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Convergence and mutual influence of legal systems in the context of globalization

Зближення та взаємовплив правових систем в умовах глобалізації

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Abstract

The purpose of the article is to clarify the patterns of convergence and interaction of legal systems. The subject of the study is the analysis of the interaction of legal systems in the context of globalization. Research methodology includes the use of general and special methods of scientific knowledge: dialectical, historical and legal, formal and logical, method of hermeneutics, generalization, comparison and more. Results of the research. The concept of legal system and its elements are considered. The essence of modern development of legal systems is revealed. Practical meaning. The processes of convergence and interaction of legal systems in the context of globalization and their consequences for legal processes in general are defined. Value / originality. The mechanisms of development of legal systems in the conditions of globalization are analyzed; among them reception, transplantation, acculturation and other legal processes of convergence are allocated. The main principles of interaction of legal systems in the conditions of European integration processes are defined.

Keywords: acculturation, globalization, legal system, integration processes, interaction.

Анотація

Метою статті є з'ясування закономірностей процесів зближення та взаємовпливу правових систем. Предметом дослідження є аналіз взаємодії правових систем в умовах глобалізації. Методологія дослідження включає в себе використання загальнонаукових та спеціальних методів наукового пізнання: діалектичний, історико-правовий, формально-логічний, метод герменевтики, узагальнення, порівняння тощо. Результати дослідження. Розглянуто поняття правової системи та її елементи. Розкрито сутність сучасного розвитку правових систем. Практичне значення. Визначення процесів зближення та взаємовпливу правових систем в умовах глобалізації та їх наслідки для правових процесів в цілому. Цінність/оригінальність. Проаналізовано механізми розвитку правових систем в умовах глобалізації, серед яких виділено рецепцію, трансплантацію, акультурацію та інші правові процеси зближення. Визначено головні принципи взаємодії правових систем в умовах Європейських інтеграційних процесів.

Ключові слова: акультурація, глобалізація, взаємодія, інтеграційні процеси, правова система.

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Introduction

The legal systems of all countries do not exist in isolation from each other. They constantly interact, conduct a "legal dialogue", which helps to assess their own legal experience and get the opportunity to improve, develop, change certain elements, filling them with new meaning.

Interculturalism has long been considered one of the main factors in the development of State and legal institutions. Today, one can hardly find "pure" national legal culture. All of them are a symbiosis of internal or external, national or international influence of legal rules.

At all times, legislators have to a greater or lesser extent used legal material of other countries. Even in ancient times it was believed that knowledge of the legal systems of certain people (civilizations) is extremely important for the establishment of "their" own legislation.

Clearly, even today, national law cannot ignore international (or foreign) legal rules, especially in the era of globalization processes, which are characterized by interdependence, interpenetration into different legal systems for the formation of common features, new holistic legal entities.

Methodology

The methodology of the article is based on general and special methods of scientific knowledge, the use of which is determined by the purpose, object, and subject matter of the research.

Legal and dogmatic method is used to understand and interpret the texts of scientific works, which makes it possible to generalize the idea of the existence of such ways of interaction of legal systems as reception, acculturation, transplantation, etc.

With the help of logical method, the concepts of legal system and the system of law are considered.

System and structural method allows to allocate such ways of interaction of legal systems as reception, acculturation, transplantation, etc.

The use of normative and dogmatic method helps to analyze the views of the scholars, who studied the particularities of convergence and mutual influence of legal systems.

The application of the method of generalization makes it possible to determine the main principles of interaction of legal systems in the conditions of European integration processes.

Literature Review

Convergence, correlation and interaction of the world's legal systems have always been relevant in the legal community. Recently, the interest in the implementation of various legal systems in the context of globalization has increased significantly.

Thus, Shkurat (2020) in his Thesis "Transformation of public administration in Ukraine in the context of globalization: theoretical and methodological analysis" provided the author's concept of globalization, which lies in deep and intensive development of economy, politics, social and other spheres and progresses internationally under the influence of various global processes and institutions aimed at effective transformation.

