlawful interference in the rights arising under the contract is forbidden; when establishing the rights and obligations in the contract, the parties must be guided by the principle of equality. The last provision directly affects the formation of the terms of the contract.

It should be noted that the principle of equality in Chinese law is more institutional and effective than in other legal systems. Its establishment demonstrates a fundamental reconstruction of the social and economic system of China: personal property was recognized as private only by the PRC law On Real Rights in 2007. This same law establishes the equality in the protection of state and private property, state property is deprived of any privileges in defense.

¹ Available at: <http://wangpa.livejournal.com/580541.html>;
<http://www.snos.info> (accessed 28.11.2017).

In the law On Inheritance, this principle is also concretized. According to art. 13 of the Law, the principle of equality is expressed by establishing the sizes of property lots: the property lots inherited by the heirs of the first stage should be equal.

Thus, it can be concluded that the legal regulations of Russian and Chinese legislation are sufficiently clear to guarantee the implementation of the principle of legal equality of the parties in civil relations. Moreover, in the legislation of the Russian Federation the relevant rules are not only established by the general part of civil legislation but also specified in provisions regulating individual relations (real, hereditary, contractual, etc.).

At the present level of development, an important task for our legal system is to establish guarantees for the weak side of a civil legal relationship by increasing its rights or increasing the duties of the strong party. This will make it possible to provide relatively equal opportunities for various actors, and therefore the most complete implementation of the principle of legal equality of the parties to civil relations.

In the People's Republic of China, there are also some practical problems in implementing the principle of equality, which is caused by the need for a clearer delineation between private and public interests. As stated above, in some cases the principle of legal equality is violated in order to realize public interests, which is not fully justifiable in all cases.

The Principle of Freedom of Contract

Freedom of contract is traditionally regarded as the most important and fundamental principle of the modern market economy. It is reflected in one of the sub-branches of civil law, being a principle of the law of obligations.

In its most general form, freedom of contract is presented in art. 421 of the Civil Code, according to which this principle includes:

- a) freedom to conclude a contract;
- b) possibility to conclude a contract as provided for or not provided for by law or other regulatory legal acts;
- c) freedom of the parties to choose the terms of the contract independently.

According to some scholars, the principle of freedom of contract includes only the three listed elements [2; 12, p. 37]¹.

When giving the principle of freedom of contract a comprehensive consideration, we should address several aspects. The essence of the basic approaches to this issue can be presented as follows [4, pp. 14–15].

1) Freedom of contract includes a certain number of elements, the list of which is exhaustive. This approach can be called narrow.

2) The principle of freedom of contract is identified with the right of subjects of civil law to freedom of contract (i. e., the bundle of rights that include the right of the parties to conclude a contract, both provided and not provided for by law, to independently choose contractual terms, etc.). Such interpretation restricts the operation of freedom of contract by specified limits, while the essence of this principle as a suppositional provision, as the basic principle in regulating binding relations remains unconsidered.

3) The essence of the principle of freedom of contract is manifested through its limits and limitations. For all its relevance, this approach to a lesser extent takes into account the bundle of powers that are provided by the operation of this principle.

4) Freedom of contract is manifested in a large number of discretionary norms.

5) Freedom of contract is understood as the opposite of the principle of planning. According to the latter, the issues of subjects' entering into contractual relations are determined by administrative-planning acts.

It appears that the most comprehensive study of freedom of contract is only possible with the use of an integrated approach that includes all of the abovenamed aspects of the principle being analyzed.

Analysis of judicial practice provides better understanding of the purpose and implementation of the principle of freedom of contract in practice. Courts, including the supreme judicial authorities, have repeatedly addressed the question about the essence of the principle of freedom of contract and its significance in the Russian Federation.

For example, the Constitutional Court of the Russian Federation stated that “from the meaning of the abovementioned constitutional norms on freedom in the economic sphere (art. 8, 34, 35 of the Constitution of the Russian Federation) follows the constitutional recognition of freedom of contract as one of the freedoms of man and citizen

¹ Some other authors also write about it.

guaranteed by the state¹". In fact, this says about the recognition of the principle of freedom of contract at the level of the Constitution of the Russian Federation.

Important issues relating to freedom of contract as well as understanding whether the norm is mandatory or discretionary are embodied in the Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation "On Freedom of Contract and Its Limits"². It is established that the norm is mandatory if it contains an express prohibition on the establishment by agreement of the parties of a contractual term different from the rule provided by this norm. At the same time, it may follow from the purpose of legislative regulation that the prohibition on the contrary agreement of the parties contained in the mandatory norm should be interpreted restrictively. A norm can be applied by the court as mandatory if it establishes that, based on the purpose of legal regulation, the contained rule provides protection of legally protected interests (in this case the court must justify its conclusion about the imperativeness of the norm). If the norm does not explicitly prohibit the establishment by agreement of the parties of a contractual term different from that prescribed in it, and if there is no reason to interpret it as mandatory, it should be considered discretionary.

Analysis of Chinese civil law, practice of its application, and scientific literature shows that Chinese legislation and law enforcement practice are familiar with the freedom of contract as a principle of law of obligations; however, its understanding and significance in the People's Republic of China is based on specific features of the legal system of the country.

For example, the Law on contracts establishes that a contract is a result of an agreement between the parties and is the embodiment of the principle of freedom of contract [31, p. 34].

