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Legal Identity of States in Central and Eastern Europe: Historical and Cultural Dimension

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Abstract

The article considers various aspects of legal system interaction and mutual influence in the states of Central and Eastern Europe during their historical and cultural development. The thing is, in particular, about unified historical (Slavic) roots of these states, common sources of law, the elements of legal culture, etc. The socialist statehood, in which they existed for about half a century, also exerted a definite influence on the development of the legal systems in these countries. The conclusions are drawn that the majority of the states of Central and Eastern Europe, having passed the so-called post-Soviet (post-socialist) stage of their development, joined the continental legal family, confirming the German theory of the temporary anomaly of socialist law. As for the Russian legal system, despite the fact that it is very close to the family of continental law by a number of criteria, it still exists apart from it (in particular, due to the specific nature of legal ideology and legal culture). Moreover, the current tendencies of social-political development (the creation of the Union State of Russia and Belarus, the Customs Union and the Unified Energy System) give grounds to assume that the emergence of the Eurasian legal family and the entry of Russia into it are possible in the long term.

Keywords: Legal identity, Eurasianism, Slavs, Legal family, Sstate, Constitution, Legal institutions, Legal culture.

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Introduction

The modern development of relations between the states of the European Union is characterized by both centripetal and centrifugal tendencies. In this regard, the definition of the legal system status of the states in Central and Eastern Europe (hereinafter referred to as CEE), their place on the legal map of the world, and the forecasting of their further development is of particular importance.

The legal systems of the states in Central and Eastern Europe interacted closely the process of their development. They can be compared to the intertwined branches of a mighty tree, which has the same roots. These roots are the Slavic statehood, of course. It is not for nothing that today in Russia, when it comes to Bulgarians, Serbs, Byelorussians, Ukrainians, they say "Slav brothers". In the people's speech, the idea of our historical community remains, despite the political "contradictions" caused by the opposition of national elites and the aggravation of the international situation [1; 2].

Slavic peoples in modern Europe are the largest ethnic and national language group, numbering more than 270 million people (the second place is shared by the German and Roman or Latin peoples, each of which is about 190 million people) [3, p.518].

There are three branches of the Slavic peoples [4, pp.6-7]:

1) The eastern Slavs - the Russians: The Great Russians, the Ukrainians (Little Russians), the Rusyns, the Byelorussians and the Cossacks - all of them united in a single state organism, then disunited in independent princedoms (the Old Russian state of Rurikovichs, the Novgorod land, the Volodymyr-Volyn principality, Moscow State, the Grand Duchy of Lithuania, Russia and Zhmudsk);

2) Western Slavs (Poles, Kashubians, Czechs, Slovaks, Sorbs or Luzhichans, Silesians) of whom only the Czechs and the Poles had a medieval statehood, with Poland constantly competing with Moscow for the supremacy in the Slavic world (the Preamble of the Constitution of the Republic of Poland (1997) points to the continuity of power from the First and Second Polish-Lithuanian Commonwealth to the Third one) [5];

3) The southern Slavs (Bulgarians, Serbs, Montenegrins, Slovenes, Croats, Macedonians, Bosnians) grew up from the three state formations of the Balkan Slavs: The Kingdoms of Croatia and Serbia, and the Bulgarian Kingdom. At the same time, the Constitution of the Republic of Croatia (1990) (as amended in 1997) defines the historical foundations of national sovereignty, beginning with the Croatian principalities of the 7th century, which serves as an important ideological argument in the struggle for an original sovereign statehood in contemporary geopolitical realities [6].

Methodology

The theoretical and methodological basis of research is essentially based on the developments in the field of the history of law and the state, the methodology of legal science, which belong to domestic and foreign experts. The obtained conclusions are the result of the use of general scientific (dialectical, logical and structural-functional analysis and synthesis, sociological, intellectual-technological and mental dimension, genetic reconstruction, etc.) and special methods of legal research (comparative legal, historical and legal, etc.).