Miroshnychenko in her work "Genesis of the legal system of Ukraine: theoretical and methodological aspect" (2012) pointed out that, in the light of the processes of globalization, new challenges have arisen in the identification and characterization of the factors that determine the specifics and further development of the legal system of Ukraine.

Nastasyak (2014) notes that under the influence of globalization well-established legal theories inevitably change and new legal models emerge inevitably, based on a legal culture, ideology, new learning methodology.

Rotaru (2011) identifies sub-systems of the legal system, which include: institutional, regulatory, ideological, functional, communicative ones. The researcher reflects their characteristics and confirms that the process of harmonization and convergence of legal systems requires targeted and coordinated action of States.

Mernyk and Burlakova (2019) believe that one of the most important features of the legal system is its dynamism, which is manifested in the emergence of new social relations and legal phenomena through the implementation of new elements.

Chirkin (2015) examines the relationship between global legal systems: Muslim, liberal

social capitalism and totalitarian socialism as the latter exists in the five surviving countries of totalitarian socialism (Vietnam, China, Cuba, North Korea, Laos), where along with the principles of socialist economy, although to a very different degree, there is private property and state-regulated market relations; the constitutions include provisions on human rights, separation of powers, and the rule of law, which were previously considered bourgeois concepts.

Bedulskaja (2013) studied the impact of EU law on harmonization of national criminal law, described the ways of such influence and proved, which ones of them positive and negative ones.

Evtukhovich (2013) examined the issue of interaction of national legal systems in regulation of mediation, comparing the ways of regulating this legal phenomenon in Russia, the USA, the Netherlands, Australia, and Germany.

However, despite the availability of current research, the issue of the impact of globalization processes on legal systems remains unexplored and needs to be improved.

Results and Discussion

Given the rapid globalization of society, the simplification of relations between leading countries, there is a need for close cooperation between different legal systems.

The current state of development of the world community leads to the fact that each state must develop its legal system so as to ensure its maximum interaction with international law. The state itself establishes the framework and nature of the relationship of its law with international law. This is realized through domestic and foreign policy.

We propose to characterize the content of legal systems for further understanding of the process of their convergence and interaction.

The legal system is a set of internally agreed, interconnected, social legal means, methods, ways and procedures by which the government exercises regulatory and organizational influence on public relations. That is, legal system can be called a complex category that characterizes the legal life of society within a particular culture.

The legal system and the system of law are correlated as a whole and a part. The system of law is an objectively existing structure of law, characterized by internal coherence,

interdependence, the interaction of the rules of law, which are grouped in separate branches, subsectors, law institutes.

Thus, the system of law characterizes the law in terms of its internal structure, and the legal system is a complex category that reflects the legal organization of society.

Skakun (2000, p. 258) understands the legal system as the set of interconnected and agreed legal means designed to regulate public relations. As a result, legal phenomena arise, for example: legal norms and principles, legal awareness and legal culture, legal relations, etc.

The elements of the legal system are:

- entities (individuals and legal entities, the State, social communities, etc.);
- legal norms and principles;
- legal relations, legal behavior, legal practice, mode of operation;
- legal ideology, legal culture, legal consciousness;
- the relationship between the above elements (Skakun 2000, p. 259).

Thus, the legal system is of general nature – it includes all legal phenomena: lawmaking, legal awareness, legal ideology, etc., the basis for which is the law – its core and regulatory framework.

On the contrary, Kharytonova and Kharytonov (2002, p. 16) believe that the list of the legal system elements is broader. They distinguish the following components:

- law (the set of norms created and protected by the State);
- legislation (as a form of expression of these norms);
- legal institutions;
- judicial and legal practice;
- legal regulation;
- interpretation;
- rights, freedoms and responsibilities of citizens;
- law and order, etc.

However, the concept of legal system is often identified with such concepts as nation, country, State (Kharytonova & Kharytonov 2002, p. 14).

If we consider the modern development of legal systems, this process is characterized by the continuous influence of one legal system on the

others, less developed. Borrowing, that is, the transfer of elements of a developed legal system to a subordinate legal system is taking place; and as a result, it is reintegrated. Under modern conditions, legal acculturation acquires a global scale, i.e. the legal development of an individual country is subject to the laws of legal development as such. That is, interaction (convergence) of national legal systems and their institutions takes place as a result of integration and globalization processes.

