

CHARACTERISTICS OF GENERAL AND SPECIAL LAW AND THE BASIS FOR THEIR DISTINCTION

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Abstract

This article explores the distinction between public law and private law, which constitutes a fundamental element in the structural classification of legal systems. The relevance of the topic stems from the fact that the correct identification of whether a legal relationship falls under public or private law is not only of theoretical significance, but also directly affects legal practice, including the applicable legal norms, procedural mechanisms, available legal remedies, and most importantly, the determination of which court has jurisdiction over the dispute. Particularly in legal relations involving public authorities and private individuals, the lack of clear boundaries between public and private law gives rise to jurisdictional conflicts and divergent legal interpretations. The article provides a comparative analysis of the historical development and conceptual foundations of public and private law within various legal traditions, especially focusing on civil law and common law systems. Furthermore, it examines the legal framework and judicial practice in the Republic of Azerbaijan, identifying specific instances in which the distinction becomes practically significant and legally complex. The study emphasizes the need for stronger theoretical underpinnings, more systematic treatment in legal education, and clearer legislative criteria to delineate public and private legal spheres. It concludes that establishing precise legal criteria for distinguishing public and private law, and ensuring uniform interpretation in judicial practice, would enhance legal certainty, protect the integrity of legal processes, and contribute to the efficient regulation of legal relations. The research employs methods of systematic analysis, comparative legal study, and normative legal interpretation.

Keywords: legal relations, court, administrative procedure, public law, jurisdiction, citizen, subordination, law.

1. The history and necessity of the division into general and special law

A recurring issue in legal practice is the uncertainty that arises when the legal nature of a relationship is not properly assessed at the outset. This can lead to misdirection of legal claims, whether to administrative courts or to courts of general jurisdiction and may result in procedural delays, annulment of decisions, or ineffective legal protection [1, p. 391].

First of all, the division of general and private law was formed in the stages of development of legal theory and systematized over time in accordance with the nature of legal relations. The main historical roots of this division lie in Roman law, and it was during this period that the need arose to classify legal relations according to whether they serve state interests and private interests [6, p. 14].

The division of general and private law was first systematically formed within the framework of Roman law, and in the formation of this division, along with the social and political structure of the Roman state, the objective necessity for the regulation of legal relations played a decisive role. In ancient Roman society, the concept of law was understood not only as a set of legal norms, but also as a means of protecting public order and regulating relations between individuals. In this regard, the classification of legal

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relations according to whether they were directed towards the interests of the state or the interests of individuals arose from objective necessity [4, p. 34].

In the classical period of Roman law (1st century BC - 3rd century AD), according to the classification put forward by the famous Roman lawyer Domitius Ulpianus, law was divided into two main categories: "ius publicum" and "ius privatum". Ulpian's famous expression accurately reflects the legal philosophy of this division: "Publicum ius est quod ad statum rei Romanae spectat, privatum quod ad singulorum utilitatem." That is, "General law concerns the state of the Roman state, and private law concerns the interests of individuals." This division was based not only on the objective content of the legal relationship, but also on the functional purpose of the law [5, p. 312]. Ius publicum general law, covered the areas of law regulating the organizational structure of the state, the activities of the governing bodies, the system of religion and cult, public order, tax and administrative relations. In this area, the state, which was a participant in legal relations, had a will superiority, and the principle of equality was not applied in these relations. It is for this reason that the violation of the general law norm was socially dangerous, and the mechanisms of punishment were directly related to the sovereign power of the state. This created a conceptual basis for the formation of the criminal and administrative law areas in the future [5, p. 65].

On the other hand, ius privatum (private law) regulated the relations arising between persons with equal legal status. According to this area of law, it was intended that persons could conclude contracts, acquire property, establish family and inheritance relations in accordance with their will. In these relations, the state only served as a guarantor of law and an arbiter of disputes, but did not participate directly between subjects. Thus, private law played the role of a system that formed the legal foundations of private property and individual freedoms and limited the state's ability to intervene in relation to law.

In Roman law, this division was not only a theoretical construct, but also permeated the processes of law application and codification. The development of such areas of law as ius civile, ius gentium, and ius honorarium took place within this division, and special legal relations developed especially within the framework of ius civile, while ius publicum was reflected more in the legislation of the senate and the emperor. The process of codification of Roman law - most clearly in the Corpus Juris Civilis collection compiled in the 6th century at the initiative of Emperor Justinian - systematized this division and turned it into the main methodological structure of legal teaching.

