

CONVERGENCE AND COMPETITION OF LEGAL SYSTEMS OF THE MODERN WORLD

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Abstract. The article is a study that continues the content line aimed at studying the legal map of the modern world, and those trends that contribute to its evolution. The work is devoted to the convergence and competition of legal systems of the world as phenomena inherent in the legal reality of the present in the post-classical era. This article develops and supplements a previous study carried out by the authors on the topic "Comparative Law: Post-Classical Era".

The urgency of studying the convergence of legal systems in its connection with the competition of legal systems is conditioned by the need to consider these trends of modern legal reality in their unity, which gives a new vision of the movement vectors of global legal matter that implements the predictive function of jurisprudence.

The research methods were as follows: we based on a comparative legal method, which is based on a dialectical platform. We also used quite classical methods of scientific cognition in various combinations, including analysis, synthesis, induction, deduction, and others. We used a concrete historical approach to certain sections of social reality, to which the authors addressed as an empirical basis. In some cases, the authors have had to turn to synergetics, which facilitates the disclosure of legal systems in their self-development.

Conclusions. Convergence and competition are two properties of legal systems of the world, manifested in different continents, countries, in different time epochs. Convergence is associated with the approach of legal systems of our time, while this approach is conditioned by general social and special legal factors. The competition of legal systems of the world is a clash (rivalry) between legal systems of the world and their elements, between which the subject of law enforcement makes its free choice. In modern conditions, the competition of legal systems leads to the spread of the legal tourism institution.

Key words: comparativistics, convergence, competition, law, legal system, comparative law, legal tourism.

1. INTRODUCTION

The modern world map is undergoing changes related to the globalization process. But, this globalization process manifests itself differently in relation to the legal superstructure. As the authors of the monograph "Internationalization of Constitutional Law: Modern Trends" rightly point out: "In the conditions of globalization, a "global legal universe" is being formed, which, however, does not differ by universality, if one proceeds from the assumption that it implies a certain coherence. On the contrary, the current state of legal regulation can be described as a "global disorder of normative orders". (Varlamova & Vasilyeva, 2017). In these conditions it is extremely important to understand the factors that determine this state of affairs. According to the article authors, convergence and simultaneously existing competition of legal systems refer specifically to such factors. The article is intended to deepen the understanding of the processes that determine the state of the legal map of the world in the post-classical era (Voronin & Zakharova. 2016).

2. METHODS

The research methods were as follows: we based on a comparative legal method, which is based on a dialectical platform. We also used quite classical methods of scientific cognition in various combinations, including analysis, synthesis, induction, deduction, and others. We used a concrete historical approach to certain sections of social reality, to which the authors addressed as an empirical basis. In some cases, the authors have had to turn to synergetics, which facilitates the disclosure of legal systems in their self-development.

3. RESULTS AND DISCUSSION

The study of legal systems of the world has entered the annals of the world legal science relatively recently. Only at the beginning of the XX century, the lawyers from different countries of the world were ready to assess their own legal existence and the legal existence of their neighbors through the prism of common cases of legal interaction and mutual influence of the synchronic and diachronic order, but through the longitudinal sections of the so-called homogeneous legal communities that received various names - "legal family", "legal circle", "legal tradition", etc. - in legal comparativistics.

In modern conditions, the legal systems of the world are forced to function in difficult conditions of legal globalization. As we noted earlier (in past scientific publications), the legal globalization has brought to life a number of serious transformations of the legal systems of the world. Firstly, *the change under the influence of various kinds of integration processes of the classical institutions of state organization of society: the institutions of "citizenship" and "territory", "state sovereignty"*. In the latter case, it should be emphasized that the classical doctrinal frameworks of the theory of state sovereignty laid by Jean Bodin, are seriously transformed at least, if they do not lose their relevance at the moment of time. The Westphalian model of the world, which has had such a continued prolongation in the global space, is all the less capable of responding to the social realities of globalism.

