



Legal Regulation of the Principles of State Activity in Family Relations*

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Abstract.

This work examines some challenges in the application of the principles of family law. It is found that the principles of family law cannot replace the legal norms that regulate family relations. However, the regulatory influence of family law norms is determined and limited by its principles. It is proven that the principles of family law can be applied by authorized law-making bodies (in the process of law-making), administrative, judicial bodies, and subjects of family relations (in the process of law enforcement). It is established that the legality of the actions of public institutions and private individuals directly depends on compliance with the principles of family law. It is substantiated that the principles of family law are implemented in the process of law-making, implemented through the norms of law, and in the process of direct application. In the process of law-making, the principles of family law establish requirements for law-making activity that cannot contradict general values. They determine the content of legal norms that must reflect these values and serve as a criterion for the conformity of family law norms with the law. It has been established that the application of family law principles is possible by embedding them in family law norms. At the same time, the principles of family law are not limited to the list that can be fixed in written law. It has been proven that consolidating family law principles in written law contributes to their practical implementation. The features of applying family law principles through legal analogy have been studied. It has been established that the analogy guarantees participants in family relations that their rights and obligations will be regulated, allowing them to resolve cases within the framework of family legislation or based on the principles of family law.

Keywords: Relations; Principles; Family Law, Analogy of Law; Legal Regulation; Judicial Practice

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A. INTRODUCTION

The application of family law principles cannot replace legal norms, which are the primary regulators of family relations. However, the regulatory effect of family law norms is determined and limited by these principles. Undoubtedly, the process of applying family law principles is complex. This is due to their abstractness and the low level of awareness among many practicing lawyers about the importance of principles. This makes the need for appropriate research urgent.

Scientists mainly study theoretical problems of applying norms and principles of law (M.I. Kozyubra, V.M. Kosovich, S.P. Pogrebnyak, O.M. Yukhymyuk, and others), the effect of individual principles of family law when regulating specific family relations (V. Borisova, I. Zhilinkova, Z. Romovska, L. Krasyt'ska, O. Rozgon, V. Chernega, V. Tylchyk, and others) ([Tylchyk et al., 2022](#)). Currently, the process of applying family law principles is insufficiently studied.

The principles of family law should be applied by authorized law-making bodies (in the process of law-making), administrative and judicial bodies (in the process of law enforcement), and by participants in family relations (for example, when regulating their relations by contract). The principles of family law are equally binding for both public authorities and private individuals (participants in family relations). The legality of the actions of both public authorities and private individuals directly depends on compliance with the principles of family law. In case of their violation, negative consequences may arise, such as an obligation to perform a specific action or compensate for the damage caused, among other penalties. ([Zadyraka et al., 2023](#))

The conducted research allows us to state that the principles of family law are applied in the process of law-making, implementation through legal norms, and during direct implementation. In our opinion, in the process of lawmaking, the principles of family law establish requirements for lawmaking activity, which cannot contradict general values (in particular, justice, humanism, equality, good faith, reasonableness, etc.); determine the content of legal norms, which must reflect the values contained in the principles (for example, when regulating property relations between spouses, legal norms must comply with such principles as justice and equality, and this applies to both legal norms in the field of joint property and norms regulating the procedure for acquiring and exercising the right of ownership of each spouse, in the field of dividing objects of joint property, and relations regarding

maintenance between spouses); serve as a kind of indicator of the compliance of legal norms with the law (if a norm in a legislative act does not comply with the principles of law, then we can speak of its illegal nature. ([Halaburda et al., 2021](#)) When considering cases, the ECHR is also guided by the principles of verifying restrictions on human rights, particularly legal certainty, proportionality, equality, and the prohibition of discrimination. ([Kobrusieva et al., 2021](#))

B. METHODS

The study is based on the works of foreign and Ukrainian researchers on methodological approaches to understanding social relations in family legal relations from the point of view of legal theory, administrative law, civil law, etc. Using the epistemological method, the methods of protecting the rights of individuals in administrative proceedings, etc. were clarified; thanks to the logical-semantic method, the conceptual apparatus was deepened, and the principles of law in family legal relations were determined from the point of view of legal theory, administrative law, etc. Thanks to the existing methods of law, we were able to analyze the essence of the techniques used in applying legal principles to family legal relations and other related areas.