Discussion

Slavonic states, as a rule, have a common state legal history, for example, for Russia, Belarus and Ukraine the origins of statehood stem from Kiev Rus; for the Czech Republic and Slovakia - from Great Moravia, etc. In the process of historical development, the Slavic states influenced one another. After the baptism of Bulgaria, Christian liturgical books were distributed with the support of King Simeon not only in the Balkans,

but also in the Great Moravian Empire. Due to the fact that the Czech king Vyacheslav became the monarch of Poland, a number of Czech law institutions was received by the Poles, for example, court books (Czech boards), city courts, the posts of elders (reformers in the Czech Republic) [7, p.6]. In 1219, the Serbian Saint Savva (the youngest son of the Grand Duke Stefan Nemanji) compiled a unique church-civil code - the Law (Nomocanon or the Book of Helmsman), which became the source of the medieval law of Serbia, Bulgaria and Russia [8].

Nomocanon was divided into 70 chapters: 6 introductory ones, 44 containing religious rules and 20 - secular ones, regulating civil and criminal law, as well as legal proceedings. Under the influence of the Polish kingdom in the beginning of the XIVth century AD the Grand Duchy of Lithuania, Russia and Zhmudsk fixed legal guarantees for the property status of widows and children who are the heirs of a deceased husband and a father respectively [9, p.27].

The recognition of the historical continuity of Slavic statehood can be found in modern constitutional documents of CEE countries.

For example, the preamble of the Czech Constitution of 1992 speaks of the faithfulness of the Czech people to the traditions of the statehood of the Czech Crown lands [10], established in the medieval era; the preamble of the Republic of Slovakia Constitution of 1992 confirms the adherence to the behests of the holy brothers Cyril and Methodius, as well as to the Great Moravian state [11]; the Act of the Ukraine Independence Proclamation of 1991, states a thousand-year tradition of the Ukrainian state creation [12], and the Art. 2 of RSFSR State Sovereignty Declaration in 1990 postulates imperatively that "The sovereignty of the RSFSR is a natural and a necessary condition for the existence of Russia statehood, which has a centuries-old history, culture and established traditions" [13]. The preamble of the Constitution of the Republic of Belarus of 1994 notes the centuries-old history of the Belarusian statehood development [14]. The continuity of the legal tradition with the Statutes of the Grand Duchy of Lithuania, Russia and Zhmud, written in the Old Russian language, is oriented by the preamble of the Republic of Lithuania Constitution (1992) [15]. The sculptural ensemble "Millennium of Russia" established in honor of the 10th century anniversary of the Russian statehood in 1862 in Veliky Novgorod has the princes of the Grand Duchy of Lithuania, Russia and Zhmud among the great figures of Russian statehood: Gedimin, Olgerd, Vitovt and Keistut.

Within the framework of this article, it is not possible to trace in detail the entire history of the state-legal development of the countries in Central and Eastern Europe, but this is not our goal.

It should be noted that the centuries-old mutual influence and interaction gave rise to the commonality of legal traditions, the peculiarities of legal understanding and legal culture, as well as the development of sources of law.

Besides, one can not ignore the influence of socialist statehood on the development of legal systems in Central and Eastern European countries. Ukraine, Belarus, Russia existed in the conditions of socialism for about 70 years, other CEE countries - about 45 years. A new socialist type of state had to be matched by a new type of socialist law, the development of which occurred during these years.

It is known that the development of the law of CEE countries before the beginning of the 20th century took place within the framework of the Roman-German legal family.

Socialist law preserved a number of features inherent in Roman-German law, such as:

- the recognition of the normative act as the main source of law,
- the hierarchical system of law sources, headed by the constitution,
- the division of law into branches,

- the codification of legislation,
- the abstract nature of the rules of law.

At the same time, socialist law was characterized by a special legal ideology (the recognition of the economic conditionality of law, the consideration of law as an expression of the economically dominant class will); the priority role of the state (by the state-owned means of production, the denial of private property, the paternalism of the state in relation to an individual [16, p.41]). "Social goals and class character were reflected in socialist legal systems, at that they emphasized that they are the means of the working class and the entire working people interest expression and consolidation" [17, p.213].

The legacy of socialist law is preserved in the modern law of the CEE states. This was brilliantly shown, in particular, in the report by R. Manko at the conference of the Higher School of Economics (Moscow) in October 2017.

Socialist law, like any phenomenon, can not be assessed unequivocally: only positively or only negatively.

