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Research Article

CIVILISTICS AS AN INTERNATIONAL PHENOMENON

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The definition of the value of law, including private law, is currently quite a relevant and significant issue both from philosophical (theoretical) and practical points of view, since recognition of the law's value will help to improve legal control over social relations and, therefore, will encourage social and national development in a progressive vein. The purpose of the research in the framework of this article is to define the functional role of civilistics regarding its functional purpose in the context of control exerted over various areas of social life on a world-wide scale. A systemic functional approach is used as the definitive research method that allows studying functions of private law in the context of the axiological approach. Aside from the abovementioned approach, other scientific methods of inquiry were used in the course of the research, including a legal hermeneutics approach. Over the course of the research, the authors have come to the conclusion that civilistics as a category is a multidimensional one, while proving that civilistics constitutes the greatest accomplishment not of a certain nation, but of all of humanity, since it serves as an all-purpose controller of social relations, in the life of society and the state.

Key words: *civilistics, private law, civil law, private law relations, value, principles of law, universal mechanism for legal control, globalization, unification, reception*

Introduction

Civilistics... over the course of many years researchers have been using this term without defining its meaning, inwardly agreeing that this term is generic and is undoubtedly obvious for any reader or audience member. Civilistics is often understood to be the science of civil law, but such an approach is hardly completely correct. Civilistics is undoubtedly a science, but it goes beyond. The meaning of this term is infinitely greater. Civilistics has embodied not only dry science, but also vibrant law – private law – in all diversity of its manifestations as well, taking its development (minus inconsistent and superficial aspects) into account. According to an incredibly keen observation by A. G. Didenko, private law, civilistics '... needs to be viewed as a generalized phenomenon that manifests itself in its entirety and provides for a broader range of different phenomena than just a law branch, a science or legislation' (Didenko, 2019: 61).

Undoubtedly, civilistics is a component of law. What is law though? What does it mean? What functions does it bear? Can one survive without it? These and other questions – similar in terms of their meaning and content globality – are the focus of the thoughts for many philosophers and legal theorists. 'The most sacred thing God has put on Earth' – that is how I. Kant spoke on the phenomenon of morality in law in general and its ethical component to emphasize the special functional purpose and clear moral aspects of law and

its legal codes (Kant, 2007: 75; Semyakin, 2013). Meanwhile, '...the law largely manifests itself through morality established in civil society and then exalts the law through its lofty ideals and values' (Alekseev, 1999: 675). One would think that over the centuries-old history of political and legal thought, this subject must have been exhausted. However, even nowadays, defining the value of law is currently quite a relevant and significant issue both from philosophical (theoretical) and practical points of view, since recognition of the law's value will help to improve legal control over social relations and, therefore, will encourage social and national development in a progressive vein.

Private law represents a critical aspect of social life, a universal everyday routine. And despite all the existing disputes regarding the structure of private law in the juridical science (Akinfieva & Voroncov, 2020: 227–228), all the researchers invariably recognize the great significance of private law for social relations control. The disputes regarding its structure as such serve as quite convincing evidence that this area is closely connected with all the other areas of human and social life in terms of development.

Civilistics is the greatest accomplishment, a cultural value and a treasure not of a specific nation, but of all humanity. This statement holds a great philosophically meaning that allows defining the functional purpose of global private law (civilistics) as such within the system of social relations regulators established in the life of society and the state. That is why civilistics is able to break the boundaries in terms of time, space, cultural and national differences – anything. It is civilistics that will pass the understanding of the truth to the next generations.

The purpose of the research in the framework of this article is to define the functional role of civilistics regarding its functional purpose in the context of control exerted over various areas of social life on a world-wide scale.

Materials and methods

A systemic functional approach is used as the definitive research method that allows studying functions of private law in the context of the axiological approach. The abovementioned methodological approach has been chosen as the definitive research method due to the fact that it is this scientific cognition method that allows exposing the integrity and comprehensive nature of civilistics as a category and, among other things, to reveal the interrelation between private law and the system of law as such, as well as the functional purpose of private law in the context of social existence in terms of its evolution. Aside from the system-structural approach, the general scientific dialectical method of social phenomena cognition, general scientific methods (system-oriented analysis and historical method), as well as special methods of legal categories research (technical legal and comparative legal methods, the method of legal modeling) were used in the course of the research. A synergetic approach was also used that can be understood as a special world outlook concept based on development patterns for self-organizing systems that manifest themselves in national legal orders, among other things (Semyakin, 2018: 238).

Accomplishment of the purpose of the research is also driven by the legal hermeneutics approach that allows defining the essence of legally significant terms and categories and their interrelations with socio-cultural and historical development of society and the state.

The meaning of such categories as 'culture' and 'value' need to be made clear for this research. They are of great methodological importance for an understanding of the civilistics phenomenon and the determination of the prospects for global private law development. Culture (and its legacy) include not only material objects, but also a large layer of immaterial goods and phenomena. Hence, in the framework of this research, the term 'value' will be understood not as the ability of some object to be measured in money as a property, but something more global, closer to the term 'the good' to define the moral attitude to the outside world and the law as a part of this world. It is this understanding that determines the use of legal axiology, since '...all values the legal system embraces turn into a kind of a unique compass, a guiding vector for the development of all branches of law and legal codes both within the state and on an international level' (Lang, 2021: 9).

Results

Any society is always a complex organism, a self-developing system of relations between individual subjects united by multiple multi-faceted ties. Without a tool designed to put these ties in order, the system will disintegrate, and the well-established system will be replaced by disorganized chaos driven by the

striving of each individual to protect their own interests while ignoring the interests of other people. It is the law that serves as such a tool for social order. It is due to this functional purpose that the law can not be eliminated from the life of the community. This is what constitutes its special value.

Private law serves as the most progressive and rapidly developing part of the entire culture that meets the general trends of human society's development (Alekseev, 2011: 28). Civilistics, in turn, is the indestructible unity of all components of private law that permits talking about the existence of global private law as some functional entity and, therefore, the legal basis for the global community. As S. A. Stepanov noted, exploration of private law invariably results in recognition of a 'civilistic truth', where private law manifests itself in all its complexity, completeness and depth and seems '...a solid and universal phenomenon of not even law, but the highest legal culture that is not inferior to religion or morals in its purpose and power' (Stepanov, 2015: 204–205).

Thereby, civilistics has encompassed branches of law, science and legislation, completing this 'cocktail' with legal ideology, legal consciousness, legal traditions, and regulatory enforcement – all the things that shape the legal reality of any society in any historical period of its existence.

It is civilistics that ensures establishment of the legal reality '...from the scholarly views of understanding the law to rearrangement of the core law enforcement mechanisms' (Didenko, 2019: 61–62).

Modern society cannot exist outside of legal control. Effective private law codes that are actually in force are one of the prerequisites for the investment attractiveness in any state, which, eventually, leads to the development of all sectors of the economy. Private law holds a specific place in the legal system of any state, since it is aimed at the legal implementation and practical realization of the main constitutional principles of the economy, property relations, credit-and-monetary relations, etc. Meanwhile, private law actually 'knows no borders'. Demands for development of international commercial turnover, other economic ties and cultural exchange undoubtedly require recognition of the rights and obligations that arose based on legal grounds provided for by other legal systems. This prolongs the validity of one national legal system on the territory of an unlimited number of other countries.

On the other hand, constantly developing economic relations and the emergence of new economic sectors require thoroughly worked-out legal control. However, it should be noted that, unlike previous periods, today's private law codes begin to prevail over other regulators of private law relations, which, in turn, invariably leads to increased significance of these codes, and, therefore, to a growing number of requirements for private law rules. Meanwhile, these codes undoubtedly have to be uniform in terms of their concepts, aimed at having a consistent social effect that can and must manifest itself in the form of law and order and a high level of legal culture.

The history of private law development in the framework of any national legal system dates back several hundred years. There are no legal documents (starting from the ancient Code of Hammurabi) that have ever been of critical value for establishment and development of law as such and have gotten by without private law rules. And every time, with every new regulatory act, private law codes have developed to bring something new and 'unknown' into global law enforcement. The modern stage of private law development is no exception: its codes are in constant flux, they advance, are updated, become obsolete and are replaced with new ones. In other words, in the framework of private law in the modern global society, the processes of global actualization and modernization of all the codes and institutions comprising it are involved.