The principle of freedom of contract is a fundamental principle of China's contract law [19, pp. 105–126], although the development of this

principle has historically been controversial. For a long time, the basis of the economy of the People's Republic of China was government planning, which minimized the possibility of contractual freedom. In this regard, one of the key achievements in the legal reform of China was the adoption of the law on contracts in March 1999, when the state's interference in concluding agreements between entities was significantly reduced. Today contracts are no longer regarded as a method and means of implementing the state economic plan [19, p. 108].

The concept of freedom of contract, used in Europe and the United States, allowed China to bring into its legislation some useful ideas, which as a whole can have a positive impact on the development of Chinese society. Contract law appeared to be consistent with the general tendency for liberalization of the Chinese economy.

However, the application of the principle of freedom of contract requires several assumptions and conditions that must be met: adequate information, free competition, and full rationality of the parties. These conditions are often at variance with the real development of social relations in China. As a result, the principle of freedom of contract has been modified, so as to take into account the specific features of the country. In particular, certain state supervision is established at the initial stage of the performance of a contractual obligation. According to the Chinese legislator, this is necessary because in certain cases the parties to a contract are not yet sufficiently prepared to fully understand the risks they are taking.

The state always acts in the interests of society, the parties of a contract act only in the interests of their own profit. Nevertheless, legislative bodies, administrative organizations and courts should offer strong justifications for interventions as well as restrictions on freedom of contract.

The reform of the legal system, aimed, among other things, at developing the principle of freedom of contract, should include various aspects, both the reform "from top to bottom" (amendments and additions to legislation) and "from bottom to top", for example, in matters of customary business practices, improving commercial practices. In the light of the special situation in China, reform may be more effective than cultivating complex judgments. In this connection, a conclusion is made about the need for a reasonable boundary between the freedom of contract, its limitations and the specific features of the development of Chinese society [19, pp. 125–126].

¹ Decision of the Constitutional Court of the Russian Federation No. 4-P "On the Case on the Verification of the Constitutionality of Some Provisions of Part Two of Article 29 of the Federal Law of February 3, 1996 "On Banks and Banking Activities" in Response to Complaints of Citizens O. Yu. Veselyashkina, A. Yu. Veselyashkin and N. P. Lazarenko" of February 23, 1999. *Bulletin of the Constitutional Court*. 1999. Issue 3.

² Decision of the Plenum of the Supreme Arbitration Court of Russian Federation No. 16 "On Freedom of Contract and Its Limits" of March 14, 2014. *Vestnik of the Supreme Arbitration Court of the Russian Federation*. 2014. Issue 5.

Problems in the development of relations in real estate, as shown by one of Chinese authors, can exemplify the specific features we are speaking about. The scholar notes that Chinese laws on real estate and business are still at an early stage of their development, although China's legal and economic institutions are developing rapidly. At the same time, there is a strong cultural tradition of dependence on personal relationships, rather than principles of the rule of law [25, p. 6].

Other Chinese scholars express similar views. They argue the following: on the one hand, from the theoretical and lawmaking perspective, in the contract law of China there is a tendency towards convergence of some of its basic norms and the most important principles of regulation of contracts operating in the countries of Europe and the United States, as well as those established by international conventions; on the other hand, application of the norms of contract law indicates a noticeable convergence with the hybrid regime, combining the features of both formal and informal mechanisms to ensure compliance with the agreements of the parties. This paradigm of evolution reveals the complexities of the operation of China's contract law, as well as the tendency towards the supremacy of law in general [20].

China is undoubtedly increasingly developing towards the creation of a modern legal system based on the principles of the rule of law. Meanwhile, the economy of the country is still regulated by the state. Here, the government intrudes into economic issues to a much greater extent than in other countries. At the same time, China spends huge sums on the modernization of its national infrastructure [25, p. 202]. In this regard, there arise objective contradictions between the development of the principle of freedom of contract and other principles of the market economy, on the one hand, and the real state of affairs in the Chinese economy, on the other.

Thus, the understanding of the principle of freedom of contract in China can be presented in the following basic theses, which also clearly illustrate some differences from the analogous principle in the Russian civil law.

First, this principle is legislatively established as the fundamental principle of law of obligations. Recently, government intervention in the sphere of concluding contracts between entities has been reduced, which strengthened the role of freedom of contract in China.

Second, the Chinese legislator does not consider the society to be ready for the maximum pos-

sible freedom of contract, therefore, some essential limitations have been established, in particular, in the form of a certain state supervision over the content of contracts.

Third, in order to develop and cultivate the principle of freedom of contract and extend its practical application, the Chinese legislator provides for measures aiming to improve certain aspects of the use of customary business and commercial practices.

Thus, the Chinese legislator, realizing the importance of the principle of freedom of contract, in particular to attract foreign investment, requires to bring freedom of contract in compliance with the socio-economic and other characteristics of the country.