Many legal institutions and legal constructions were first developed by Soviet law. Russia was one of the first countries which established the suffrage for women, that was not conditioned by the property qualification (1917), established a number of guarantees for workers in the field of labor law - an 8-hour working day, an annual paid leave, an unemployment benefit, collective and contractual regulation of labor conditions, etc. (1917-1918) "For the first time in history, legal forms have been developed in socialist legal systems for such phenomena as the collective forms of ownership, the state management of economy, and the planned management of the people economy" [17, p.214].

Social rights, which were recorded in the Constitution of the USSR in 1936 and subsequently included in the constitutions of other socialist countries, have been preserved in the constitutions of the CEE countries after the "velvet revolutions" and are now seen as an element of continuity in the changed legal context [18, p.308].

In the light of recent trends in economic development (the globalization and the transition to a digital economy), we see that Soviet law had a great potential, that this is a significant positive experience that we must learn to use in modern conditions. In particular, we are talking about such features as the synthesis of public and private law, the socialization and the internationalization of law, the significant effectiveness of regulation with a relatively small number of regulatory acts. (This point of view was presented by the Dr. of Law, Prof. V.N. Sinyukov in the report "The System of Russian Law: Issues of Methodology", presented on November 21, 2017 in the framework of the International Scientific and Practical Conference "Kutafin Readings" in Moscow).

Speaking about the legal system of modern Russia, it should be noted that it preserves the legacy of Soviet law, of course, despite the radical transformation of the last decades.

Separate legislative acts of the USSR and the RSFSR continue to operate "in the part that does not contradict the Constitution of Russian Federation" (Part 2 of the 2nd Section of RF Constitution (1993)) - these are by-laws mainly.

An example of certain state and legal institution preservation, inherited from the Soviet era, is the institution of the Prosecutor's Office as a special system of bodies designed to oversee the rule of law in Russian Federation. The prosecutor's office of the Russian Federation does not fit into the traditional triad of separation of powers; it can not be attributed unequivocally to either the executive or the judiciary power. According to the Art. 129 of RF Constitution, this is a single centralized system with the subordination of lower-ranking prosecutors to the higher-ranking ones and the General Prosecutor of RF (who is appointed to the post by the upper house of parliament on the proposal of RF President). The

organization of the prosecutor's office is still based today on the principles set forth in the work by V.I. Lenin "On "double" subordination and legality" [19, pp.197-201] - in particular, with regard to its isolated position and the subordination exclusively to the central government (now - to RF President).

The legacy of the Soviet era is obviously the developed branch of labor legislation, which was among the first ones that consolidated the achievements in the field of worker right protection and was a model for a number of other countries. It is no coincidence that when we compare the conventions of the International Labor Organization and the Russian labor legislation, we often find a higher level of guarantees established by the national law (unfortunately, this can not be said about the Russian social security law) [20; 21; 22].

In the field of social security, the remnant of Soviet law is a very low retirement age (as a general rule, 60 years for men and 55 for women) and a broad list of grounds to acquire the right to an early retirement pension. However, there is no opportunity today to increase this age (at least for men) due to a very low life expectancy of Russian population.

Of course, significant reforms were performed in the field of civil law over the past 25-30 years aimed at market principle development. Nevertheless, about 90% of lands in Russian Federation are in state and municipal ownership now, which allows one of the leading Russian civilians, the Doctor of Law, Prof. E.A. Sukhanov, to conclude that there is a mixed, public-private economy in our country [23].

With regard to the criminal process, it can be said that the prevalence of search (inquisition) elements remains in it despite the fact that the experts characterize it as a mixed one on the whole [24]. According to K. Osakwe, "the current Russian inquisition criminal process retains many attributes of the socialist inquisition process", such as the prosecutor's dominant role, a defendant's keeping a courtroom cell, the general severity of criminal punishment, etc. [16, p.44].

If you try to determine the place of Russia on the modern legal map of the world, it is necessary to note the following.

Since the time of Peter I the legal system of the Russian state was an integral part of the Romano-German legal family. Russia pre-empire law was reflected in the Russian Truth, court documents, the Royal Code of Laws and the council code of 1649. The peculiarity of Russian law development was that it fixed the extensive rights of the community to land and a weak development of private property. Besides, the relationship with the state has always been important for the domestic law [25, pp.214-215]. According to I.A. Ivannikov's opinion, historical, religious and legal sources of the Russian legal system are "the Russian Empire law, the Soviet law conditioned by socialist ideology, and post-Soviet law" [26, p.332].