Representing global private law in all its diversity, civilistics holds a significant place in the framework of any national legal system, regardless of the political, economic or national structure of the state where this legal system exists. And this is quite natural, since private law is supposed to formalize economically significant relations, and the availability of exactly this function predestines the fate of private law as such: it appeared along with the state (or maybe even earlier) and it will continue to exist until the end of the state's lifecycle, until human society as such ceases to exist. However, private law has to change along with social and economic relations in society; otherwise it stops fulfilling its main function – the function of regulator and warrantor of stability of private law relations, and stability of the civil cycle.

Thus, civilistics with the entire abundance of its content turns into a part of the global culture and its asset destined to ensure the preservation of universal human values and the development of civil society in the framework of control over the relations for the society and the state that are the most important (because of their prevalence, among other things) – the relations associated with the enforcement and protection of subjective private rights and interests.

Discussion

The role of each legal sector in legal order development in individual historical periods is ambiguous. Leading positions in this process are often held by public sectors. It is no secret that different periods can be identified in the history of private law. Over the course of many years and even centuries, private relations remained outside government control. In other words, the state used to underrate the role of private law control mechanisms in the development of legal reality. But this does not mean that private relations remained outside the law. As early as in the Middle Ages and even in the age of ancient law, society realized that private relations by nature ran throughout the life of both society and the state and, therefore, constituted an integral part of the general legal order. Moreover, stability and regulatedness of private relations undoubtedly underlies law and order, the public sense of stability and security.

In 2018, in the Address to the Federal Assembly, President of Russia V. V. Putin noted that in the age of technological changes 'it is impossible to overestimate the role of culture that serves as our nationwide civilization code and reveals the creative energy in people'. In this regard, private law aimed at legal generation, comprehensive regulation, preservation and protection of subjective rights arising in this field take on special significance.

In the modern world, the added complexity of structure and dynamics of economic relations constantly leads to the increased significance of control over private law relations that serve as the institutional basis for the market economy. An important part of the private law evolutionary process is the development of large sets of codes to solve certain practical problems. This is about control over new phenomena in the life of society that have already become a part of its culture: digital rights, smart contracts, blockchain, Internet trading, crypto currency... this list can be extended almost endlessly, since there is always something new, something unknown in the life of human society that experiences one industrial revolution after another, and this requires a legal order to be established, subjective rights to be protected and legal interests to be legally formalized. It is private law that is destined to satisfy society's demands; it is private law that is the first to guard human interests by legalizing the relations between subjects.

Nowadays, one of the most important areas of any national economy is the market of innovations. The modern stage of society's development is marked by better results of creative activities not only in the field of culture, but in economic, social and other sectors as well. Effective protection of intellectual rights is one more indicator of democratic society development that is a prerequisite for a state's integration into the global economic community (Bliznec, 2021: 11). That is why it is so important to pay special attention to this aspect of social relations. Establishment of a well-developed intellectual property market is required to improve the Russian economic system and to boost its interregional and international collaboration. The process of establishing the Russian digital society includes development and promotion of the Internet (Rybakov, 2020; Shapovalova, 2016). The experience of recent years revealed how relevant this area of Russian private law is. Implementation of the Strategy for the Development of an Information Society in the Russian Federation for 2017–2030 (approved by Executive Order of the President of the Russian Federation No. 203 of May 9, 2017), entrance of Russia into the active stage of scientific and technical progress and digital technologies, inclusion of Russia into the list of countries that adhere to the innovative path of development have led to better results in intellectual activities in economic, social and political sectors, so that knowledge and ideas ultimately obtained the status of the most important economic assets. And private law promptly responded to the tasks at hand, since modernization of Russian private law in the field of intellectual property was aimed at solving problems in that area. The changes made allowed an increase in the level of legal protection for rights holders (by stiffening penalties for violation of intellectual rights, among other things), and some aspects of intellectual rights protection on the Internet were legally secured. Undoubtedly, there are still many changes to occur, but in general, the development direction of this part of the Russian legislation is indicative of closer attention by a legislator to the problems in this sector, which is certainly a positive development trend for private law as an integral part of the national legal system.

The opinion about the complexity of private law was formed as early as in the beginning of the 19th century. For instance, one could hear statements that '...to study civil law, additional knowledge is required. To comprehend the reasons and to reach the goal of the law, thorough familiarity with national history is required; to apply laws accurately to deeds that is the art of correct thinking, a lawyer needs

the science of logic'. However, '...since the subjects of law are the essence of the individual, things and deeds, a lawyer needs sciences related those sciences such as anthropology in general and psychology in particular, also physics, architecture, technology, the science of rural household management and other natural sciences the subjects of which are the essence of the things that constitute citizens' property' (Kukol'nik, 1813: 7–8).

In the world of 'open borders' united by the aspiration to create a shared economic space, insistent demands to unify private law codes are voiced, since such a measure would allow implementing the principle of stability and legal clarity to the fullest extent for all participants in the private law relations regardless of their national (state-legal) identity. That is why it is not enough to only explore the national legal system. As V. F. Yakovlev fairly noted '...in the context of globalization of economic ties and economic development patterns, synchronization of legal regulation of economic relations has taken on great significance. That is why the second basis and simultaneously the second goal of modernization is for the provisions of the Civil Code of the Russian Federation to come closer to regulatory rules for relations in the European Union, as well as for Russia to start using the latest civil code modernization best practices of such European countries as Germany, Holland and France' (Yakovlev, 2019).

It is common knowledge that the policy of national legal systems rapprochement in the field of economic relations control is a form of cooperation between states (Bublik, Semyakin & Gubareva, 2020). This rapprochement has an objective '...to create, put into effect through international legal mechanisms and ensure the enforcement of similar or identical legal regulations that ensure elimination of differences in legal control over certain kinds of relations' (Bahin, 2003: 19). In private law, globalization manifests itself in the concept of establishing shared, universal legal control.

It is impossible to dismiss the significance of such an interstate influence. Its existence was discussed by the civilists of the past. Thus, for example, G. F. Shershenevich noted that '...the modern civil legal order observed in any state resulted not only from its personal history, but from the history of the entire group of communities, the joint existence of which created the culture' (Shershenevich, 2016: 348).

However, choosing between two widely known legal systems rapprochement methods – unification and harmonization – it appears that the second option should be preferred. Unification of legal codes has only one goal: to erase all the apparent and implicit differences in legal orders of various states, and to converge these legal orders until they align completely. Historically, the practical interaction of legal systems in different countries has always caused quite a few problems because of disparities between legal codes. Implementing the principle of state sovereignty, each state secures in its legislation a rather extensive network of codes regarding the private-law status of parties to civil and other private law relations, the categories of things, property and other proprietary rights, as well as regarding transactions and non-contractual obligations, inheritance and intellectual rights protection. Meanwhile, each state is aware that in the modern world of open borders, a foreign element always appears in such legal relations that makes the legal system of this state collide with the legal system of the country this element belongs to. Ever since the times of ancient law, special rules have been established to solve conflicts like this: conflict rules and connecting factors that are currently gathered together under the single name of international private law. In the modern world, it is considered normal when a state allows foreign law to be in force on its territory by securing special conflict codes, while each state acts based on principles of mutuality and international courtesy and hopes for the same loyalty from other states and their legal systems. Currently, such behavior can be considered one of generally recognized principles of international contact and international law as such.

However, the collision method is not convenient when it comes to practice. It causes a lot of problems, primarily for the law enforcer, which has been the focus of Russian and foreign scientists multiple times already. A particular example of these problems is multivariance in resolution for a conflict problem because there is no restricted list of conflict connecting factors recognized and applied within all legal orders without exceptions. This issue is complicated by all the 'traditional' problems of collision law such as renvoi, mobile conflicts, the qualification issue and many others. The result is legal uncertainty bordering on legal confusion of participants in legal relations that cannot anticipate either the final decision of the law enforcer on their dispute, or even the legal system the codes of which will be applied to solve legal issues in their regard, to determine their status, their rights and obligations.

At the same time, it should be noted that active development of a trans-border stream of commerce, establishment of a system of complicated and diverse private-law connections between individuals of diffe-

rent state affiliations evokes the need for the comprehensive legal groundwork that allows implementing the rights of parties to private law relations to the fullest extent possible without violating the basic principles of private law at the same time.