The Principle of Good Faith of Participants of the Civil Turnover

Among the principles of civil law, the most controversial is, perhaps, the principle of good faith. This applies not only to Russian and Chinese civil law. It is no secret that the Anglo-Saxon and Romano-Germanic legal systems differ in their attitude to the principle of good faith. This drew attention of many authors. For example, Zimmermann conducted a detailed analysis of this problem in terms of comparative legal research [32]

In 2012, the Russian legislator gave the category of good faith the status of one of the main principles of civil legislation¹. By virtue of cl. 3 art. 1 of the Civil Code, participants of civil relations should act in good faith in the establishment, implementation and protection of their civil rights and in the performance of their civil obligations. The essence of the principle of good faith is embodied in a number of provisions of the Civil Code of the Russian Federation, in particular, in the rule of cl. 3 art. 307 of the Civil Code of the Russian Federation, which states that when establishing, fulfilling an obligation and after its termination, the parties must act in good faith, taking into account the rights and legitimate interests of each other, mutually providing the necessary assistance to achieve the purpose of the obligation, and also providing each other with the necessary information.

Among the most famous and first formal acknowledgments of the principle of good faith at the

¹ Federal law No. 302-FZ "On Amendments to Chapters 1, 2, 3 and 4 of Section I of the Civil Code of the Russian Federation" of December 30, 2012 (as amended on 04.03.2013). *Collection of Legislative Acts of the Russian Federation*. 2012. Issue 53. Section I. Art. 7627.

level of the supreme legislative act of civil law are the rules of § 242 of the German Civil Code (BGB). According to these, the debtor is obliged to act in good faith, in accordance with the customs of civil turnover. Given the complexity of the interpretation of this provision, called in some studies a “rubber paragraph”, German civilians attempted to clarify its meaning. As a result, works of many authors, for example, Franz Wicker [28, p. 517], subsequently became the basis for judicial interpretation of § 242 BGB. Today, the civil law of Germany is difficult to imagine without the principle of good faith, which is used in many cases considered by German courts; signs and criteria of the principle of good faith are formed, its essence is clarified quite clearly.

With regard to Russian law, the situation is more complicated. In the scientific literature, the principle of good faith is assessed ambiguously, and the very introduction of it into the text of the Civil Code of the Russian Federation raised some questions.

One of the first most famous opponents of the doctrine of good faith was I. A. Pokrovsky. He pointed to the vagueness of this concept, the lack of a criterion for distinguishing between “good” and “bad” mores [10, p. 255]. The scholar writes: “... As soon as we come out of this clear and definite conception, we will find ourselves on an inclined plane, rolling down which we will inevitably reach a complete judicial control over the whole area of turnover, in terms of completely subjective and arbitrary notions of “justice”, “social ideal” etc.” [10, p. 255].

Modern opponents of the principle of good faith point to the same possible complexities of its enforcement, although the legislation knows many evaluation categories, and the court often has to use them. Apparently, in this case the problem comes down to the question of the effectiveness of justice and establishment of certain specific criteria that could enable us to understand the essence of the principle of good faith. In particular, in practical activities the specific characteristics of conduct based on good faith can be identified, and, conversely, it can be established when the conduct of a subject should be characterized as lacking in good faith.

For example, a number of signs of non bona fide conduct have already been worked out by the Supreme Court of the Russian Federation. In particular, such conduct is recognized as bona fide, in

which the subject takes into account the rights and legitimate interests of the other party, assists it, including in obtaining the necessary information¹. Among the examples of non bona fide conduct, the following can be named: the court refuses to recover a part of the interest under the loan agreement in the case of a unilateral, unreasonable increase in the interest rate by the bank².

In connection with the above said, the position of V. G. Golubtsov appears to be fair. According to the scholar, the problem of unpredictability of judicial decisions when applying the principle of good faith can be eliminated if the criteria of good faith as applied to law of obligations are introduced to civil law legislation [5, p. 183].

Thus, theory and practice prove that there are signs and criteria for the differentiation between bona fide and non bona fide conduct, and they can be effectively used to protect the rights of civil law subjects.

Problems of implementation and application of the principle of good faith in civil law also exist in the People’s Republic of China. In some aspects of this issue, the Chinese and Russian legal reality tend to be similar.

In accordance with the General Principles of Civil Law of China, civil activity must follow the principle of good faith. This principle requires that the parties, firstly, ensure fairness in the implementation of the civil right and equality of the subjects, secondly, respect the rights of counterparties, and, thirdly, avoid abusing their own civil rights. This is a moral standard in the market economy. The law also explicitly requires that the parties to a contract exercise their rights and fulfill their obligations in accordance with the principle of good faith [29, pp. 5–6].

The General Principles of Civil Law of the People’s Republic of China of 1986 did not initially contain a general fundamental principle that would contain a general rule of good faith. Apparently, they were the provisions of art. 4 that played

¹ Decision of the Plenary Session of the Supreme Court of the Russian Federation No. 25. “On Application of Some Provisions of the Section I of Part One of the Civil Code of the Russian Federation by Courts” of June 23, 2015. *The Bulletin of the Supreme Court of the Russian Federation*. 2015. Issue 8.

² Decision of the Plenary Session of the Supreme Court of the Russian Federation No. 54 “On Certain Issues of Application of General Provisions of the Civil Code of the Russian Federation on Obligations and Their Performance” of November 22, 2016. *The Bulletin of the Supreme Court of the Russian Federation*. 2017. Issue 1.

the role of such a general rule. According to those, in civil activity the principles of voluntariness, justice, compensation for equal value, honesty and trust are observed. Thus, in a number of cases, in the capacity of the civil law principles, it was possible to use the principles of justice, honesty and trust, which taken together are, apparently, close to the essence of the principle of good faith.

