

The legal system of modern Russia in the general discourse of world development

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Abstract. The study's objective is based on the disclosure of the specific comparative nature of the modern Russian legal system to substantiate the theoretical concept of its existence as a unique hybrid legal type as a symbiosis of the three legal traditions: Romano-Germanic, religious and socialist. The methodological basis of the study is the methodological and analytical range of methods presented in the article, known and proven ways and means of research in jurisprudence. To obtain reliable and well-founded conclusions, traditional general scientific and special research methods and descriptions of its results are used, mainly historical, comparative methods, a systematic approach, etc. The study result concluded that the formation of the main properties of the Russian legal system is associated with the goals and objectives that were assigned to it by the state and society in a particular historical period, which is why it is unique. The perception of specificity in implementing the classification of modern legal systems largely determines the justification of the criteria put forward. To determine the ways of further development in the twenty-first century, Russia's legal system must still rely on its historical legal identity, taking into account the peculiarities of national culture. The novelty of this study is the resolution of a complex problem of theoretical and methodological order, namely: is it worth defining the underlying legal identity of the Russian legal system or is it enough to show its place on the "legal map of the world", including it in a particular larger legal community?

Keywords: comparative law, legal tradition, hybrid legal type

1 Introduction

After the end of the Second World War, several researchers attributed the importance of analyzing Soviet legislation to the differences in the economic systems of the East and West. Subsequently, it became apparent that by the mid-80s of the last century, the public

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sector and the commitment to social welfare in Western European countries, on the one hand, increased decentralization and the appeal to the economic responsibility of producers in socialist countries, on the other hand, reduced this fundamental difference [1, 2].

Foreign scientists noted that Russia, having become a member of the Council of Europe and joined the World Trade Organization, was forced to bring its legislative acts in line with the legal principles of these organizations. Even the reorientation from European legal standards to the Eurasian direction of cooperation has not fundamentally changed the vector of the progressive movement of the Russian Federation toward a market economy [3, 4].

This required the use of various comparative methods in the study of various legal systems. The scientific position of the researcher is of no minor importance, namely, on what grounds to compare and justify the uniqueness of a legal system, since the latter is subjected to the continuous influence of the surrounding legal world, in one way or another, influencing its development [5-8].

The starting point of this study is the fact that the legal system of modern Russia, acting as a very extraordinary object for comparative analysis, has been and remains the center of constant attention of domestic researchers [9-15]. However, there is no clear scientific position on the classification of the Russian legal system within the legal typology used in modern comparative studies.

2 Methods

To solve the problems of the study, the authors used the dialectical method, analysis of sources, the method of abstraction in the processing of an array of empirical material, successfully used by the authors earlier [16, 17].

When preparing the material, the authors studied the works of scientists who have contributed to the development of Russian comparative law [18-22]. In preparation, a group of foreign authors [23-28], whose ideas formed the methodological framework for this study, was also highlighted.

3 Results

The study concluded that the domestic legal type is an independent version of a separate hybrid legal civilization, equivalent to the Romano-Germanic and Anglo-Saxon legal cultures. Modern Russian legal reality is even more multifaceted and ambiguous than it was before. The Russian legal system was originally part of Slavic legal systems, but nowadays pan-Slavism and the Russian idea in the public consciousness, part of which is the legal consciousness, is usually considered an anachronism. At the same time, the idea of ensuring the rights of national minorities, the largest of which have their own legal systems within the Russian Federation, is being cultivated. The number of Russian-speaking population in the Russian Federation exceeds the share of all titular nations combined, but this fact is not reflected in the existing legal ideology and legal system.

4 Discussion

It can be considered that the Russian legal system borrowed elements of the socialist system for the most part since socialist law constituted a separate family of legal systems in the twentieth century [29]. This approach was generally accepted in the Marxist-Leninist general theory of state and law and shared by Western comparativists-Rene David,

Zweigert, etc. Nevertheless, some foreign specialists in comparative law continued to regard the law of the Soviet Union as a variation of continental law.