The solution to this problem seems to be within the framework of the process for private law unification on various levels and, first of all, on the universal level. However, there has already appeared a conventional understanding of international unification as the process in the framework of which '…conflicting codes of two or more national legal orders applied to the same trans-border private law relation are replaced by a single code' (Krutij, 2012: 7). The main way to create such codes is development of international treaties that include detailed rules for control over a specific group of social relations and introduction of their provisions into specific legal systems by virtual replacement of national codes with new codes of a universal nature. Meanwhile, law enforcement discovers serious problems with application of such a unification method. Modern lawyers view the system of legal acts and codes as a pyramid on top of which international rules are located, so that in the course of implementation and application of legal codes, preference is given to the provisions of international treaties. However, it should be noted that many treaties that include private law codes are entered into for political reasons and it is not often that they provide for an opportunity to implement the relevant codes in Russian legal reality. Moreover, some provisions of individual international treaties that are currently still in force in Russia allow behavior on the territory of our country that contradicts the principles of private law. In this regard, it appears necessary to recall the existence of the public order category that suggests giving priority to the groundwork for the Russian legal order, including 'aside from moral foundations, core religious postulates, major economic and cultural traditions that have established the Russian civil society, the fundamental principles of Russian law as well' in terms of the approach worked out in practice (see, e.g., Order of the Federal Antimonopoly Service of the Northwestern District of March 6, 2012 in case No. A56-49603/2011, Order of the Federal Antimonopoly Service of the Northwestern District of March 18, 2010, in case No. A56-82470/2009, etc.). At the same time, Article 46 of the Convention on the Law of International Treaties provides for each state to have the right to renounce application of rules (implementation) of an international treaty in a situation when its implementation directly or indirectly leads to violation of particularly important codes (principles) of national law of the relevant state.

In this context, it becomes practically impossible to preserve the independence of the legal system and to protect the national interests of the state. Despite the maximum rapprochement of legal systems of individual countries, nevertheless, nowadays establishment of a single global economic space '…seems impossible due to significant differences in the legal systems of states' (Perevalov, 2014: 10).

In this regard, it should be noted that it is not possible to just implement foreign law in the national legal system. Unfortunately, nowadays the attempts to adopt some 'imported' legal codes have become very popular among an enormous number of states. And in the context of the ongoing process of modernization and improvement in Russian private law, the question of whether it is possible, necessary and acceptable to adopt categories, ideas and principles of foreign law arises again and again. Traditionally, it is thought that borrowing accomplishments from another legal order is a way to harmonize legal systems. It also should be noted that such a lawmaking policy is nothing new for the Russian system of private law. Starting in the 1990s and over the course of establishment of civil legislation in the Russian Federation, legislators actively studied and applied foreign experience. As V. F. Yakovlev noted, Russian civil legislation does not only follow the traditions of national private law, but also '…bears the stamp of the legacy from the French Civil Code, the German Civil Code, and the modern Civil Code of the Netherlands. Many of its provisions have been shaped talking the economic law of unified Europe into account' (Yakovlev, 2012: 832). That said, it is thought that within the private law modernization process, a critical issue is to define 'representative' models of foreign civil law for Russia correctly. 'Blind' imitation of the categories that are not typical for Russian law seems unacceptable, since these results in neglection of legal traditions and already established specificities of the national legal system development. Any application of foreign legal experience needs to be justified and by no means should it set an example of simple borrowing; to ensure the effect of true legal control a relevant legal category needs to be assimilated, i.e., it should be successfully internalized by the Russian legal system, adjusted to the specificities of Russian private law and the needs of the Russian civil cycle. This very approach is considered to be chosen as one of basic rules for modernization of private law in Russia. It should be remembered that legal control over relations reflects the people's mindset, and

it would hardly be possible to introduce something by force, particularly when this is about the rules applied by these people not just regularly, but on an everyday basis.

Today's foreign-policy developments impact on the economic situation on a global scale. As soon as political decisions are made, foreign economic policies of states change, too. Political decisions with an economic impact reflect not only upon the nationwide interests; they affect common individuals who function exclusively within the framework of private law codes. Sanctions imposed by states have resulted in a need to adjust smooth-running trade relations. Moreover, private law contracts have been terminated at various stages, including long-term ones.

Unfortunately, many individuals with authority, representing states of great historical and global significance have turned out to be unable to differentiate private and public interests in the field of politics. Moreover, many political decisions have proved to be made against the rules and laws of the civil cycle and norms of civilistics. Ultimately, this leads to civil cycle deformation, distortion of its legal groundwork, ignoring of key principles and categories of law that have been established, kept and respected over the centuries. Principles of unquestionable respect for private-property rights, freedom of contract, responsibility for failure to perform obligations, inadmissibility of unilateral abandonment of the obligations taken based on a contract and many other principles developed and confirmed over the entire history of private law development have turned out to be substituted with short-term political interests that ultimately result in violation of the interests of all trans-border civil cycle participants as well as parties to public legal relations.

In the current historical period, we are witnessing the negative reverse side of the reciprocity rule, when Russia has to defend itself and makes decisions leading to a so-called 'sanctions war' for this purpose. As a result, public law 'interferes' in private relations control, virtually altering its nature and changing the nature of private law. Within the framework of the disposition principle, which is familiar to all participants in private law relations, an imperative prohibition arises that does not allow full enjoyment of the freedoms traditionally provided to civil cycle participants.

It appears that processes of private law codes unification, establishment of international private law must be primarily aimed at overcoming such a political influence. However, it is essential to understand that the process of universal unification has to include not only and not so much as establishment of uniform legal codes, but, first of all, development of uniform (universal) mechanisms for their implementation. Creation of universal unified private law must be based on establishment (and revival) of universal private law principles that in their entirety can (and must) surpass national legal systems and turn into some non-national law free from political relations and decisions of states. This is the only way to lay the foundation for real general private law. Single international treaties cannot ensure such an effect, particularly because, if past experience is anything to go by, even participation in some international community or treaty is not a guarantee that all the participants will deliver on commitments already made or that all the controversial situations will be resolved according to the established rules.

And it should be noted that there are principles like this; they have been the 'pillars' of civilistics for many centuries. Private law is imbued with social and cultural categories such as justice, integrity, reciprocity... the list can be extended almost indefinitely. Meanwhile, these categories, as A. G. Didenko has rightfully mentioned, do not have a specific creator, they are created by society (Didenko, 2019: 38), and, therefore, they are manifestations of the society's culture in every specific historical period of its development.

Thus, for example, nowadays there are is a lot of talk about justice (Bogdanov, 2014; Gadzhiev, 2017; Gongalo & Novikova, 2018) regarding all areas of human society's existence, and the area of legal control is no exception to the general rule. The issue of justice and its practical implementation has been raised multiple times by the President of the Russian Federation in his speeches, including his Addresses to the Federal Assembly. Thus, as early as 2016, he noted that justice is a comprehensive phenomenon that encompasses such features as responsibility, moral rectitude, concern for public interests, willingness to listen to other people and to respect their opinions, and it provides for and ensures broad dual opportunities for self-expression to bring business, creative and civic initiatives into life. Justice manifests itself in the field of private law both as the groundwork for general principles of civil legislation and as part of the implementation of individual legal control directions. Justice of private law is a conceptual basis of the principles of equality and equivalence. Thus, justice is a kind of '...a criterion that means availability of equal opportunities for participation in the civil cycle' (Petrov, 2016). In fact, justice is both the

principle and the goal of legal control over the civil cycle aimed at fair and reasonable satisfaction of the interests and needs of civil cycle participants (Vinichenko, 2014).

Integrity (Hesselink, 2020; Shuhareva, 2020), reasonableness (Konovalov, 2019; Vanin & Tihonov, 2019) and many other explicitly moral categories that have been implied in any area of private law relations during the entire history of private law development are becoming no less significant in the field of private law control. However, it seems important to note that in each and every historical period, private law control reflects the content of these categories the way they exist in society, showing the historical specificities of their development every time. Therefore, private law serves as a critical guide and at the same time as a guard for moral and general legal categories that objectively exist in society permeating its codes with the content of these categories.