Secondly, the transparency of the modern state borders, the weakening of its role, and sometimes a complete or partial erosion of its competencies in various spheres of public life, lead, in turn, to *the effects of regionalization and law, and the state. The manifestations of the decentralization trends are quite diverse: from open separatism to the appearance of such a specific phenomenon as the "Europe of Regions" in the Western world. The specific manifestation of decentralization are megacities, which have become peculiar city-states ("global cities", "villes globales") of the integration world.*

Thirdly, *the growing effects of "supplement" and "replacement" of national law by external regulators of social relations.* In some areas of public regulation (such as, for example, environmental protection, climate issues, international economic security), the state cannot cope with the problems of regulating the public relations (*the effect of supplementing the national law*) alone. Here, the supranational legal instruments are clearly needed. In particular, since the 1980s, the movement, which was called "*deep integration*" in the Anglo-Saxon literature, i.e., the integration of national economies into the global economy was actualized in the economic field... And there is a paradoxical situation *with the replacement of national law* by the external regulators of social relations, on the one hand, the states declare themselves as an element of certain powerful supranational force (for example, the Group of Eight), and on the other hand, they increasingly lose their former confident power.

Fourthly, *the reciprocal reception between the legal systems of different group orientation*. Thus, in particular, the American legal system, being once a recipient of the English legal system, was able to become a donor system for the European law itself by the mid-end of the XX century. This includes, in particular, the transplantation of "business concepts" relating to "new contractual concepts" in the economy, related to leasing, factoring, franchising, bank deposits, protection of the rights of owner and consumers, "private law delicts", etc.

Fifthly, *the fusion of globalizations of different qualitative orientations and, as a result, the emergence of institutions unique in their essence: "Lex electronica"; "Lex sportiva"* (the principles of sports law developed by the supranational and international organizations, which are the so-called "soft" law to resolve the sports disputes).

Sixthly, *the increasing role and significance of non-state law-making institutions*. The transnational and interstate corporations become an active participant in the structuring of the world legal space (Zakharova, 2011).

It is legal globalization that in many ways generates legal convergence, which, according to a fair assessment of O.D. Tretyakova (2012) is "a process of interaction of elements within the system of law, law and other regulators of relations in society, as well as the legal systems of various states, characterized by the approach, increasing the number of links between the elements of the approaching objects and a certain coherence degree of the impact of these elements on public relations".

Legal convergence has various forms, types and levels. According to O.D. Tretyakova, the basic forms of legal convergence include: *external, medial and internal convergences*.

In our opinion, in the context of the evolution of legal systems of the world, we should discuss two basic forms of legal convergence - voluntary and violent. In this case, the main indicators of the inclusion of foreign elements in the framework of legal systems should be:

1. Issue teleology - the ability to assess the functional possibilities of transplanting foreign and (or) international law into the national legal system.
2. Mental compatibility of transplantable legal norms with the cultural-value framework of the national legal system.

3. The degree of scientific and practical development of activities for the reception of foreign legal norms.

The levels of legal convergence vary depending on the individual elements of the legal systems of the world - regulatory, institutional and functional.

The evaluation of another trend in the development of legal systems of the world - their competition - is equally important (Gaudusson & Ferrand, 2008), that is, a clash (rivalry) between legal systems of the world and their elements, between which the subject of law enforcement makes its free choice.

Classical paradigms - dilemmas, between which the subject of law enforcement makes its choice in the competition of legal systems, are:

1. "Common Law" – "Droit civil";
2. "Firm law" – "Soft law";
3. Secular legal tradition and religious legal tradition.

The first type of competition is quite indicative in the evolution of nomadic legal systems in the state of Louisiana in the USA and in Quebec. In this regard, it is interesting to note that unlike many countries in the French area of legal influence and expansion, which perceived the norms of the so-called developed law formed within the framework of the centralized French legal system of the early XIX century, Quebec absorbed a particular customary law of France, first of all. It's about the Coutumes of Paris. The royal ordinances were also equally applied in the territory of modern Quebec. Even with the development of its own civil code in 1866, when the Code of Napoleon celebrated its anniversary more than half a century ago, Quebec's lawyers also focused on the so-called *Common Law* formed under the influence of the Coutumes of Paris and the French Civil Code itself (it was about reception of the family law norms, in particular) Mignault, 1904)