It is necessary to consider the central moments of the origin and development of the socialist legal system in Russia to understand this contradiction, which determines the uniqueness of its organic features as a unique legal family.

Since ancient times, we have read in Plato that private property leads to antagonism within the polis [30, 31]. This doctrine was reflected in the socialist state and law formation when private property was expropriated and transferred to the socialist state. Accordingly, the role of the socialist state in the management of the economy becomes predominant, which led to the use of administrative and command methods of influence on all spheres of the national economy, often acquiring legal forms.

All this allowed the perestroika years to substantiate a different view of the Soviet legal system: it began to be referred to not as socialist, but as totalitarian, and Soviet constitutional law from October 25, 1917, to the end of the 1980s was called “totalitarian constitutional law” [32]. This classification has not been widely accepted in Russian academic circles, as it is essentially a classification based primarily on the political characteristics of leaders rather than legal principles and institutions. In addition, as part of the experiment to build a transitional society in Russia, it should be remembered that the domestic legal system, although it belongs to the family of Romano-German law in terms of formal legal characteristics, is a hybrid, being a symbiosis of three legal traditions that took place in Russian legal history: Romano-German, religious and socialist. The fact is that the Russian legal system, according to its formal and legal characteristics, adjoins the family of Romano-German law. This requires no further special argumentation. However, belonging to the other two legal traditions is associated with the atavisms of Russia’s former forms of state development.

Thus, we know that the Russian state has had a monarchical form of government for thousands of years, and strong paternalistic traditions, public consciousness, and legal culture were part of the Russian “ethnic code”, transmitted at the psycho-emotional, socio-normative, and even genetic levels. This is due to the fact that since the choice of Christianity in its Orthodox variation in Kievan Rus, there has been an increasing perception of the political and legal order of Byzantium [33, 34]. As a result, from then until the early twentieth century, the Orthodox Church was synchronized with the state, officially performing some of its functions, such as drawing up acts of civil status, promoting spiritual and moral education, stimulating population reproduction, and spreading primary education [35, 36]. In this regard, the legal consciousness of the Russian people has long been determined by the Christian commandments and respect for the tsarist power [37]. Legal consciousness is one of the three main elements of the legal system of society, and the other parts – law and legal practice are developed taking into account the third, since they are all correlated with each other, clarifying the content and level of development of legal culture [38, 39].

The hybridity of the Russian legal system is associated with the atavisms of socialist law. The fact is that until the 1990s, Russia existed in the form of a Soviet state, so even today, people who received a legal education based on historical materialism and Marxist legal doctrines live in contemporary Russian society and continue to be bearers of the values of socialism, even when they deny it. The stereotypes of the socialist worldview continue to work at the psycho-emotional level when personal interests are leveled and social needs become dominant. Revealing the specifics of the law and legal traditions (including the remnants of socialist law and legal consciousness, the special role of the judiciary), determining the ideological background, stereotypes and mythologies of legal

institutions and other hidden factors in the development of law, including through historical analysis, genealogy of concepts in the context should determine the further development of domestic jurisprudence.

5 Conclusion

Contrary to the position of some scholars about “return to (civilized legal) Europe” of the Russian legal system and attempts to interpret the legal system of Russia as an organic part of the Romano-Germanic legal system, the authors come to a conclusion about the continuing legal originality of Russia, based on a different semantic content of its constituent elements – legal consciousness, rules of law and legal practice. Their systematic functioning is carried out not in the “sterile” atmosphere of a legal-rational worldview but in the concentrated and almost opaque environment of traditional spontaneous regulation – ordinary, religious, corporate, and communal. The Russian legal system now appears as a complex, contradictory combination of divine meaning, human behavior, and an artificial, sometimes opportunistic mask put on the Russian legal phenomenon by the political power or the dominant ideological system [16], for example, socialist or liberal. On this basis, an interest in the intertwining of law, politics, ideology, attention to the post-Soviet legacy, and a skeptical attitude toward liberal jurisprudence serves not the individual but also the political and economic elites of liberal capitalism constitute the main discourse of our study.

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