It appears that the activities of international organizations in charge of developing non-political documents and introducing them into legal practices are of particular importance for unification and generalization of rules and principles. An example of this is the Principles of International Commercial Contracts (UNIDROIT). The importance of this document is that while lacking a binding legal effect for states and private law relations participants it nevertheless contains detailed instructions regarding regulation of contractual relations to serve as a special set of rules and customs the parties of such relations have become accustomed to turn during the long history of foreign economic turnover and economic interaction on the supranational level. Because of this peculiar feature, UNIDROIT Principles are a vivid example of the case when participants in private law relations have created legal codes themselves and agreed to comply with them, which, in turn, means that introduction of these rules at the legislative level will be accepted without any opposition by those subjects these codes exist for. In this regard, it appears that it is quite reasonable to make UNIDROIT Principles mandatory by securing this feature of theirs in the Russian legislation, so that Russian courts could apply provisions of this document at least when the need arises to fill the gaps of legal control over international private law relations. Obviously, if such a decision is made by the majority of states, then national legislations of various countries will make another step toward global harmonization of private law.

It is these rules and principles providing the basis for global categories of the world's civilistics that make the language spoken by all specialists (scientists and practitioners) in the field of global private law universal. It is civilistics that must become the flagship in terms of finding a balance between public and private interests in legal control. The state must encourage actions by civil cycle participants, create favorable conditions and prerequisites, protect the rights of civil cycle participants who act in good faith. Hence, modern civilistics must be aimed at working out issues connected with a balance between private and public interests through legal control of these relations via codes of private and public law, and currently, the results of this research need some concrete definition and practical focus

Conclusion

Private law is a unique legal phenomenon, an entire legal world, if you like. It should be considered a phenomenon that encompasses legal ideology, legal consciousness, law enforcement, legal traditions, and the critical cultural heritage of humanity.

Currently, it seems reasonable to state that the work aimed at reinforcing the role and significance of private law in general processes of national and international law and order establishment needs to be continued and the fair principles of private law should be strengthened.

Civilistics can and must manifest itself, use its mechanisms to provide protection for Russia's national interests. For these purposes, there is a need to develop an effective and justified private law policy concept that takes into account the doctrine, historically established traditions, law enforcement practice, the experience of economic activity aimed at eliminating the imperfect and deficient juridical base, contradictions in legal and law enforcement acts based on the absolutely recognized universal principles of private law.

It is the private law principles that need to come to the fore – freedom of contract and integrity, good faith and reasonableness, those based on age-old traditions and codes, supported by the rules of international law and replicated in legislation of the overwhelming majority of states. They must become the component part of and the basis for public and individual legal consciousness. In this case, private law can serve

as a guarantee for social development and establishment of a high legal culture within the framework of which legal consciousness of society will be based on principles of integrity and reasonableness that are conventional for private law.

However, the identity of Russian private law should be taken into account as well as the need to preserve it. Any implementation of the codes of foreign law must be as well-balanced as possible and allowed for introduction into the Russian legal reality only if it is in keeping with the spirit of Russian private law. This is the only scenario that allows speaking about preserving Russian private law as a unique cultural phenomenon, the existence of which invariably enriches the culture of the entire nation and encourages its development while preserving its identity and maintaining the international properties of civilistics that can overcome the borders of space and time.

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Research Article

INTERACTION AND COMPETITION OF LEGAL SYSTEMS: A STUDY OF CIVIL PROCEDURE

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The long outlined process of globalization interferes not only with the economy, politics, and ecology but with law directly as well. Regarding globalization in the field of law, we use such terms as rapprochement, unification, and harmonization. That said, generally, the abovementioned terms are intended to denote the process of creating something shared, of a similar meaning. Conventionally, these processes can be observed in the framework of various integration associations. The opposite phenomenon is a competition of legal systems that provide for the establishment of the best conditions for social and economic development. The same is true for civil procedure as well. At the same time, in recent years, an interesting trend has emerged – competition within integration associations. This paper is the first attempt to show the aforementioned trend in the field of civil procedure. The authors note that this trend can be traced both in the EU (in the context of Brexit) and in the EAEU (in the context of establishing the Astana International Financial Centre and the AIFC Court). The paper analyzes the consequences of these actions in view of their impact on integration associations and a more detailed exploration of the legal status of the AIFC Court and its jurisdiction in this regard. Based on the research, the authors draw the conclusion that increased competition in the field of civil jurisdiction does not have to weaken integration associations, it can even enable further rapprochement.

Key words: *rapprochement of law, competition of legal systems, EU, EAEU, Astana International Financial Centre Court (AIFC Court)*

Introduction

Rapprochement of law, unification of law, harmonization of law, internationalization of law – this is hardly the entire list of terms Professor Peter Gilles ranked among the 'Babylon of verbal and conceptual confusion'[1] in one of his reports in 2003.

Currently, it is globalization that is called the natural scientific grounds for the interaction of legal systems. This process is global by nature; it involves a great many people as well as national and international social agencies, states, and their coalitions (blocks) (Perevalov, 2014: 7). However, it would not be fair to consider the very idea of the entire world 'shrunk into a single communication network with a lot of cells' (Bolz, Zons & Kittler, 2000: 7) to be a discovery of the 21st century. For example, K. Marx noted the following pattern in the preface to the first edition of *Das Kapital* (1867): 'Intrinsically, it is not a question of the higher or lower degree of development of the social antagonisms that result from the natural laws of capitalist production. It is a question of these laws themselves, of these tendencies working with iron necessity towards inevitable results. The country that is more developed industrially only shows, to the less developed, the image of its own future' (Marx, 1867).

When the concept of unification is examined in the European legal doctrine, it is noted that in this case, it means the process of creating something uniform or shared[2]. This phenomenon results in establishing a situation where the courts of different countries administer legal codes that are identical in content. Unification is a kind of apotheosis, the pinnacle of the process of creating something uniform or shared. That is why the words 'unified' and 'uniform' are essentially synonyms (Kropholler, 1975: 19). Rapprochement of law, by contrast, is a process aimed at overcoming the existing differences in various legal orders by establishing close, but not identical legal codes.

It is the rapprochement of law that is considered a broader category (generic concept) in Russian legal doctrine. It unites all the ways of creating uniform codes: rapprochement of law refers to a complicated legal phenomenon that manifests itself in two inter-related processes that are still different in their content – unification and harmonization of law (specific concepts) (Dmitrieva, 2010: 93; Kutafin, 2007: 15; Mengliev, 2012: 156).

Besides, it is emphasized that rapprochement is essentially an activity or a process aimed at establishing, introducing into effect or enforcing similar or identical legal provisions that ensure elimination of differences in the legal regulation of a certain type of relations for the sake of convenience of transnational relations (Bakhin, 2003: 19). In turn, harmonization of law serves as a broader term of rapprochement of sort represents the establishment of uniform legal provisions of national law that ensure overcoming of differences in legal regulation of certain relations. However, it should be noted that harmonization is possible only when there are objective conditions for rapprochement of relations in some area, which implies some grounds for harmonization (Bachilo, 2000: 92).

Competition of systems (institutional competition) refers to the process of interaction when various elements of economic and political competition manifest themselves (Gerken, 1995: 77). Interaction of certain elements results in competition of systems. Since this is an issue of competition, private individuals get permission to choose one system or another. The availability of such an opportunity to choose implies a significant degree of openness in competing systems. The latter in turn also serves as a factor for the economic and labor migration of individuals. The factor of migration from one competing system/ country to another is a unique independent arbitrator who can indicate the available economic benefits impartially. Economically active private individuals use the disparity between expected net incomes in different systems, while the latter (systems) in their turn use and declare the available benefits. Meanwhile, politicians, being agents of competing systems, cannot take into account the special features of different systems and their level of economic development.

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[1] Aside from the aforementioned, there were also transnationalization of law, universalization of law, incorporation of law, correlation of law, coordination of law, and integration of law. See more: Gilles, P. (2003) Rechtsangleichung in Europa – Geschäftigkeit ohne Theorie? In: Festschrift Kostas E. Beys. *Dem Rechtsdenker in attischer Dialektik*, Band 1, Athen (Griechenland), S. 431–446; Huber, S. (2008) *Entwicklung transnationaler Modellregeln für Zivilverfahren: am Beispiel der Dokumentenvorlage*. Tübingen: Mohr Siebeck, S. 49.