From a practical perspective, the above principles should be regarded as abstract concepts that do not have a specific content. They appear to have only law-making significance since the legislator, when making changes and amendments to the current legislation, must follow the rules of fairness, honesty and trust.

Analysis of China's civil law allows us to conclude that some legal provisions in which the principle of good faith is embodied were contained in the General Principles of Civil Law of the People's Republic of China. For example, by virtue of art. 59, a party has the right to appeal to the people's court or arbitration agency with a request to amend or repeal the following civil acts which are obviously unfair.

According to the provisions of art. 83, neighboring users of real estate must maintain proper neighborly relations on such issues as water supply, drainage, passage, ventilation and lighting, which is prescribed for the purposes of rendering assistance in the production, creation of living conditions for people, strengthening of unity and mutual assistance, justice and reasonableness.

The judicial practice of China shows that the principle of good faith can be used to solve specific law-enforcement tasks. For example, in one of the cases a dispute arose over a loan agreement. In the said agreement, the parties provided that the funds provided by the bank should be used as working capital, as well as in order to repay the loan previously granted. However, the loan agreement was secured by a pledge agreement, which prescribed that the money should be used only as working capital. In this case, the pledgor was a third person. When the borrower used a new loan to pay off the previous debt, the pledgor refused to fulfill his obligations and demanded termination of the contract since, in his opinion, the new loan was not used for the purpose agreed by the parties.

The court stated that, firstly, the general interpretation of the purpose of working capital should include repayment of the previous debt. Secondly, since the pledgor was aware of the borrower's debt, in the event that the pledgor did not wish to provide pledge for the repayment of the existing debt of the borrower, the pledgor should have requested inclusion of a relevant restrictive provision in the pledge agreement. Thirdly, without expressing any restrictive provisions in the agreement, by virtue of the principle of good faith, the pledgor cannot interpret contractual terms in a narrow way [29, pp. 5–6].

Recent changes in Chinese civil law have strengthened the role of moral principles and, in particular, the principle of good faith. Moreover, according to the Chinese author Su Zelin, among the eight most important innovations in Chinese civil legislation which came into force in 2017, such a novel stands out as an increase in attention to public order and moral conduct of subjects. The new version of the General Principles of Civil Law of China imperatively prohibits actions that violate public order and good faith [26].

Thus, in the new version, the General Principles of Civil Law of the People's Republic of China already contain a general rule that forms the fundamental principle of good faith, which is likely to be applied in the long run both as an independent rule of conduct and in conjunction with the existing rules, in particular with those given as an example above.

For example, in the opinion of the Supreme People's Court of the People's Republic of China, if a party uses its advantages or enjoys the lack of experience of the other party, and the parties have such rights and obligations that clearly violate the principle of fairness, then this position of the parties will be determined as obviously unfair and compensation will be given to the weak party [24].

This conclusion of the Supreme People's Court of the People's Republic of China was made before the relevant changes in Chinese law, since it is fully based on the rules of art. 59 of the General Principles of Civil Law of the People's Republic of China. However, it fully fits into the general framework of changes in Chinese law, can be used in the future

to determine the essence, criteria and basic signs of the principle of good faith, and to establish a difference between the good and bad faith.

It can be concluded that the understanding of the principle of good faith and its implementation in civil law and practice in Russia and China is specific. In our country, the principle of good faith is established as one of the main principles of civil law and embodied in separate legal norms. The frequent application of the principle of good faith in the judicial practice of Russia gives grounds for understanding certain features that allow one to distinguish between bona fide and non bona fide conduct.

In the People's Republic of China, there is no clear understanding of the principle of good faith, its essence is just beginning to form within the general rule that prohibits actions that violate public order and good faith.

It is noteworthy that, given the above differences, the theoretical and practical problems associated with the principle of good faith in the civil law of Russia and China are very close. They are connected with the complexity of establishing the essence of the principle of good faith, its main criteria. It is fairly problematic to establish the existence of "good" or "bad" mores, to determine whether there was bona fide and non bona fide conduct. It remains unclear how to deal with the situation when there is no clear answer to the question whether the conduct of a subject is consistent with good faith or not, whether the answer to this question will serve as a basis for excessively wide judicial discretion. These issues are relevant both for the law of Russia and China.

Other Principles of Civil Law

In addition to the aforementioned principles of civil law, Russian science also distinguishes the following ones: inviolability of property, inadmissibility of arbitrary interference in private affairs, unimpeded exercise of civil rights, restoration of violated rights, and their judicial protection. Each of them is enshrined in art. 1 of the Civil Code of the Russian Federation, and is also implemented in separate norms of civil legislation. Some scholars also suggest some other principles of civil law that are not directly established in civil law. For example, E. V. Vavilin writes that "the fundamental

principle in the mechanism is the principle of guaranteed implementation of civil rights, the most important condition of which is the formation of an enabling legal environment" [3, p. 11]. This principle is doctrinal, inherent in Russian civil law, manifested in its separate norms.

Among the principles of Chinese civil law which were listed above but not specially considered, it is necessary to distinguish the principles of equivalent compensation, sincere trust, protection of legitimate interests of citizens and legal entities, lawfulness of civil activity, environmental protection.

As we can see from their names, a number of civil law principles in Russia and China differ, although many of them essentially repeat each other. The differences, which will be discussed below, are caused by the socio-economic specific features of the countries in question, as well as by the specific features of the historically established system of law.