The concept of globalization means the process of global economic, political, cultural integration and unification. But we understand that globalization encompasses not only the economy, politics and culture, but also the law in all its aspects.

Nersesians (2005, p. 1) believes that globalization affects the transformation of State and legal institutions, legal rules and renews all processes in the area of law. Globalization of legal systems is accompanied by the universalization of law itself, the development of forms, norms and procedures of social life of the State.

There are four approaches to the definition of the concept of globalization, including:

- strengthening links between different parts (events in some regions significantly affect the development of the situation in other ones);
- dissemination throughout the world of technologies, culture, ideas, values, lifestyles, behavior, etc., common to all mankind;
- common problems for the world community (economic, environmental ones);
- growth of common interests (interdependence of countries and people).

There is an opinion that under the influence of globalization all established legal theories change and new ones, which are based on new legal culture, ideology, methodology, etc., emerge (Nastasiak 2014, p. 36).

Thus, the legal systems that exist in the world interact with each other through political, economic, cultural dialogue. As a result, a part of another falls into one legal system, on the basis of which «mutual enrichment» takes place by certain norms, procedures and institutions of law.

Can we say that in the course of such an interaction, the law of one country affects the law

of another one? Certainly, we can. As a result of the interaction of legal systems there is such a phenomenon as the influence of the laws of one country on the establishment and implementation of the laws of another(s) one(s). There are two ways of such interaction: 1) internally oriented; 2) externally oriented.

Internally oriented one is characterized by the fact that the establishment of the legal system was influenced by laws, customs and traditions. Externally oriented one is associated with the dissemination of State laws in the conquered territories (Bandurka 2018, p. 382).

Returning to contemporary understanding of the interaction of legal systems, we can talk about the growing interconnectedness, mutual influence of legal systems of different States. Influence is manifested in several areas, including in borrowing ideas, concepts, institutions, legal structures, etc. This is, first of all, direct borrowing of normative material. It lies in the fact that one legal system includes normative elements of another one – sub-branches of law, branches of law, legal institutions, legislative acts, etc. Related to this area is the understanding of ideas, principles of legal regulation, more often – forms (sources) of law, forms of legislative acts, legal constructions. A special form is the adopting of legal terminology, rules and techniques of legislative technique, interpretation, use of legislation specific to the country's legal system, legislative procedures, etc.

Such adopting is called reception – the process of development of national law through foreign law and transformation (implementation). Reception is often the subject of research by various scholars, but there is no established concept. That is, there is no understanding of reception as a legal phenomenon, its definition, compliance with other legal norms.

Opinions were divided, as one group of scientists understands the reception as the restoration of legal norms, and the others – as the adoption by one country of elements of the legal culture of another one (Marchenko 2004, p. 423). Thus, reception is part of the revival of the past culture, represents the perception of its spirit, ideas, main principles and individual provisions of a local civilization at a certain stage of its development (Bandurka 2018, p. 382). However, we do not agree with this view, because it is only a theoretical recognition of the reception (only its legal ideas), without the practical application of law.

Marchenko (2002, p. 88) notes that the reception is the adaptation of law to new historical conditions, new legal environment. And Nasibullin (2005, p. 224) defines reception as the application of the law of a more authoritative country.

Reception is often interpreted through such concepts as: transplantation, acculturation, assimilation, migration of legal norms, etc. This happens because the reception often goes beyond the borders of the State, determines the relationship of legal systems, the trend of their convergence and unification.

We believe that the concept of transplantation should not be associated with reception. Thus, transplantation is the transfer of fundamentally important legal norms and models of one or more legal systems (Martyshyn 1996, p. 5). This term is more used in international law to describe the rules of domestic law of the State, i.e. the development of legal processes within the State with the application of international law. Thus, it is impractical to identify these two concepts.