[2] Regarding the correlation of French terms 'unification' and 'harmonization' see: Kerameus, K. D. (1992) *Revue hellénique de droit international*. 52, pp. 515; for the correlation of English terms 'unification' and 'harmonization' see: Stьrner, R. (1999) *Feasibility Study on Transnational Rules of Civil Procedure*. UNIDROIT Study LXXXVI. Doc. 1, pp. 4.

It should be noted that competition of systems manifests itself not only in migration factors but also in cross-border trade in goods, works, and services. The choice within the country is affected by various kinds of national regulation of the entry/launching of some goods, works, or services onto the market. Free movement of goods, works, and services implies that the importing country recognizes the legal status of the exporting country's regulation is equal to its own and vice versa. Within this framework, when choosing goods, works, or services, the consumer de facto chooses regulation as well. The advantage of external over internal regulation can result in import growth. These examples allow a deeper understanding of the competition between systems, which is a complicated phenomenon that can be interpreted from two viewpoints (Woolcock, 1994: 7).

On the one hand, competition between systems is a process that allows the consumer to test a certain system in practice and encourages the agents of the system to improve it continuously (competition between systems as a development process). On the other hand, competition between systems ranks all the existing and potential internal offers by their attractiveness, which provides the agents of the system control over the previous and new offers (competition between systems as a control process).

Moreover, in the modern world, there is not only competition between goods, works, and services, but also competition between different legal systems. Such systems not only converge and mutually enrich each other[3], but objectively compete with each other due to the special features of their development and a lot of different factors by offering the best conditions for doing business, fiscal terms, more convenient forms and procedures for dispute settlement and their general accommodation, as well as for the execution of the decisions made. In a word, various characteristics of a certain legal system allow evaluation of its benefits and seeing its downsides compared with others. That is why it is so important for the companies that run transnational businesses to choose a certain legal system that is the most cost-effective and legally sound, the potentially least controversial, and allowing building the system of legal and economic relations in the best way possible.

Materials and methods

The issues of rapprochement and competition of jurisdictions are always associated with the examination of foreign legislation. In this regard, the main method used by the authors is comparative law method. It is the use of this method that reveals the goals of rapprochement and competition, benefits and downsides of foreign (Lezhe, 2009) legal regulation, and outlines the paths for improvement (Kuznetcova, 2020). This method is the only way for the foreign researchers to trace the outlined trends mentioned in the Introduction. The comparative law method is commonly used in Russian jurisprudence, including the science of civil procedure (Fokin, 2018).

The materials for this research included Russian and foreign (mainly British and German) civil procedure doctrines, foreign law (EAEU countries, France, Germany, United Kingdom), legal acts and directives of some international organizations.

Results

Competition between legal systems is based on the idea of creating better conditions for economic and social development, attracting people, and raising funds. In this respect, the law has long turned into another commodity that defines how attractive some country is to be chosen as the place for residence, marriage registration, investments, capital preservation, and inheritance, or as a jurisdictional venue for settlement of possible or already existing disputes (Yarkov, 2021). Different legal regimes in such fields as access to business and doing business, taxation, key institutions of civil law (registration of ownership, law of obligation, law of inheritance, property relations regime in the family, etc.), jurisdictional conditions and procedures, ensure that there is a practical opportunity for choosing the most reasonable model of the legal system, the most reliable in terms of the place for business registration, applicable law or jurisdiction

[3] Many researchers have focused on this matter. See, for example: Kudriavtseva, E. V. (2008) *Grazhdanskoe sudoproizvodstvo Anglii [Civil Proceedings in England*]. Moscow, Gorodets. (in Russian); Reshetnikova, I. V. (1997) *Dokazatel'stvennoe pravo SShA i Anglii [Evidence Law in USA and England*]. Yekaterinburg, Ural State Law Academy Publishing House (in Russian).

in case of a conflict. Aside from increasing investment attractiveness and raising financial resources, the choice in favor of a certain legal system creates a labor market for lawyers and legal institutions of the relevant legal system, for legal education, and has an impact on many other areas.

Discussion

The proponents of the idea of legal order competition instead of their rapprochement and coordination use both cultural and legal (Jayme, 1995: 167), and economic and legal reasoning (Kerber, 2000: 74). Their general idea is that law develops more successfully when the best solution to the problem is sought in the context of competing national legal orders (Kerber, 2000: 75; Kieninger, 2002: 25). Competition between legal orders in turn serves as a modification of the broader concept of the competition between systems (institutional competition in terms of politics, economics, culture, and law). It is customary for such institutional competition to refer to the process of interaction when various elements of economic, political, and other kinds of competition manifest themselves (Gerken, 1995: 77). Interaction of certain elements results in competition between systems.

That said, while remaining the driver for any development, be it the market for goods and services or a legal system, the factor of competition as it is has faltered significantly due to the impact of globalization, which in turn has led to the emergence of a great number of different integration associations of countries. Thus, since 1951, economic and legal integration has started in Western Europe; since 1967, countries of South-East Asia have maintained cooperation in the framework of the Association of Southeast Asian Nations (ASEAN); since 1988, the North American Free Trade Agreement (NAFTA) has been in force on the American continent; since 1989, the Asian Pacific Economic Cooperation (APEC) has emerged; since 1991, economic integration has intensified in South America in the framework of the MERCOSUR trading bloc; since 2015, the Eurasian Economic Union has developed, and currently new tendencies toward mega-agreements (TTIP), etc. have emerged. The states have recognized that rapprochement with like-minded allies while maintaining competitive conditions with the rest of the world can not only give a boost to their own development but also help to stand ground in the context of competition with its most economically powerful representatives.

Although integration associations established in order to build a unified legal framework (EU, EAEU) consider rapprochement of legal systems preferable in terms of providing equal and efficient access to jurisdictional mechanisms of defense of violated rights and prohibition of any discrimination, their current development signals that competition has emerged even within these integration associations.

Thus, starting in 2018, in the context of Brexit, the establishment of specialized state economic courts began in France, Germany, Belgium, and the Netherlands in order to meet the states' demand for increasing the attractiveness of their own marketplaces. It is emphasized in the scientific literature that the establishment of such courts was also a response to such claims as discontent with the settlement of economic disputes in general courts, drawbacks of arbitration proceedings, aspirations to use the opportunities provided by Brexit, and inability to use decisions of UK courts in accordance with Regulation (EU) No. 1215/2012, etc. (Vasil'eva & Varlamova, 2020: 146–169). Particularly, in 2018, the International Chamber of the Paris Commercial Court was rearranged to establish the International Chamber of the Paris Court of Appeal that exercises the powers and authority of appeal regarding the judgments made by the International Chamber of the Paris Commercial Court made by the first instance. Since March 1, 2018, special rules have come into force – the protocol regarding procedural rules applied in the International Chamber of the Paris Court of Appeal4. For example, they allow using any applicable law chosen by the parties, presenting the case and providing testimony of experts in English during the hearings, translating the judgment into English, etc.

At first glance, these new developments have little in common with the focus on a single legal framework, they are risky for rapprochement of legal orders when it comes to civil procedures. It is crucial to understand though that such legal 'experiments' generally fit into the 'rules of the game' created by the EU over the decades and fall in line with them, specifically, with the direct jurisdiction mechanism, judicial authorization, and judicial summons. That is why there is hardly any sense in discussing the threats to the European legal framework.

[4] Available at: https://www.cours-appel.justice.fr/sites/default/files/2019-04/Traduction%20en%20anglais%20du%20protocole%20CCIP-CA%20-%20V4%20.pdf [Accessed: 24 March 2022].

It is this type of innovation (establishment of specialized jurisdictional bodies) in those integration associations where either modern or effective supranational procedural rules are either absent or the reforms are implemented without reference to their content that should be considered much more dangerous. Thus, in 2015, the Astana International Financial Centre (hereinafter – the Centre) was established within the EAEU in accordance with Constitutional Law of the Republic of Kazakhstan No. 438-V 'On the Astana International Financial Centre'[5] of December 7, 2015, to serve as a territory within the city of Astana where a special legal regime in the financial sector is in effect (Art. 1).