This division of general and private law was later revived by the study of Roman law in medieval universities, especially in the Bologna law school, and became a fundamental structural principle of European legal systems. Thus, this classification, formed in Roman law, became an integral element of legal theory until the modern era and was one of the main mechanisms ensuring normative specialization in the application of law. This classification was later developed in the legal system of the Byzantine Empire and substantiated in Justinian's "Corpus Juris Civilis". Here, the concepts of general and special law played an important role in further specifying the scope of application of law and creating a typological classification of legal relations.

In the middle ages, the ius commune system developed in European legal traditions, especially in the 12th-13th centuries during the teaching of law at the University of Bologna. The division of general and special law in this system emphasized the universality of law and its difference from local legal norms. In the modern era, along with the development of legal science and the formation of a legal state, the hierarchical

structure of legal systems has become more complex. At this stage, the boundaries of general and special law have become more clearly defined, and with the expansion of the administrative functions of the state, the need arose to form administrative law as a separate field from special law. In modern legal systems, especially in continental law, the concept of general law encompasses the general principles and rules of law, and special law encompasses the private normative systems of different areas of law. This requires specific approaches in legislation, judicial practice and legal education.

Thus, the historical development of the division of general and special law has emerged as a necessary legal tool for the structuring of law and the effective regulation of legal relations. This division both strengthens the theoretical and legal basis and serves to clarify relevant issues in the practical application of law. The division of general and special law is of great importance in terms of the systematic structuring of law and the correct regulation of legal relations. This division allows you to determine the area of law to which the legal relationship belongs, which in turn plays a key role in determining which court the dispute will be considered in. For example, a dispute arising between a citizen and an administrative body should be submitted to an administrative court, not a general court. This is based on the specific recognition of the relationship as an administrative law relationship. If the legal relationship is not correctly classified, the dispute may be considered in the wrong court, which leads to ineffective legal protection and a delay in the process.

In general, the correct determination of the jurisdiction of the court is important for the practice of applying law, since then it becomes possible to correctly select legislative acts and in general, the correspondence of theory and practice increases the effectiveness of the legal system. Therefore, the distinction between general and special law serves to reconcile theoretical knowledge with legal practice. The accuracy and clarity of this division is also important in legal education, because it allows students to correctly understand the characteristics and areas of application of various areas of law.

Although the division of law into general and specific areas is accepted as one of the fundamental principles of classical legal theory, a number of well-known legal theorists have argued that it is inappropriate to apply this division in the structuring of legal science in general and have opposed the principle of division. The formation of such opposing approaches has emerged primarily as a result of the requirements for a systematic and analytical approach arising from the complex and dynamic nature of law, and is justified by the idea that explaining law only with a dual structure is incomplete both theoretically and practically.

One of the main arguments of theoretical approaches opposing the traditional division is based on the concept that law is a single and indivisible normative system and that artificially dividing such a system into separate categories contradicts the general goals and functions of law. Theorists speaking in this direction, including some representatives of the German legal school, have evaluated the division of law as a conceptual framework that was formed only in a historical and sociological context, but does not meet the requirements of modern legal systems. In this regard, theorists such as lawyer Rudolf von Ihering By highlighting its social-functional character, he took the degree of service of law to society and its development as the main criterion in the classification of law, and criticized the division of law into general and specific parts as an abstract and normative-schematic approach. According to Ihering's approach, law is a means of social regulation, and its division serves not to fulfill this function, but, on the contrary, to dogmatize legal thought.

At the same time, in modern legal philosophy, especially in postmodern legal theories, it has been suggested that the normative structures of law are not stable and unchangeable, but rather are formed as contextual and social constructions. In this regard, it has been emphasized that any division of law is not absolute, but relative in nature, and instead of the public-private dichotomy of law, functional, cross-sectoral or problem-based classification forms have been proposed. Some lawyers opposed this division and criticized it as a product of positivist legal theory. In their opinion, the explanation of law with a normative content based only on the will of the state ignores its social, ethical and economic functions. In this regard, the classification of law into public and private rather than a deeper analysis of the transitions, interactions, and sociological realities between normative and non-normative legal relations should be preferred.