As for the state of Louisiana in the USA, we can state a steady tendency to reducing the role and significance of "Droit civil" in the private law evolution in this region. So, the experts estimated that 85 percent of the Civil Code of Louisiana of 1808 was based on French sources (normative texts and doctrinal materials) (Batiza, 1971). It is also about the Code of Napoleon itself and the sources of its predecessors: the works of Domat, Pothier,

ordinance of 1667 and the Coutumes of Paris. Such a choice is due primarily to the inability to break the political and legal ties that have been built over many years with the metropolis in combination with the quality and degree of elaboration of the French legal norms themselves at the time of the Civil Code of Louisiana creation. The number of French law sources is significantly reduced already in the next Civil Code of Louisiana of 1825 (Palmer, 2004). But the recognition of the law as the main source of law as opposed to the common Anglo-Saxon legal tradition of law with the leading court role as a source of legal prescriptions remained unchanged for civil law from 1825 until the reform of 1975-2002.

The soft law became the subject of scientific evaluation relatively recently - in the middle of the XX century. But there is no consensus yet on the soft law concept in a legal science. Some scientists believe that "soft" law covers only "non-binding rules or documents that interpret or communicate to others the idea of their creators about legally binding norms or represent promises that create expectations about the future behavior of a person" (Guzman & Meyer, 2010, p. 174.). Other scientists believe that the term "soft" law, as a rule, "refers to any international document different from an international treaty that contains principles, norms, standards and other provisions regarding the expected behavior" (Shelton, 2006, p. 319). At the same time, it should be recognized that soft law is already openly marching along the legal map of the world and constitutes a serious competition to the classical maxims of firm law in certain areas of legal regulation (for example, in the field of sports law).

Competition of the last of these types - between the traditions of secular and religious order - can be traced today not only in the clerical and theocratic states, but also in the secular European states. *In particular, we can state its spread beyond the borders of the states of pro-Islamic religious orientation and, as a consequence, its collision with the secular legal systems among the specific tendencies of Islamic law.* Such a practice became possible, first of all, because of the intra-social and non-domestic action nature of Islamic law itself. The Islamic law for a Muslim is relevant where there is a Muslim community - ummah, regardless of the citizenship of which state he/she is. *An important trend in the development of the Islamic group of legal systems should also be considered an increase in their overall level of mosaicism.* At the same time, the Islamic legal world opens the possibility of

receiving foreign legal norms in the sphere of private law, being guided primarily by the pragmatic motives, but it remains very conservative with regard to preserving traditional tools for protecting the public policy. In particular, it should not be expected to abandon the criminal norms of the Sharia in the near future, while full or partial transplantation of the European civil and commercial codes for the Islamic legal systems becomes common practice.

The competition of legal systems leads to the spread among the subjects of law of the so-called legal tourism. In this case, such a subject travels from the area of the national legal system to the foreign legal system in the search for the most advantageous law and order and (or) jurisdiction. For example, spouses who wish to perform surrogate motherhood procedure do so.

In the future, the development of competition and convergence of legal systems of the world may lead to the creation of a legal Esperanto or a "*horizontal forum of judges*" which the judges from different countries will "speak".

4. SUMMARY

The evolution of social relations dictates transformations within the legal systems of the world, which include, in particular, the convergence and competition of legal systems of the world.

At convergence, we can observe the approach of the national legal system as a whole or its individual elements with the foreign and (or) international law. At the same time, the basic forms of convergence, depending on the methods and measures of their implementation, are the voluntary convergence and the forced convergence.

The competition of legal systems of the world is a clash (rivalry) between legal systems of the world and their elements, between which the subject of law enforcement makes its free choice. In modern conditions, the competition of legal systems leads to the spread of the legal tourism institution.

5. CONCLUSIONS

Convergence and competition are two properties of legal systems of the world, having their manifestations in different continents, countries, in different time epochs.

The intensification of these processes is connected with the general globalization trends of social systems of the modern world in many respects. But it was possible to observe individual manifestations of these phenomena earlier in the era of colonial power. A vivid example of this is the nomadic legal systems of the state of Louisiana and Quebec.

The multi-vector influences of the external nature on the part of the national law of legal systems of the world and the international law will continue to accompany the development of the legal map of the world. In this regard, a scientific analysis of the processes of convergence and competition of law will serve the purpose of revealing the predictive functions of jurisprudence.

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