By reason of the provisions of Art. 4 of the aforementioned Constitutional Law, the prevailing law of the Centre is based on the Constitution of the Republic of Kazakhstan and consists of: this Constitutional Law; acts of the Centre that are not contradictory to this Constitutional Law and can be based on principles, codes and precedents of the Law of England and Wales and/or standards of the world's leading financial centers accepted by the bodies of the Centre in the framework of the powers conferred by the Constitutional Law; the actual law of the Republic of Kazakhstan applied to the extent not regulated by the Constitutional Law and the acts of the Centre. Therefore, the Centre has extraterritorial jurisdiction within which only the Constitution of Kazakhstan, this Constitutional Law, UK Law, and other legal rules adopted by the Centre itself are in force. Since the Constitutional Law is a framework law, in practice, the Centre is completely autonomous and has rule-making prerogative powers restricted only by the Constitution of Kazakhstan.

The legal status of the Centre Court is no less interesting. According to clause 5, Art. 3 of the Constitutional Law of the Republic of Kazakhstan No. 132-II 'On the Judicial System and Status of Judges in the Republic of Kazakhstan' of December 25, 2000, 'A special status is granted to the Court of the Astana International Financial Centre that is not a part of the judiciary system of the Republic of Kazakhstan'. This circumstance is emphasized in Art. 13 of the Constitutional Law on the Centre: 'The Centre Court is independent in its activities and is not included in the judiciary system of the Republic of Kazakhstan'.

The Centre Court is aimed at protecting the rights, freedoms, and legitimate interests of the parties, and enforcing the Centre's prevailing law. It includes the first instance court and the court of appeal. The Court's jurisdiction is defined in the following way. The Centre Court does not conduct criminal and administrative legal proceedings and has the exclusive jurisdiction regarding the consideration and settlement of disputes arising between participants in the Centre, Centre bodies and/or workers from abroad; consideration and settlement of disputes associated with any operations performed in the Centre and subject to the Centre Law; consideration and settlement of disputes submitted to the Centre Court upon mutual agreement of the parties. The Centre Court has exclusive jurisdiction for interpreting codes and acts of the Centre. The judges of this Court are British lawyers, i.e., not Kazakhstan citizens.

Since UK Law and Law of the Centre itself serve as applicable law, when settling disputes, the Centre Court may also consider the judicial decisions of the Centre Court for specific disputes that have already come into force and the final judicial decisions of other courts of common law jurisdictions. Judicial decisions of the Centre Court of Appeal are final, not subject to appeal, and mandatory for all individuals and legal entities. Execution of Centre Court decisions in the Republic of Kazakhstan is performed in the same order and on the same terms as the execution of judicial acts of courts of the Republic of Kazakhstan. However, translation of the Centre Court's decisions into Kazakh or Russian should be ensured in the manner established by acts of the Centre.

According to K. Kelimbayev, the Managing Director of the Centre, 'On the territory of foreign countries, decisions of the AIFC Court shall be executed in accordance with the terms of international treaties ratified by the Republic of Kazakhstan' (Lord Wolf & Campbell-Holt, 2019: X). At the same time, more conservative estimates of the outlook for enforceability of decisions by the AIFC Court can be found in the literature, at least on the territory of EAEU member states, since examination of the status of this Court raises quite a lot of questions (Branovitskii, 2018: 27–330).

The exclusive nature of the Court's jurisdiction and the legal status of the Court itself, since it is not a part of the judicial system of the Republic of Kazakhstan can be listed among the reasons for concern. Thus, the Kazakhstan legal doctrine emphasizes that the Centre Court is a sui generis judicial body since it has jurisdiction to settle 'constitutional', investment, financial, and labor disputes, as well as to hand down decisions regarding the interpretation of legal codes of the Centre (Daulenov & Abilova, 2016: 32).

[5] Available at: https://online.zakon.kz/document/?doc_id=39635390 [Accessed: 24 March 2022].

In respect to the Court's jurisdiction that is claimed to be exclusive, the question arises as to whether the Centre Court can have international jurisdiction. With this interpretation in mind, a lot of questions arise regarding the Court's status. Due to its independent nature (it is not a part of the judicial system), the multilateral agreements in force on the territory of the CIS and EAEU countries do not apply to it in terms of international jurisdiction regulation. In the Kyiv Treaty and then in the Chisinau Convention, it is primarily state courts[6] integrated into a single state judicial system of contracting parties that are meant as 'courts of contracting states'. Thus, for instance, it is quite difficult to estimate how the Court of Kyrgyzstan will interpret the rule of Art. 24 of the Chisinau Agreement if identical court proceedings were initiated previously in the Centre Court.

Of course, such modelling requires relying upon the assumption about the inclusion of trans-border activities in clause 4, Art. 13 of the Constitutional Law. In the case of literal interpretation, the rule in question is about disputes of participants within the Centre without the emergence of trans-border elements[7]. At the same time, the real estate of some Centre participant (disputing party) located in the territory of another country can serve as such an element as well. In this case, collisions of international jurisdiction can occur if the Centre Court is to interpret sub-clause 1, clause 4, Art. 13 as the one extending to international jurisdiction. Against this background, some 'shared legal status' of the judgments delivered by the Centre Court and state courts mentioned in clause 8, Art. 13 will by no means enable collision settlement. Thus, in case such property is located on the territory of Kyrgyzstan and a dispute regarding property rights arises between two Centre participants, it is only Kyrgyzstan state courts that will have exclusive jurisdiction based on Art. 4 of the Kyiv Treaty and Art. 22 of the Chisinau Agreement. No decisions by the Centre Court for this dispute can be executed on the territory of Kyrgyzstan due to Art. 9 of the Kyiv Treaty and Art. 59 of the Chisinau Agreement (seen as one made in violation of jurisdiction rules).

Besides, the challenges associated with establishing the Centre Court's legal status in the Constitutional Law along with the simultaneous operation of the International Arbitration Centre can result in some problems associated with the recognition of judicial decisions delivered by the Centre Court in EAEU countries and pose a question of legitimacy of their trans-border validity (within the EAEU) in general. As it has already been mentioned, in accordance with clause 7, Art. 13 of the Constitutional Law, judicial decisions of the Centre Court of Appeal are final, not subject to appeal, and mandatory for all individuals and legal entities. Execution of Centre Court decisions in Kazakhstan is performed in the same order and on the same terms as the execution of decisions delivered by courts of Kazakhstan (clause 8, Art. 13). However, translation of the Centre Court's decisions into Kazakh or Russian should be ensured as established by acts of the Centre.

Due to the lack of a clearly determined legal status of judicial acts passed in the Kazakhstan legislation, the issue of trans-border validity of decisions by the Centre Court, as well as potential recognition of their validity and their execution beyond Kazakhstan will inevitably run into international legal regulation of the CIS period.

Per the existing multilateral agreements (except for the Kyiv Treaty) in the post-Soviet states, it is only the state authorities, including judicial authorities (justice institutions) and public officials that are considered competent bodies. As for the regulation established in Art. 3 of the Kyiv Treaty, where courts of arbitration are mentioned along with 'other authorities with the competence to settle disputes' as 'competent' courts along with state courts, some researchers consider this regulation random and lacking in terms of the legal writing of the Treaty (Kanashevskii, 2006: 13–17).

The lack of mention of any potential recognition and enforcement of the Centre Court decisions within multilateral agreements in itself implies that when a petition for recognition and enforcement of the Centre Court's decision is submitted to the court of an EAEU member, the latter can deny such recognition based on the general condition of recognition – an international treaty (that allows potential recognition) along with the 'special' status of this judicial body (not a part of the Kazakhstan judicial system). Moreover,

[6] In the Kiev Treaty, courts of arbitration belong to the concept of 'authorities to settle commercial disputes' (Art. 3).

[7] The broad interpretation is enabled by rules of Section 5 'Jurisdiction of the Court' of the Regulation of the Centre Management Council of December 5, 2017 'On the Court of the Astana International Financial Centre' dedicated to extension of jurisdiction to any disputes arising between the AIFC's Participants. Available at: http://laws.aifc.kz/files/3c79917a4b9e44f2/3.%20Legislation%20-%20AIFC%20Court%20Regulations%202017.pdf [Accessed: 24 March 2022].

the need for enforcing any decision beyond Kazakhstan can arise at any moment, when one of the Centre participants (registered or accredited) as a disputing party is found to have property outside of Kazakhstan against which a claim can be made.