Another important argument is that in modern times, many areas of law, for example, environmental law, tax law, corporate law, digital law, etc. has the character of a hybrid or mixed regulation that does not fit into the framework of the classical division. Thus, in these areas, both state interests and the rights of private subjects exist at the same time, and in these relations there is neither complete dependence nor complete equality. For this reason, the dual division of law cannot adequately express the legal essence of such new relations, and more flexible legal methodologies are needed. In addition, the division of law into general and special parts encourages artificial legal formalism in some legal systems and creates difficulties in the practical application of law. For example, in some cases, it is necessary to apply both general law and special law norms to a legal relationship at the same time, but in this case there are no clear and unambiguous criteria regarding which legal regime should prevail. This can lead to legal uncertainty, contradictions in the activities of law enforcement agencies, and legal inequality.

In addition to the above, a number of lawyers have proposed to accept the division of law into general and special areas only as a theoretical and technical tool in terms of legal teaching and systematization. In their opinion, this division is independent does not have a legal nature and can only be used for the perception and organization of legal material, but such a strict division of legal relations themselves cannot be scientifically justified.

As a result, theoretical positions opposing the division of law into general and specific areas are becoming increasingly relevant against the background of the evolution of legal science and the increasing complexity of legal relations. These approaches suggest that law is a dynamic system that should be analyzed not only on formal categories, but also on social, contextual and functional grounds, and encourage the development of legal doctrine in a more adaptive, pragmatic and consistent with real life. In this regard, positions opposing the division can be regarded as a manifestation of legal modernity and the need for renewal of legal science.

II. Legal criteria for distinguishing between general and private law

One of the main issues at the center of scientific discussions on the classification of legal relations and their essence has been the division of law into general (public) and private (private) spheres, as well as the scientific substantiation of the criteria used in determining this division. This division is not only theoretical in nature, but also of great importance in terms of determining specific legal regimes, the content of the state's law-making and law-enforcing activities, as well as the correct determination of the nature of legal relations between subjects. Although the issue of dividing law into general and private spheres seems simple at first glance, the diversity of conceptual and methodological approaches behind this

division, as well as the existence of different theories put forward to justify this division, indicate that this issue has a deep scientific and historical context.

The disagreements and mutual theoretical polemics that have formed among lawyers over the centuries around the issue of the division of law have become even more relevant, especially with the formation of medieval European law, starting from Roman law, as well as modern constitutional and administrative law theories. The idea of dividing law into general and private parts was first introduced in classical This dual division of law was put forward by the Roman jurist Ulpian and was assessed by him as an attempt to distinguish between norms and institutions expressing the interests of the state and norms and institutions regulating the interests of individuals. This division of Ulpian became the main structural element of subsequent legal teachings and an important reference point in the development of legal systems.

However, over time and with the multifaceted nature of legal relations, the division of law into two parts according to the Ulpian division was not enough. In some cases, legal relations are regulated neither by completely general nor by completely special legal norms. Taking into account this reality, a number of lawyers emphasized the need to put forward additional criteria and theoretical constructs to determine the division of law, and numerous scientific approaches were formulated in this area. The necessity of the emergence of these approaches arose primarily from the need for a correct and systematic classification of the nature of legal relations. In terms of practical law application, the consequences of attributing a legal relationship to general or special law lead to the application of different legal regimes, legal Since it leads to the type of liability, the determination of the instance where legal disputes will be considered, and other important legal consequences, the precise determination of this issue is considered important in terms of the integrity and effectiveness of the legal system. In addition, the division of law into general and special areas also plays a fundamental role in clarifying the nature of legal regulation tools. While general law usually includes norms that express the will of the state, are normatively binding, and necessarily determine one side of legal relations as the state or a body authorized by the state, special law regulates relations between equal subjects based on the principles of free will and freedom of contract.

The formation of existing theories on the division of law into these two areas was also closely related to the development of the philosophical foundations of legal science, the formation of scientific directions such as legal positivism, legal realism, and natural law. For example, the theory of the subject criterion, taking the participants in legal relations as a basis, attributed the relationship between the state and the citizen to general law, and the relationship between equal persons to the field of special law. In other approaches, regulation method, nature of interests, purpose of relations and other elements have been put forward as a justification factor.

The promotion of these different approaches is explained, on the one hand, by the rapid complexity of legal relations, and on the other hand, by the emergence of new areas of law - for example, economic administrative law, environmental law or digital law. These new areas necessitate a reconsideration of the classical principles of division and the application of more flexible and contextual approaches to the classification of law As a result, the application of different theoretical models in approaches to the problem of dividing law into general and specific areas demonstrates the dynamism and open nature of legal science, as well as acts as a fundamental factor ensuring the flexibility of the legal system. In this context, the parallel existence of different theories is not only an indicator

of disagreements, but also a sign of the potential for adaptation in accordance with the multidimensional structure of legal systems.