C. RESULT AND DISCUSSION

The norms of family law should not contradict its principles. The principles of family law govern family relations, making it impossible to regulate them when this contradicts the fundamental values that constitute the content of these principles. ([Nalyvaiko et al., 2018](#))

The application of family law principles is possible through their consolidation into the norms of family law. At the same time, the principles of family law are not confined to the list that can be fixed in written law; thus, direct application of these principles is possible, not only indirectly through the legal norms that consolidate them. Undoubtedly, consolidating the principles of family law in written law contributes to their practical application. ([Nalyvaiko et al., 2023](#))

M.I. Kozyubra notes that when applying the fundamental and general principles of law, there is not always a need to refer to another source of law (law, legal custom, etc.), which is why, according to the scientist, such principles are often considered as an independent source of law in international and European law, as well as in the legal systems of Romano-

Germanic law. Courts apply them when there are gaps and conflicts. In addition, this makes it possible to avoid the identification of conflicting laws and serves as a safeguard against the creation and application of unjust laws. ([Kozyubry, 2015](#))

The effectiveness of applying family law principles depends on their consolidation in written law (indirect action) and the awareness of law enforcement subjects about the possibility of directly applying family law principles. Traditionally, the direct action of the principles of not only family law, but also of all principles of law is associated with filling gaps in the law (analogy of law). ([Leheza et al., 2023](#)) Article 10 of the Family Code of Ukraine provides for the application of legal analogy to the regulation of family relations. Based on the analysis of this article's provisions, the analogy of law (regulation in accordance with the general principles of family legislation) holds a subsidiary meaning compared to the analogy of law (regulation of relations by similar norms of the Family Code of Ukraine). English case law, as scientists note, is based on the broad application of legal analogy. The Supreme Court of the USA and the highest courts of various states widely use the method of analogy ([Zavalnyuk, 2016](#)). Domestic scientists consider analogy of law as an appropriate mechanism for overcoming gaps in civil legislation ([Zavalnyuk, 2014](#)). A.V. Kostruba believes that the analogy of law is characteristic only of private law branches and can be an effective method of convalidation (rehabilitation) not only for the termination mechanism but also for the entire legal regulation mechanism ([Kostruba, 2012](#)). V.A. Kroitor notes that analogy in civil law is a relatively common legal phenomenon; it can be applied exclusively by the court in the event of compliance with a particular procedure, which must be established by law. ([Kroitor, 2016](#))

We agree with the opinion of S. Pogrebny that in the case of analogy, the law enforcement body cannot change the subject of regulatory regulation of the legislative act. The limits of the regulatory influence of the law do not expand, as analogy is merely a legal and technical means of overcoming gaps to resolve a specific case [6, p. 16]. Undoubtedly, in the analogy of law, gaps in legal norms are not filled but are promptly overcome in each case. The Ministry of Justice expressed its position on the application of the analogy of law. In particular, in the Letter of January 30, 2009, No. N-35267-18 it was noted that when resolving a case both by analogy of law and by analogy of law, the following conditions must be observed: analogy can be applied only when legal norms are entirely or partially absent; analogy can be applied if social relations are in the sphere of legal regulation; between the circumstances of the case and the existing norm there must be a similarity in essential legal features;

the search for a norm that regulates a similar case must take place in the acts of the same branch of law, and in the absence of such a norm, it must take place in other branches and in the legislation as a whole; in the process of using analogy, the decision made must not contradict the norms of the law and its purpose; the motivation of the reasons for applying analogy to a specific case is mandatory (Regarding the procedure for applying regulatory legal acts in the event of inconsistency between subordinate legislation, 2009). We disagree with the position that, in the absence of a norm that should regulate specific relations, the search for a similar one should be carried out not only in the same branch of law, but also in others. In our opinion, if there is no legal norm that regulates specific relations, then the search for a similar one should take place exclusively within one branch, and in the absence of such circumstances, the principles, i.e., the analogy of law, are applied.

Scientists express concerns that when applying the analogy of law, the court, filling in the gaps within the positive law, may create a prescription that will not always have a legal character, that is, will not be based on the ideas of justice and humanism ([Pidvalna, 2012](#)). We disagree with this position, since we are convinced that in the case of the analogy of law, making a non-legal decision is not possible, since the analogy involves the application of the principles of law that reflect its essential values, therefore, if the decision contradicts the principles of law, it will not be possible to talk about the application of the analogy of law. ([Kulinich et al., 2023](#))

Thus, courts apply analogy, while adhering to the requirements of the rule of law and legality; therefore, the decision made in the case should not contradict the current legislation. An analogy guarantees that participants in family relations will have their rights and obligations regulated and can resolve cases within the framework of family legislation or based on the principles of family law.

The application of family law principles helps prevent the abuse of family rights. For example, when concluding a marriage contract, a person's private autonomy is limited by such principles as justice, equality, protection of the weaker party, the principle of the best interests of the child, etc.

The principles of family law can have a direct regulatory effect, not only when applying legal analogies. In cases where specific family conflicts are resolved based on family law principles, and the corresponding decisions are justified by the court, these principles directly apply.