Conclusion

Individual cases of increased competition in those systems (integration associations) that have previously been positioned exclusively within the rapprochement paradigm examined in this paper should not be seen as isolated instances of strictly negative connotation. As it has been noted already, competition does not exclude rapprochement and vice versa. Such reforms do not have to result in a weakening of an integration association or a decreased level of trust within it, given that the general rapprochement context (established institutional cooperation framework) is not taken out of context. Cases with specialized courts in some EU member states are vivid examples.

Additionally, even in the framework of an integration association, the states, while being subject to unified "rules of the game" can realize at a certain point that those who do not abide by these rules due to the lack of any restrictions imposed by membership in one integration association of another can have more beneficial positions. In this respect, the report 'Civilistic Legal Traditions under Question: Regarding Doing Business Reports of the World Bank' prepared by a group of French professors, lawyers, and notary publics in 2006 draws special attention (Griadov, 2007). The work constituted thorough research of actual and legal raw data that allowed making quite an accurate note of the actual groundlessness of many Doing Business reports as well as noting the benefits of the civil law system that let it serve as the basis for economic development.

In the cases where there is no effective institutional framework for cooperation between states in the field of justice within integration associations affecting the level of the legal definability of the participants, any 'legal experiments' related to the issues of international jurisdiction or authorization should be treated with extra caution since this only promote it further.

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Research Article

CONSTITUTIONAL FRAMEWORK TRANSFORMATION TO REINFORCE INTERETHNIC ACCORD

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This paper explores constitutional reforms that occurred in Russia and some countries of the Euro-Asian Region aimed at interethnic accord solidification and protection on the way to national unity among other things; it also reveals terminological ambiguity in the field of interethnic relations. The following methods are used: a technical legal method, a systems analysis method, synthesis and test methods are used in the research. The main results of constitutional transformations in the field of interethnic relations are reconsidered in the paper; national and international acts that enable interethnic accord solidification are analyzed; the value of interethnic accord solidification is established; certain legislation defects preventing harmonization of interethnic relations are revealed. The authors state the following results: 1) two approaches to the term 'interethnic' have been illustrated; 2) various practices of terminology application have been demonstrated based on regulatory acts and documents; 3) the main results of Russia's 2020 constitutional reform and constitutional reforms in the field of interethnic relations made in other countries have been provided; 4) the analysis of regulatory enforcement in the field of interethnic accord has been conducted; 5) the role of interethnic accord as a constitutional and universal human value for social and economic development of the state has been explained.

Key words: *interethnic accord, tolerance, interethnic peace, nationality, constitutional values, Russia's constitutional reform, national unity*

Introduction

Interethnic accord, or peace, as a long-awaited value in a series of wars, coups and revolutions of the 20th century is now something to protect on both national and international levels. However, the issue with unity of the terminology used is obvious: what lies behind the term 'interethnic' and is whether there is a difference between 'peace' and 'accord'.

It is not easy for undefined terms to exist in the legal field. Such common terminology defies interpretation. As a rule, terms like this have several meanings and are considered approximate. Therefore, based on a subjective perception, the current state of interethnic accord can be seen differently by individuals: for some of them, the state of social relations is connected with smoothing out conflicts, while others ee interethnic accord as complete mutual understanding combined with interaction, and still others will say that this issue doesn't have any impact on their lives. However, the latter make a mistake. Interethnic accord is one of the public law fundamentals, a constitutional value for intra-state relations. When there

is no interethnic accord, the future of the country may be put at risk, because there is no way to build an integral legal system when there is discord. All this calls for an obligation by the state to guard interethnic accord by ensuring national unity through legal regulation.

The purpose of this research is to analyze the demand for establishing interethnic accord in domestic and foreign policies that has increased over the last five years in the states of the Euro-Asian Region and is currently being achieved through constitutional reforms.

The main focus is on the Russian legal system, since the policy aimed at harmonization of interethnic relations, protection of fellow countrymen is actively conducted within the country, support is provided for Russian native speakers and culture-bearers living abroad. In addition, the research includes a review of terminology on this topic, revealing its ambiguity with certain examples, showing differences in the application practice.

This purpose will allow a grasp of the meaning of interethnic accord in the legal system and assessment of the directions for peace consolidation in the state and beyond.

Materials and methods

Research of statutory concepts in either theoretical or practical application is impossible without resorting to methods of analysis and synthesis. A define method and a comparison method are actively used in this research to explore the terms 'inter-ethnic' and 'interethnic', 'interethnic accord' and 'interethnic peace', 'accord', 'peace' and 'harmony', as well as other variants that can be found in legal acts and documents and in practical application (political statements by heads of states, reports and reviews of various bodies).

The analysis is based on laws and regulations of the Russian Federation, including program and strategic documents (Strategy of the State National Policy, National Security Strategy, Strategy for Countering Extremism). Along with Russian legislation, the acts of Euro-Asian Region states (Belarus, India, Kazakhstan, the Kyrgyz Republic, Moldova, Uzbekistan and other countries) are used for analysis with a comparison method.

At the same time, the research is aimed at exploring constitutional reforms that have occurred in Russia and some other countries in recent years, because these reforms have plotted a new vector for understanding interethnic accord.

Taking cross disciplinary terminology in the field of interethnic relations into account, the authors refer not only to the works of constitutional practitioners and legal theorists, but also to the works of sociologists and political scientists. The theoretical literature containing hypotheses and deductions on this issue made before actual amendments are introduced into the Constitution, as well as papers by theoreticians trying to conceptualize the results of today's reform for the territory of the entire country or a certain region serve as the necessary materials for this work. Consequently, the updated content of program and strategic documents and practical application of the current rules are analyzed.

Lastly, considering the active participation by the United Nations (hereinafter – UN) in peace establishment for the international community, its universal acts and documents are also among the materials used for this research (the Charter of the United Nations, the Declaration on the Preparation of Societies for Life in Peace, the United Nations Declaration on the Rights of Indigenous Peoples, the 2030 Agenda for Sustainable Development, and others) along with the sources approved by regional international organizations (the Charter of the Commonwealth of Independent States (hereinafter – CIS), Declaration of Alma-Ata on Promoting Independent and Pluralistic Asian Media (1992), the Agreement on Humanitarian Cooperation of the State Parties of the Commonwealth of Independent States of 2005, and others).

Results

In 2020, a block of amendments aimed at maintaining interethnic accord and peace was introduced into the Constitution of the Russian Federation, including:

– reinforcing national unity (Part 2, Art. 67.1 of the Constitution of the Russian Federation),

– recognizing the Russian language as the language of a state-forming nation included in the multinational union of peoples of Russia with equal rights (Part 1, Art. 68 of the Constitution of the Russian Federation),

– introducing a constitutional guarantee for legal protection of culture (Part 4, Art. 68 of the Constitution of the Russian Federation),

– protecting peoples' cultural identities and ethnic communities (Part 2, Art. 69 of the Constitution of the Russian Federation),

– preserving ethnic, cultural and linguistic diversity (Part 2, Art. 69 of the Constitution of the Russian Federation),

– establishing and supporting the all-Russian cultural identity (Part 3, Art. 69 of the Constitution of the Russian Federation),

– adopting measures to maintain and reinforce international peace and security, ensure peaceful co-existence between states and nations (Art. 79[1] of the Constitution of the Russian Federation),

– setting a special goal for the Security Council of the Russian Federation founded in particular to promote national interests and security and to maintain civil peace and accord (clause (g), Part 1, Art. 83 of the Constitution of the Russian Federation),

Obviously, these changes are primarily supposed to be implemented within the state. As for foreign policy, the term 'international peace and security' is used in the Russian legislation that complies fully with international treaties.

In fact, there is a risk of misinterpreting such concepts as 'peace' and 'accord' in international and national regulatory acts and, therefore, of misinterpreting the area of their application. The problem is that the term 'interethnic' as such has a dual interpretation.

I. The term 'interethnic' is used to define the relations between nations – states. Such an approach is vividly represented in the name of the international organization 'United Nations'. The name professes the unity of nations (countries) willing to co-exist in peace and accord. In this case, the interpretation should enable the state to establish foreign policy in compliance with peace and security requirements.

II. The term 'Interethnic' is used to demonstrate the relations between nationalities or ethnoses within the country. The term 'inter-ethnic' is also mentioned in the legislation. It should be emphasized though that in terms of its content, the term 'interethnic' includes a much broader range of people, including people of different ethnic and religious background. However, it should be noted that terms 'interethnic' and 'inter-ethnic' are seen as synonyms in the Russian legal system.