The principle traditionally being one of the main in the Chinese legislation is that of environmental protection. The so-called "green" principle reflects China's need to maintain a balance between its population of 1.3 billion and the environment for a long time [16]. Recent changes in China's civil law only confirm the tendency to strengthen environmental protection measures.

This principle is also reflected in the Russian legislation. In accordance with art. 58 of the Constitution of the Russian Federation, everyone is obliged to preserve nature and the environment, to take good care of natural resources. The Constitution of the Russian Federation has a direct effect; by virtue of cl. 2 art. 1 of the Civil Code, civil rights can be limited on the basis of a federal law, and only to the extent necessary to protect the foundations of the constitutional order, morality, health, rights and legitimate interests of others, to ensure the country's defense and state security. Considering all that, civil legislation should be based on the principle of environmental protection.

Some provisions of the Civil Code of the Russian Federation directly point to the implementation of this constitutional principle. For example, according to cl. 3 art. 209, possession, use and disposal of land and other natural resources, to the extent their turnover is permitted by law, are exercised

by their owner freely, if this does not damage the environment and does not violate the rights and legitimate interests of others.

However, in the Russian system of law, the rules on environmental protection are traditionally related to public law, they are established by land and environmental legislation; so it is no accident that the legislator refused to directly establish the principle of environmental protection in the Civil Code of the Russian Federation.

Analysis of other similar principles of civil law in Russia and China allows us to conclude that, in fact, the analyzed principles are close. For example, the principles of the inadmissibility of arbitrary interference in private affairs, unhindered exercise of civil rights, restoration of violated rights, and their judicial protection, considered together, allow us to assume that their main purpose is the protection of the legitimate interests of civil turnover actors and the inadmissibility of violations of civil legislation. Such essence follows from such principles of Chinese civil law as protection of the legitimate interests of citizens and legal entities, legality of the implementation of civil activity.

For example, there is a general principle of legal protection of civil rights. The essence of this principle, according to Chinese scientists, is simple: any individual or legal entity has equal rights, civil rights are protected by law, their violation by any other person is not allowed. The emphasis is put on protecting the legitimate interests of entities on the part of the state and the government, protecting the civil rights of every person or legal entity. According to many jurists, this circumstance testifies to the formation of a special direction in the development of China's civil law. Many Chinese scholars either evaluate this principle as the first general principle or consider it as the fundamental principle and purpose of China's civil law [29, p. 5].

The principle of equivalent compensation in China is considered to be a general legal principle of civil law. In Russia, we traditionally apply the principle of full compensation for harm, which means that the harm caused to a person or property of a citizen, as well as the harm caused to the property of a legal entity, is subject to compensation in full by the person who caused the harm (cl. 1 art. 1064 of the Civil Code of the Russian Federation). In other words, this principle is usually considered a principle of law of obligations. At the same time, according to art. 15 of the Civil Code of the Russian Federation, a person whose right has

been violated may claim full compensation for the losses caused to him, unless the law or the contract provides for compensation for losses in a smaller amount. Taking into account that the rule of art. 15 of the Civil Code of the Russian Federation is applied to all civil relations, it can be assumed that the principle of full compensation for losses is typical of all civil law. Thus, the principle of equivalent compensation can be called a reflection in the Chinese legislation of the Russian principle of full compensation for damages.

As we see, the list and content of the principles of civil law of Russia and China are close, the principles considered above in this article are similar. At the same time, based on the example of the principle of environmental protection established by the rules of Chinese civil law, it can be concluded that the system of law of Russia and China is different in general and in particular in the issue of separation into private and public law. In the People's Republic of China, the influence of public law on private law is slightly bigger, which is reflected in the principles of civil law, their list and purpose.

Conclusions

The study has analyzed the principles of civil law of Russia and China in their comparison. We compared the systems of civil principles of the two countries taken as a whole, as well as some individual principles, their implementation in the rules of law, their law-making significance. In general, we can state a certain similarity of the approaches of the Russian and Chinese legislators to the question of the formation of the civil law principles. However, the main results of our research work are presented in the following conclusions.

1) The Russian Federation has an established system of principles of civil law. This system is not just a list of basic principles but a certain hierarchy. The system implies the existence of interrelated and interdependent elements that exist not in themselves but in a certain unity, complementing and developing each other. In the People's Republic of China, a list of principles of civil law has been formed; but neither legislation, nor scientific literature, nor the practice of applying civil law rules gives an unambiguous and clear idea of the system of principles.

2) With regard to the principle of legal equality of participants in civil legal relations, it should be said that in both countries processes are going on related to the search for an effective mechanism

for the fullest implementation of this principle. In the Russian Federation, at the present stage of development, an important task is to establish guarantees for the weak party of a civil legal relationship by increasing its rights or increasing the duties of the strong party. In the People's Republic of China, there are also some practical problems in the implementation of the principle of equality, which are caused by the lack of a clear differentiation between private and public interests. In some cases, the principle of legal equality is violated in order to realize public interests, which is not always fully justified.

3) The Chinese legislator, understanding the importance and necessity of the principle of freedom of contract, in particular, for attracting foreign investment, requires to bring freedom of contract in compliance with the socio-economic and other characteristics of the country. Thus, in many respects the implementation of the principle of freedom of contract in the rules of China's civil law differs from its operation in Russia and the countries of Western Europe and the United States, where freedom of contract is traditionally the basis of the market economy.