The distinction between general and special law has long been a hot topic of discussion in legal theory and practice, and various approaches and criteria have been developed to make this distinction. In order to determine the field to which a legal relationship belongs, several theories have been put forward in the legal literature, for example, the theory of subordination, the theory of interests, and the theory of subjects (as well as others).

The first approach is the theory of subordination. According to this theory, if one party in a legal relationship is legally subordinate to the other party and this relationship is not based on the principle of equality, but on the basis of subordination, this relationship belongs to general law. In other words, here one of the parties is the state or an authorized representative of the state, and the other is a subject legally subordinate to it [2, p. 44-47]. For example, the relationship between a citizen and a tax authority, or the relationship between a police officer who imposes an administrative fine and a citizen, falls under the general law field according to this criterion. However, the drawback of this theory is that in some cases, although the legal relationship contains an element of subordination, this relationship is not fully the subject of general law. For example, in the labor relationship between an employee and an employer, although the employee is in a certain sense subject to the instructions of the employer, this relationship belongs to labor law, that is, to the field of private law. This shows that the criterion of subordination is not always valid as an independent and universal basis for differentiation.

The second approach is the theory of interests. According to this theory, in order to determine which field of law a legal relationship belongs to, attention should be paid to what interests it serves [4, p. 35]. If a legal relationship is aimed at protecting general and public interests, it belongs to the field of general law. On the contrary, if the relationship is aimed at ensuring individual and personal interests, then the relationship is considered a subject of private law. For example, property donation, purchase and sale agreement, inheritance, debt relations and other such relationships are included in the field of private law because they serve personal interests. However, this approach also has certain shortcomings. Thus, in some cases, even if a legal relationship is established on a personal initiative, it can serve general interests. For example, although a citizen's creation of a public fund, establishment of a political party or establishment of a public association are based on the subjectivity of personal law, general and public goals are at the forefront in these relations. This also prevents the unambiguous application of the criterion of interests.

Another approach is the theory of subjects. According to this theory, whether a legal relationship belongs to general or special law depends on its participants - that is, its subjects. If one of the parties in a legal relationship is the state or an agency acting on behalf of the state, the relationship belongs to the field of general law. On the contrary, if the participants in the relationship are only individuals and legal entities, and the state does not act as a party with a willful advantage, this relationship is included in the subject of special law. For example, according to this theory, the relationship between the tax authority and the entrepreneur belongs to general law, and a lease agreement concluded between two citizens belongs to special law. However, this theory is not absolute either. Thus, not all relations in which the state participates can be attributed to general law. For example, when selling or leasing state-owned real estate, it acts as a commercial entity and the relationship has the character of a classical civil law relationship.

Although each of these theoretical approaches contains useful points for determining the affiliation of legal relations to general or special law, none of them can be fully applied in legal practice as an independent and universal criterion. In some cases, these criteria overlap and complement each other, and in some cases, one excludes the other. Therefore, a complex and systematic approach is required to correctly determine the legal nature of a legal relationship.

In the Resolution of the Plenum of the Constitutional Court of the Republic of Azerbaijan on the interpretation of Articles 2.0.1 and 2.0.2 of the Law of the Republic of Azerbaijan "On Administrative Proceedings", it was clearly established that the distinction between general and special legal relations is the main criterion for determining the jurisdiction of legal relations [7]. In this Resolution, the Constitutional Court considered it necessary, first of all, to assess the legal essence and legal nature of a legal relationship in order to determine whether a legal relationship should be considered within the framework of administrative proceedings.

Thus, the field of law to which the dispute that has arisen between the parties belongs determines in which court it should be considered, and here, one should proceed from the content and nature of the legal relationship, not from formal criteria. The Resolution indicates that the belonging of legal relations to general or special law should be determined not by their form, but by the basis of their emergence. That is, the legal basis on which the subject of the dispute and the legal relationship between the parties arose, the relevance should be determined accordingly. In this context, it is noted that even if one of the parties is a state body or a state-owned legal entity, if the legal relationship that has arisen is formed on the basis of a contract and this contract can be attributed to the subject of civil law, such a relationship belongs to the field of special law and falls within the jurisdiction of general courts. In that Decision, the legal nature of the dispute arising from the relationship regarding energy supply in a specific case was examined and it was determined that the dispute that arose between a citizen and an energy supplier - a legal entity - arose from a civil law contractual relationship [3]. In this relationship, there are no elements of subordination of administrative authority. The Court concluded that since the dispute arose on the basis of a contract, this relationship should be attributed specifically to civil law and the dispute should be considered in a general court, not an administrative court.