Reception is a part of a broader concept – acculturation. It is understood as the process of assimilation by the people of the forms, institutions and features of the culture of another people during their communication. Bandurka (2018, p.382) characterizes acculturation as the assimilation and use of legal values, norms, institutions and activities of other legal systems. Legal acculturation is carried out with the help of legislation and legal practice.

The term “acculturation” was first used to describe contacts between different cultures, and then – to explain the changes caused by the interaction of two or more autonomous cultures. It is focused on exchange, borrowing, reception, etc. That is, any society in the process of its development is aimed at mutual “cooperation” with other legal systems. It is believed that acculturation processes involve borrowing norms on the basis of “common sense”, i.e. taking into account reasonableness, legality, morality and other legal principles.

It should also be noted that the above legal processes of convergence and interaction of legal systems do not always occur at the initiative of the government. There is a practice of initiating such processes by society itself or by individual groups of people, i.e. they are voluntary.

There is also a mutual influence of different types of right-wing systems, which is most evident in

their convergence. Given the position of lawyers, rapprochement is a manifestation of deeper processes, which can also be called legal convergence. Following the legal convergence, in which there is a mutual influence of legal “culture”, there are features of a “new uniformity” in the legal systems of democratic countries (Lukashuk 2002, p. 115). At the same time, national legal systems do not lose their individuality and independence.

Regarding convergence, Tretiakova (2009, p. 47) defines it as the process of interaction between legal systems, as well as between its individual legal elements, characterized by convergence, increasing the number of links between elements of law and legal systems and the degree of interaction of these elements in the society. Like any process that takes place in society, they have a specific form of expression. One of them is approximation; it is not only the convergence of legal systems, but also their simplification by replacing part of the national legal material with an analogue of foreign legislation (Tirskikh & Abbasov 2016, p.111).

The question arises – can a legal system exist without reception, acculturation, convergence and other legal processes? The most common answer is yes. But no legal system can ignore external factors. Modern civilizations, States and legal systems cannot exist solely on their own, abandoning the relationships and “knowledge” of other countries. Separate legal systems exist as interconnected and interdependent. That is, there is a constant enrichment of legal systems by other ones; the achievement of a particular system also expresses general social significance. Therefore, the interaction and interconnection of legal systems with each other is vital for the development of the rule of law.

It can be concluded that the use by one legal system of experience of another one is not an exceptional process, but a universal factor in the development of law in all countries.

The implementation of Ukraine’s legal policy reflects its special interest in European integration processes. The level of influence of international law on national legal systems is determined by the activities of such institutions as the Council of Europe and the European Union. The mechanism of interaction of legal systems includes: definition of the basic principles of interaction; independent regulation of international and national law-making and establishment of their borders; providing legal means of interaction and subjects of their

implementation; harmonization of legal norms (Bandurka 2018, p. 387).

The main principles of interaction of legal systems (international and national ones) are: equality of international and national system; the principle of cooperation in the legal sphere; the principle of mutual protection of human rights; the principle of complementarity and enrichment of legal systems, etc.

Conclusion

Scholars note that the processes of globalization are objective, and moreover, require a rethinking of the legal regulation of norms, public relations and elements of the legal system as a whole in accordance with national legal systems and generally accepted norms and principles of international law.

Globalization is a combination of major regional, local and national issues. The processes of globalization are expressed in the reorganization of legal norms and forms, cultural processes, convergence of national traditions, customs and mentality, etc. It can be considered that it is a way to solve all global problems through the mutual development of all social legal processes. This is a positive experience aimed at promoting the progress and development of the legal society (State).

As a result of globalization processes of legal systems, which are expressed in convergence and close connection, there is an adoption of universal norms and principles, emergence of new branches of law, convergence and harmonization of legal norms.

Considering the modern development of legal systems, we can conclude that this process is characterized by the continuous influence of one legal system on another one, less developed. That is, there is a transition of the elements of the developed legal system to the less developed.

The influence of legal systems is characterized by such processes as reception, transplantation, acculturation, assimilation, migration of legal norms, etc. All these concepts are synonymous or equated with the concepts of interaction and relationship, and also determine their legal destiny in the context of the globalization processes of the present.

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