4) Understanding of the principle of good faith and its implementation in civil law and practice in Russia and China is specific. In our country, the principle of good faith is established as one of the main principles of civil law, is embodied in separate legal norms. In the People's Republic of China, there is no clear understanding of the principle of good faith, its essence is just beginning to form within a general rule that prohibits actions that violate public order and good faith.

It is noteworthy that, given the above differences, the theoretical and practical problems associated with the principle of good faith in the civil law of Russia and China are very close. They are connected with the complexity of establishing the essence of the principle of good faith, its main criteria. It is fairly problematic to establish the existence of "good" or "bad" mores, to determine whether there was bona fide or non bona fide conduct. It remains unclear how to deal with the situation when there is no clear answer to the question whether the conduct of a subject is consistent with good faith or not, whether the answer to this question will serve as a basis for excessively wide judicial discretion. These issues are relevant both for the law of Russia and China.

5) With all the similarity of the essence and list of principles of civil law of Russia and China, based on the example of the principle of environ-

mental protection established by the rules of civil law of China, it can be concluded that the systems of law of Russia and China are different in general and in particular in the issue of the division into private and public law. In the People's Republic of China, the influence of public law on private law is slightly bigger, which is reflected in the principles of civil law, their list and purpose.

It appears that the most important reason for this imperfection of the notions of China's civil law principles is that the fundamental principles in the country, as well its civil legislation as a whole are at the stage of formation. As for the positive aspects in the development of the ideas of Chinese law on the civil law principles, it is noteworthy that they are only applied with due account for the socio-economic and other objective conditions that have developed in this country.

References

1. Bondarenko N. L. *Problema formirovaniya effektivno deystvuyushchey sistemy printsipov grazhdanskogo prava Respubliki Belarus'* [Problem of Creating an Effectively Operating Civil Law Principles System of the Republic of Belarus]. *Vestnik Permskogo universiteta. Yuridicheskie nauki* – Perm University Herald. Juridical Sciences. 2012. Issue 4(18). Pp. 16–21. (In Russ.).
2. Braginskiy M. I., Vitryanskiy V. V. *Dogovornoe pravo: Obshchie polozheniya* [Contract Law. General Provisions]. Moscow, 2000. 848 p. (In Russ.).
3. Vavilin E. V. *Mekhanizm osushchestvleniya grazhdanskikh prav i ispolneniya obyazannostey: avtoref. dis. ... d-ra yurid. nauk* [Mechanism of Exercising Civil Rights and Duties: Synopsis of Dr. jurid. sci. diss.]. Moscow, 2009. 54 p. (In Russ.).
4. Volos A. A. *Printsipy obyazatel'stvennogo prava: avtoref. dis. ... kand. yurid. nauk* [Principles of Law of Obligations: Synopsis of Cand. jurid. sci. diss.]. Saratov, 2015. 26 p. (In Russ.).
5. Golubtsov V. G. *Printsip dobrosovestnosti kak element pravovogo mekhanizma stimulirovaniya dolzhnika k nadležashchemu ispolneniyu obyazatel'stv i garantirovaniya interesov kreditorov: analiz sudebno-arbitrazhnoy praktiki* [The Principle of Good Faith as an Element of the Legal Mechanism for Stimulating the Debtor to Proper Execution of Obligations and Guaranteeing Creditors' Interests: Analysis of Judicial and Arbitration Practice]. *Vestnik Permskogo universiteta. Yuridicheskie nauki* –