Scientists note that the effectiveness of legal principles can be tested in practice. If they are not a guideline for the subjects of legal relations, then the principles in society do not reflect the real value system. This is especially evident during their application to the courts. In addition, the main directions of implementing the principles of law during judicial proceedings are as follows: application of legal principles to eliminate gaps in the legislation; application of principles in the case of deciding specific cases; filling the principle formulated in the legislation with specific legal content; direct indication of the inconsistency of specific legal norms with the requirements of the principles of law. ([Osadchuk, 2012](#))

When applying the principles of family law enshrined in the Constitution of Ukraine, they play an important role because their norms are norms of direct action; therefore, these principles also have a direct effect. Therefore, the subject of law enforcement can influence a decision in a case involving the principles of family law as outlined in constitutional norms. In recent years, more and more decisions of the Constitutional Court of Ukraine include references to legal principles in their justifications. For example, in Decision No. 5-rp/2005 of September 22, 2005, the Constitutional Court of Ukraine established that the constitutional principles of equality and justice entail the requirement of certainty, clarity, and unambiguousness of a legal norm, since nothing else can ensure its uniform application. ([Leheza et al., 2023](#))

In its decision of December 26, 2011, No. 20-rp/2011, the Constitutional Court of Ukraine interpreted the principles of a social and legal state, as well as the rule of law. It stated that they determine the legislative regulation of social relations based on the principles of justice and proportionality, considering the state's obligation to ensure decent living conditions for every citizen. That is, the Constitutional Court of Ukraine, as a rule, applies general principles of law, which also regulate family relations. ([Nalyvaiko et al., 2022](#))

Among the general principles applied by the courts of Ukraine when deciding family cases, we found the following: the principle that laws and other regulatory legal acts do not have retroactive effect in time (applied in cases of collection of arrears for the payment of alimony); the principle of fairness (applied by the Supreme Court in cases of granting permission for a child to travel abroad without the consent of one of the parents, determining the place of residence of the child, adoption of a child, and divorce); the principle of equality (applied quite often, including in cases on the division of marital property, on the removal of obstacles to communication with the child, on granting permission for a child to travel abroad without the consent of one of

the parents, on determining the place of residence of the child, on divorce, on the right to use residential premises), etc. ([Matviichuk et al., 2022](#))

Among the principles of family law applied by the courts of Ukraine, it is worth highlighting the following: the principle of the best interests of the child (applied in cases on the upbringing of children and the removal of obstacles to communication with them, on determining the place of residence of children, on granting permission for a child to travel abroad without the consent of one of the parents, on the adoption of a child, on the collection of alimony, penalties for late payment of alimony, on the deprivation of parental rights, including with the simultaneous collection of alimony); the principle of general and equal responsibility of both parents for the upbringing and development of the child (applied in cases on granting permission for a child to travel abroad without the consent of one of the parents); the principle of voluntariness of marriage (applied in cases of divorce, including those accompanied by requirements for determining the place of residence of the child); the principle of monogamy (applied in cases of declaring a marriage invalid, establishing the fact of cohabitation of a man and a woman as one family without state registration of marriage); the principle of inadmissibility of arbitrary interference in family life (applied in cases of recognition as a family member, the right to use residential premises, the removal of a minor child); the principle of prohibition of violence in the family (on the application of special measures to combat domestic violence), etc. ([Leheza et al., 2022](#))

The Supreme Court also uses the term “principle” in its decisions (for example, the principle of equality of rights and obligations of fathers and mothers in relation to their children). Quite often, principles are used without specifying that they are principles (for example, the equality of rights of each spouse). In our opinion, applying principles without specifying that they are principles does not change their essence or diminish their significance. ([Sinkevych et al., 2024](#))

The Supreme Court's application of general principles to the regulation of family relations and family law principles contributes to their application by courts of first and appellate instance. For example, in the decision of the Tyachiv District Court of the Transcarpathian Region dated May 15, 2019, the principles of equality, general and equal responsibility of both parents for the upbringing and development of the child, and the best interests of the child were applied ([Decision of the Tyachiv District Court of the Transcarpathian region, 2019](#)). The principle of equality was applied when the Board of Judges of the Civil Chamber of the Court of Appeal of the Transcarpathian Region

adopted the Resolution of January 18, 2018, regarding the granting of permission to produce a travel document and travel abroad for a child. ([Villasmil Espinoza et al., 2022](#))

D. CONCLUSIONS

Two forms of application of family law principles can be distinguished: 1) the preferential application of the principles of law through their consolidation in legal norms (this is typical of the Romano-Germanic legal family); 2) the direct application of the principles of law in judicial practice (in the Anglo-Saxon legal family). The main feature of the second form of application is that the court has the right to decide at its own discretion which principle of family law is subject to application, to interpret it in accordance with established judicial practice, or, with appropriate justification, to go beyond its limits. At the same time, in both forms, both the legislator and the courts enjoy a broad discretion as to how they apply the principles of family law.

Therefore, the application of family law principles can have a direct vertical effect, where the principles of family law are applied directly in regulating family relations, and an indirect vertical effect, where the principles of family law regulate family relations through norms that reflect them. The convergence of legal families has led to a combination of the above forms of application of family law principles in different states in different proportions. The application of family law principles expands the freedom of action of participants in family relations and increases judicial discretion when resolving family cases.

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