After the abandoning from the socialist path of development, Russia began to build economic relations based on market principles, approved the principles of a legal, a democratic and a social state in the Constitution of 1993. Although these principles rather indicate the goal to which Russian society is moving than determine the existence of such a state in Russia [27].

Therefore, in our opinion, we should agree with the point of view by K. Osakwe, voiced back in 2002, that "the modern post-Soviet legal system of Russia shows many signs of continental-European law, but is not yet the part of Western law family" [16, p.27]. A similar opinion is shared by M.N. Marchenko [28, p.778].

Among the signs that bring the domestic legal family closer to the continental one, one can name the following ones:

- the historical influence of Roman and German law (structure, vocabulary, institutions);
- the priority of the law in the system of law sources (the judicial precedent is not an official source of law, although the acts of RF Supreme Court are necessarily taken into account during the provision of judgments, and there is still no consensus in the legal doctrine of Russia on a precedent role [29]);

- codification of legislation;
- the division of law into public and private one;
- the primacy of the material and the secondary nature of the procedural law;
- deductive and abstract legal thinking;
- the features of the inquisition process in civil and criminal procedural law.

Conclusions

A number of reforms carried out over the past 15 years have brought the domestic legal system to Romano-Germanic one in some extent: in particular, much has been done to ensure the transparency of judicial and legislative process, the prompt publication of regulations and judicial decisions, the increase of population access to legal information (all this is the elements of legal culture in Western law).

At the same time, according to a number of criteria, the Russian legal system can not be referred to a Romano-German legal family today, namely:

- a special nature of the existing economic system with the preservation of a significant sphere controlled by the state, on the one hand, and the serious influence of financial and oligarchic groups, on the other; the absence of a middle class, the polarization of society on property status, an unfair distribution of income from the use of national wealth;
- the discrepancy between the real state system and the principles of a legal, a democratic and a social state proclaimed by the Constitution;
- the level of legal culture that does not meet the criteria of Western law (the instability of legislation, a low level of legal technique, a weak legal literacy of population, a selective application of law by state bodies - and, accordingly, a legal nihilism generated by all this).

Nowadays, "the mentality of an average Russian on issues of legal understanding and the role of law in society is more Asian than Western one" [16, p.46].

Besides, there has been an intensification of integration processes during recent years in the area of the former USSR. The first interstate formation in this space was the Union of Independent States, which turned out to be very amorphous. In 2001, the Eurasian Economic Community was created, which was abolished in 2014 in connection with the transition to a closer integration within the framework of the Eurasian Economic Union (EAO).

The EAO was established by three independent states - Russian Federation, the Republic of Belarus and the Republic of Kazakhstan. Subsequently, the Republic of Armenia and the Kyrgyz Republic joined it. These countries partly preserved the legacy of the socialist legal family; their long existence within the framework of one state favored the rapprochement of population legal culture. The practice of adoption the Fundamentals of legislation in various sectors that was established in the USSR during the second half of the 20th century greatly contributed to the unification of the republic legislations that were part of the Soviet Union. All this makes the integration processes in our countries quite natural and even necessary.

In recent years, the law of the EAO has been formed, which includes: The Agreement on EAO issued on May 29, 2014; international agreements within the framework of EAO; the international agreements of EAO with a third party; the decisions and the orders of the Supreme Eurasian Economic Council, the Eurasian Intergovernmental Council and the Eurasian Economic Commission (the Article 6 of the Agreement on the Eurasian Economic Union [30]).

Since 2016, the course entitled "The Law of the Eurasian Economic Union" has been taught in some Russian universities.

All this gives grounds to assume that it is possible to form a Eurasian legal family with Russia and a number of former Soviet states in the long term.

As for the countries of Central Europe, they evidently passed the post-Soviet (post-socialist) stage of their development and after a number of legislative reforms (including the adoption of new constitutions) joined the family of Roman-German law. A similar outcome was predicted by the German theory of the "socialist law temporary anomaly," according to which it was a kind of "a prodigal son" of continental law, which will eventually return to its home.

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