- Perm University Herald. Juridical Sciences. 2016. Issue 32. Pp. 175–184. (In Russ.). DOI: 10.17072/1995-4190-2016-32-175-184.
6. Komissarova E. G. *Printsipy v prave i osnovnye nachala grazhdanskogo zakonodatel'stva: avtor-ref. dis. ... d-ra jurid. nauk* [Principles in Law and Basic Principles of Civil Law: Synopsis of Dr. jurid. sci. diss.]. Ekaterinburg, 2002. 46 p. (In Russ.).
 7. Krasavchikov O. A. *Dispozitivnost' v grazhdansko-pravovom regulirovanii* [Optionality in the Civil Law Regulation]. *Sovetskoe gosudarstvo i pravo – Soviet State and Law*. 1970. Issue 1. Pp. 41–49. (In Russ.).
 8. Kuznetsova O. A. *Normy-printsipy rossiyskogo grazhdanskogo prava* [Norms-principles of Russian civil law]. Moscow, 2006. 269 p. (In Russ.).
 9. Ma Chang-Shan. *Sozdanie grazhdanskogo obshchestva i sistemy grazhdanskogo prava v Kitae* [Mutual constructing of civil society and civil law system in China]. *Grazhdanskoe pravo i ego rol' v formirovanii grazhdanskogo obshchestva – Civil law and its role in the formation of civil society*. Moscow, 2013. Pp. 20–27. (In Russ.).
 10. Pokrovskiy I. A. *Osnovnye problemy grazhdanskogo prava* [The main problems of civil law]. Petrograd, 1917. 330 p. (In Russ.).
 11. Sverdlyk G. A. *Printsipy sovetskogo grazhdanskogo prava* [Principles of Soviet civil law]. Krasnoyarsk, 1985. 200 p. (In Russ.).
 12. Tanaga A. N. *Printsip svobody dogovora v grazhdanskom prave Rossii* [The principle of freedom of contract in civil law of Russia]. St. Petersburg, 2003. 211 p. (In Russ.).
 13. Uemov A. I. *Sistemnyy podkhod i obshchaya teoriya sistem* [System approach and general theory of systems]. Moscow, 1978. 272 p. (In Russ.).
 14. Yakovlev V. F. *Grazhdansko-pravovoy metod regulirovaniya obshchestvennykh otnosheniy* [Civil-law method of regulating social relations]. Sverdlovsk, 1972. 210 p. (In Russ.).
 15. Beckett N., Lichtenstein F., Zhang V. After 30 years China overhauls its civil law. Available at: <https://www.lexology.com/library/detail.aspx?g=bfa1e670-9b8e-4e58-99db-ee57151715ee> (accessed 23.11.2017). (In Eng.).
 16. China adopts General Provisions of the Civil Law. Available at: http://www.chinadaily.com.cn/china/2017twosession/2017-03/15/content_28562047.htm (accessed 23.11.2017). (In Eng.).
 17. Chuan Feng, Leyton P. Nelson, Thomas W. Simon. *China's Changing Legal System: Lawyers and Judges on Civil and Criminal Law*. New York, 2017. 264 p. (In Eng.).
 18. General Principles of the Civil Law of the People's Republic of China. Available at: http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383941.htm (accessed 15.11.2017). (In Eng.).
 19. Jun Zhao. The puzzle of “freedom of contract” in China's contract law. *ILSA Journal of International & Comparative Law*. 2010. Vol. 17. Issue 1. Article 6. Pp. 105–126. (In Eng.).
 20. Leng J., Shen W. The Evolution of Contract Law in China: Convergence in Law but Divergence in Enforcement? (January 14, 2017). Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2899390 (accessed 01.12.2017). (In Eng.).
 21. Liming W., Chuanxi X. Fundamental Principles of China's Contract Law. *Columbia Journal of Asian Law*. Vol. 13. No. 1. Spring 1999. Pp. 1–34. (In Eng.).
 22. Morshak G. Anwendung verschiedener Rechtszweige. Available at: <http://www.praeventionstag.de/dokumentation/download.cms?id=2530&datei=G-Moshak-FORSCHUNG-DESSCHUTZES-GEISTIGER-Eigentumsrechte-2530.pdf> (accessed 18.02.2017). (In Germ.).
 23. *Opinions of the Supreme People's Court on Several Issues Concerning the Implementation of the General Principles of the Civil Law of the People's Republic of China* (For Trial Implementation). Available at: <http://www.ipkey.org/en/resources/china-ip-law/15-civil-law-procedures/3141-opinions-of-the-supreme-people-s-court-on-several-issues-concerning-the-implementation-of-the-general-principles-of-the-civil-law-of-the-people-s-republic-of-china-for-trial-implementation> (accessed 23.11.2017). (In Eng.).
 24. Pisacane G., Murphy L., Zhang C. *Arbitration in China. Rules and Perspectives*. Springer Science + Business Media Singapore. 2016. 217 p. (In Eng.).
 25. Stein G. M. *Modern Chinese Real Estate Law. Property Development in an Evolving Legal System*. MPG Books Group. 2012. 222 p. (In Eng.).
 26. Su Zelin. Eight innovation in China's draft general provisions of civil law. Available at: <http://www.chinahumanrights.org/html/Spotlight/News/2017/2017/0310/7608.html> (accessed 23.11.2017). (In Eng.).

27. *Tu G.* Private International Law in China. University of Macau. 2016. 193 p. (In Eng.).
28. *Wieacker F.* Privatrechtsgeschichte der Neuzeit. 2nd ed., Goettingen, Vandenhoeck und Ruprecht, 1967. 659 p. (In Germ.).
29. *Yuanshi B.* Chinese Civil Law. Hart Publishing. 2013. 325 p. (In Eng.).
30. *Zheng H. R.* China's New Civil Law. *The American Journal of Comparative Law*. Vol. 34. Issue 4. 1 October 1986. Pp. 669–704. (In Eng.).
31. *Zheng Yunrui.* Studies on Certain Issues of the General Principles of Contract Law. *Singapore Journal of International & Comparative Law*. 2003. Vol. 7. Pp. 28–58. (In Eng.).
32. *Zimmermann R., Whittaker S.* Good Faith in European Contract Law. Cambridge University Press. 2000. 722 p. (In Eng.).