Thus, the aforementioned Decision of the Constitutional Court once again confirms that the belonging of a legal relationship to general or special law is determined not by the identity of its parties, but by the legal nature of that relationship and the legal basis for its emergence. This approach, in addition to being a practical confirmation of the application of the theories of differentiation between general and special law, also acts as one of the main structural criteria of normative law in terms of the correct and objective resolution of relevant issues [9].

Based on the generalization of the obtained analyses, it is possible to conclude that the issue of whether a legal relationship belongs to the general or special field of law should be determined in a comprehensive manner, not only on the basis of formal criteria, but also on the basis of its legal essence, the basis for its formation, the purpose of regulation and the nature of the legal relationship between the subjects. This distinction serves as a fundamental subject not only for theoretical considerations, but also for practical application of law, in particular, for the correct determination of the jurisdiction of the court and the normative acts to be applied. According to the legal position of the

Constitutional Court, the fact that one of the parties to a legal relationship is a state or a public legal entity does not necessarily mean that the relationship belongs to administrative law. If this relationship is based on a civil legal basis, for example, a contract, and there is no element of subordination, then it should be assessed as a special law relationship and general court jurisdiction should be applied.

Therefore, in distinguishing between general and special law relationships, along with a number of theoretical criteria, the source of the formation of the legal relationship, the status of the participants and the legal nature of the interests should be carefully examined. Law enforcement authorities should then approach each legal invoice and context individually, applying existing legal doctrines, case law and regulatory acts with a comprehensive assessment. [8, p. 56-59]. Only in this case can the precise legal nature of the legal relationship be determined and adequate legal mechanisms be activated.

III. Summary

Based on the obtained scientific results, it was concluded that the issue of distinguishing between general and special law is quite complex and multidirectional in modern legal doctrines and legal practice, both theoretically and practically. The correct determination of the area of law to which legal relations belong is of fundamental importance not only for the scientific construction of legal systematics, but also for determining in which court specific legal disputes should be considered, which normative act should be applied, which legal regime should be applied, and finally, the characterization of legal remedies. For this reason, the issue of whether a legal relation belongs to general or special law should be considered not as an isolated independent issue in legal theory, but as a methodological problem that requires a complex analysis, closely related to the mechanisms of law application.

The study showed that although modern legal science has formulated various theoretical criteria for explaining this division, none of them is universal, and therefore the differentiation should be carried out not only on the basis of one criterion, but as a result of a comprehensive, multi-plan and systematic analysis of the legal nature of the legal relation. Although the theory of subordination, the theory of interests and the theory of subjects have a certain explanatory power in the relevant contexts, the separate application of these approaches sometimes gives rise to legal contradictions. For this reason, it is necessary to develop integral and normative approaches for differentiation in legal theory.

The assessment of the relevant legal situation has also been reflected in the precedent-based decisions of the courts, and the importance of applying key factors such as the nature of the legal relationship, the basis for its formation and the purpose of regulation as criteria has been emphasized. At the same time, the failure to codify these criteria as a separate legal standard in the normative legal environment leads to uncertainties and different interpretations in the application of law in practice.

In this regard, it is proposed that:

- Fundamental legal studies devoted to an in-depth analysis of classical and contemporary theories on the distinction between general and special law should be given priority, and legal doctrines should be systematically re-evaluated;
- The legal approaches of foreign countries, especially Germany, France, Italy and the European Court of Human Rights, should be involved in comparative analysis and their differentiation criteria should be systematized by adapting them to the Azerbaijani legal system;

- The specific criteria and criteria for attributing a legal relationship to general or special law should be reflected in the Law “On Administrative Proceedings” and other relevant normative acts in a precise and normative form in terms of legal technique;
- Methodological tools for lawyers, judges and other persons practicing law, specialized commentaries, legal publications based on precedent analysis should be prepared and made available to the legal community;
- Scientific and practical conferences, seminars and training programs on this issue should be held within the framework of legal awareness measures, and these issues should be systematically integrated into the curricula for law students;
- Finally, in order to form a general and stable legal approach that determines which area of law a legal relationship belongs to, the legal positions of the Supreme Court and the Constitutional Court should be brought together and normative explanatory acts should be encouraged.

The implementation of these measures will facilitate the correct assessment of the content and forms of legal relations, the prediction of the application of law, and the provision of legal certainty, and ultimately will create conditions for the systematic nature of law and the effective implementation of the principles of the rule of law.

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