References in Russian

1. *Бондаренко Н. Л.* Проблема формирования эффективно действующей системы принципов гражданского права Республики Беларусь // Вестник Пермского университета. Юридические науки. 2012. Вып. 4(18). С. 16–21.
2. *Брагинский М. И., Витрянский В. В.* Договорное право: Общие положения. М.: Статут, 2000. 848 с.
3. *Вавилин Е. В.* Механизм осуществления гражданских прав и исполнения обязанностей: автореф. дис. ... д-ра юрид. наук. М., 2009. 54 с.
4. *Волос А. А.* Принципы обязательственного права: автореф. дис. ... канд. юрид. наук. Саратов, 2015. 26 с.
5. *Голубцов В. Г.* Принцип добросовестности как элемент правового механизма стимулирования должника к надлежащему исполнению обязательств и гарантирования интересов кредиторов: анализ судебно-арбитражной практики // Вестник Пермского университета. Юридические науки. 2016. Вып. 32. С. 175–184.
6. *Комиссарова Е. Г.* Принципы в праве и основные начала гражданского законодательства: автореф. дис. ... д-ра юрид. наук. Екатеринбург, 2002. 46 с.
7. *Красавчиков О. А.* Диспозитивность в гражданско-правовом регулировании // Советское государство и право. 1970. № 1. С. 41–49.
8. *Кузнецова О. А.* Нормы-принципы российского гражданского права. М.: Статут, 2006. 269 с.
9. *Ма Чаншань.* Создание гражданского общества и системы гражданского права в Китае // Гражданское право и его роль в формировании гражданского общества: сб. ст. / отв. ред. А. Е. Шерстобитов. М.: Статут, 2013. С. 20–27.
10. *Покровский И. А.* Основные проблемы гражданского права. Пг.: Изд. юрид. кн. склада «Право», 1917. 330 с.
11. *Свердлов Г. А.* Принципы советского гражданского права. Красноярск: Изд-во Краснояр. ун-та, 1985. 200 с.
12. *Танага А. Н.* Принцип свободы договора в гражданском праве России. СПб.: Юрид. центр Пресс, 2003. 211 с.
13. *Уемов А. И.* Системный подход и общая теория систем. М.: Мысль, 1978. 272 с.
14. *Яковлев В. Ф.* Гражданско-правовой метод регулирования общественных отношений. учеб. пособие / Свердлов. юрид. ин-т им. Р. А. Руденко. Свердловск, 1972. 210 с.
15. *Beckett N., Lichtenstein F., Zhang V.* After 30 years China overhauls its civil law. URL: <https://www.lexology.com/library/detail.aspx?g=bfa1e670-9b8e-4e58-99db-ee57151715ee> (дата обращения: 23.11.2017).
16. *China adopts General Provisions of the Civil Law.* URL: http://www.chinadaily.com.cn/china/2017twosession/2017-03/15/content_28562047.htm (дата обращения: 23.11.2017).
17. *Chuan Feng, Nelson L. P., Simon Th. W.* China's Changing Legal System: Lawyers and Judges on Civil and Criminal Law. New York: Palgrave Macmillan, 2017. 264 p.
18. *General Principles of the Civil Law of the People's Republic of China.* URL: http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383941.htm (дата обращения: 15.11.2017).
19. *Jun Zhao.* The puzzle of “freedom of contract” in China's contract law // *ILSA Journal of International & Comparative Law*. 2010. Vol. 17, issue 1. Article 6. Pp. 105–126.
20. *Leng J., Shen W.* The Evolution of Contract Law in China: Convergence in Law but Divergence in Enforcement? (January 14, 2017). URL: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2899390 (дата обращения: 01.12.2017).
21. *Liming W., Chuanxi X.* Fundamental Principles of China's Contract Law // *Columbia Journal of Asian Law*. 1999. Vol. 13, № 1. Pp. 1–34.
22. *Morshak G.* Anwendung verschiedener Rechtszweige. URL: <http://www.praeventionstag.de/dokumentation/download.cms?id=2530&datei=G-Morshak-FORSCHUNG-DES-SCHUTZES-GEISTIGER-Eigentumsrechte-2530.pdf> (дата обращения: 18.02.2017).

23. *Opinions* of the Supreme People's Court on Several Issues concerning the Implementation of the General Principles of the Civil Law of the People's Republic of China (For Trial Implementation). URL: <http://www.ipkey.org/en/resources/china-ip-law/15-civil-law-procedures/3141-opinions-of-the-supreme-people-s-court-on-several-issues-concerning-the-implementation-of-the-general-principles-of-the-civil-law-of-the-people-s-republic-of-china-for-trial-implementation> (дата обращения: 23.11.2017).
24. *Pisacane G., Murphy L., Zhang C.* Arbitration in China. Rules and Perspectives. Springer Science+Business Media Singapore, 2016. 217 p.
25. *Stein G. M.* Modern Chinese Real Estate Law. Property Development in an involving legal system. MPG Books Group, 2012. 222 p.
26. *Su Zelin.* Eight innovation in China's draft general provisions of civil law. URL: <http://www.chinahumanrights.org/html/Spotlight/News/2017/2017/0310/7608.html> (дата обращения: 23.11.2017).
27. *Tu G.* Private International Law in China. University of Macau, 2016. 193 p.
28. *Wieacker F.* Privatrechtsgeschichte der Neuzeit. 2nd ed., Goettingen, Vandenhoeck und Ruprecht, 1967. 659 s.
29. *Yuanshi B.* Chinese Civil Law. Hart Publishing. 2013. 325 p.
30. *Zheng H. R.* China's New Civil Law // The American Journal of Comparative Law. October 1986. Vol. 34, issue 4, 1. Pp. 669–704.
31. *Zheng Yunrui.* Studies on Certain Issues of the General Principles of Contract Law // Singapore Journal of International & Comparative Law. 2003. Vol. 7. Pp. 28–58.
32. *Zimmermann R., Whittaker S.* Good Faith in European Contract Law. Cambridge University press. 2000. 722 p.