This dual interpretation has been established as a result of translation nuances ('nation' referring to state, people and nation; 'international' referring to 'between countries'). It is also impossible to ignore how complex the perception of interethnic relations structures is, when issues of nationalities and ethnic affiliation are so vague. Not every individual is ready for national self-identification. Moreover, no one has to.

In this regard, when interpreting some regulatory or other documents, it is necessary to rely upon the document's context and to take the goals and subject of regulation into account.

Analysis of national and international acts has allowed identifying the following ways to refer to 'interethnic\international peace and accord' in various meanings:

1. The use of the term 'international peace' is always focused on the foreign policy of the state and peaceful interaction. A classic case is any fundamental international treaty. Preambles to the UN Charter and the Helsinki Final Act of 1975 include statements regarding maintaining peace when conducting foreign state affairs.

There is a highly unambiguous rule about the measures on reinforcing international peace and security in the Constitution of the Russian Federation (Art. 79[1] of the Constitution). According to Art. 51 of the Constitution of India, the state maintains international peace and security by fulfilling four obligations. India as a sovereign state shall (1) ensure peace directly, (2) establish fair relations with other countries based on respect (Author's Note: in the Article, the word 'nations' is used to refer to states as a confirmation of suggested approach I to the term 'interethnic'). Moreover, the Indian state (3) fulfills international commitments and (4) encourages dispute settlements in international bodies.

2. Inclusion of 'peace' as an independent concept into the text requires referring to the context, since the word may be a part of both intrastate values and external commitments.

For example, the purpose of the 1984 Declaration on the Right of Peoples to Peace adopted by the UN General Assembly is exclusively to establish peace on Earth as a whole. The Declaration on the

Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples adopted by the UN General Assembly in 1965 and the Declaration on the Preparation of Societies for Life in Peace of 1978 are aimed at supporting two areas: a favorable domestic policy and stopping the arms race on the international arena. In a similar way, double measures are implied by the word 'peace' used in the 2030 Agenda for Sustainable Development. The goal is external reduction in the scale of violence and internal social integration based on respect for people of various origins and ethnic background.

As for the national acts of supreme juridical force, for example, the Constitution of the United Arab Emirates provides for establishment of the Supreme Council for maintaining the peace and security of the Union (Art. 141 of the Constitution of the UAE). In a similar way, the powers of the Russia's President and the country's national body – Security Council – are articulated: to ensure civil peace and accord in the country.

Let us consider some examples of opposing interpretations. It has been established in Constitutions of the Republic of Kazakhstan and the Kyrgyz Republic that the Parliaments of these countries have the right to decide on their own whether Armed Forces need to be involved to maintain peace and security outside the countries' territories, but to fulfill international commitments (clause 5, Part 1, Art. 53 of the Constitution of Kazakhstan and clause 3, Part 4, Art. 80 of the Constitution of the Kyrgyz Republic). The Preamble to the Constitution of Moldova states the intention 'to live in peace and accord with all the nations of the world', which is also how external enforcement of the rule manifests itself.

3. To refer to the term 'interethnic accord' is typical not only for the Russian legal system, but for other countries as well. This term is not used directly in the Russian Constitution, where only the principle of accord is enunciated, but the concept is articulated in program and strategic documents. Reinforcement of the spirit of interethnic accord and religious tolerance is declared in strategic acts of Uzbekistan. According to the oral and written positions of Kazakhstan leaders, interethnic accord in the context of today's global challenges is also considered a fundamental value (Yespolova, 2019: 57).

In terms of combining nationality and religious matters, the exact wordings of the highest document in the Kyrgyz Republic are interesting. According to Part 4, Art. 21 of the Constitution of this state, inter-ethnic and interreligious accord is ensured on its territory, which is equal to legal protection of interethnic accord. The term 'interethnic accord' is not usually used in universal international documents. The accord of people within the state or peace in inter-ethnic relations is more likely to be mentioned in reports of such UN bodies as the Human Rights Council or the Committee on the Elimination of Racial Discrimination. However, on the territory of the CIS or within the framework of certain international treaties between post-Soviet states, interethnic accord has been recognized as the highest political, moral and human value for almost 30 years already (the Ashgabat Declaration on Development of Cooperation and Enforcement of Trust in the Relations between the State Parties of the Commonwealth of Independent States of 1993). Additionally, for the purpose of interethnic accord harmonization, the Memorandum on Cooperation in the Field of Migration of July 8, 1994, and the Agreement on Humanitarian Cooperation of the State Parties of the Commonwealth of Independent States of 2005, were entered into.

4. Establishment of 'harmony' in the documents can be seen directly as accord or as the result when reaching interethnic accord. For example, according to the Constitution of India, citizens shall promote harmony and the spirit of fellowship among all Indian people, while overcoming any religious, linguistic, regional and social barriers ((f) of Art. 51A).

Additionally, harmony as a result is referred to, no matter how rarely, by international bodies in their reports and memoranda. For example, in the Concluding Comments on the 8th – 10th Periodic Report of Kyrgyzstan of May 30, 2018, the aforementioned UN Committee spoke about the need to reinforce inter-ethnic relations in the country. The state is advised to take all possible measures 'to provide various ethnic groups with the opportunity to live in harmony together (clause 20)'. Today, we can see that these and other comments by international bodies about Kyrgyzstan have become the premise for the 2021 constitutional reform in the country.

5. The lack of references to verbatim phrases like 'interethnic peace and accord', 'interethnic accord', 'inter-ethnic accord' and other previously articulated similar versions do not attest to the fact that the act does not regulate this matter at all. Since the issue of peaceful relations among the people living in a country depends on several mutually related rights and obligations, legislators usually resort to the minimum – they simply declare a non-discrimination principle in the regulatory acts. Descriptive regulation can be found

much less often in legislation. For example, the non-discrimination principle is detailed in the Constitution of India (Art. 15).

The international community also acts in a similar manner. For example, one of goals established in the UN Charter is maintaining international peace and security. Meanwhile, the interethnic issue is also documented in the UN Charter as 'respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion (Part 3, Art. 1)'.

Discussion

In the context of multiple approaches to interethnic relations in general, it is quite difficult to reach a common denominator. However, some common approaches still have been developed in theory and practice.

For example, there is a documented definition of peace in the UN system. According to the Resolution of the UN General Assembly of December 19, 2016, peace is 'a positive dynamic process based on extensive participation, where dialog is encouraged, conflicts are resolved in the spirit of mutual understanding and cooperation, and socio-economic development is ensured'. This document is unique in its own way, since it has managed to unite domestic and foreign policy. In these two areas, peace is the lack of conflicts (international and civil wars, armed clashes within the country and beyond). It is also fair to say that the meaning of peace does not come down to a lack of conflicts. On the contrary, it should be noted that conflicts are a given, they cannot be avoided. This is rather about effective ways to settle, overcome conflicts. Some criteria that imply not power methods, but unification of nations through cooperation, mutual help and interaction are suggested for conflict settlement. A preventive mechanism for crisis situations is no less important.

Moreover, defects in the system of interethnic peace within the state lead to stagnation in the social and economic development of society. And this is a two-way street. When there is no modernization, society can lose its national identity. In this case, interethnic conflicts intensify (Yuki, 2021: 1–2).

All the aforementioned explains why countries must treat interethnic relations as constitutional values and guarantee their protection, even if this requires constitutional framework transformation along with some reforms of executive government agencies, civil society or certain areas of life. For example, mass media plays a major role in establishing the image of interethnic accord in the state, therefore, legal control over the freedom of mass media will most likely be reconsidered (Tovmasyan, 2020: 38).

Interethnic accord has been recognized as a part of political relations that must be built based on the principle of solidarity and lead to national unity (Hoffman, 2015). Subsequently, the term 'interethnic accord' was studied in different sciences. For example, in sociological studies, the concept was articulated through the theory of communication (Drobizheva, 2018). Nowadays, when law, sociology, political and other sciences are combined, an integrative definition can be found in the form of the interethnic accord concept meaning an internally consistent state of social relations that provides for integration of national and ethnic groups based on objective common interests and civil identity (Martynov & Purtova, 2019: 46–47).

The foundation was laid for reform in Russia in 2012 with the Strategy of the State National Policy of the Russian Federation approved by a Decree of the President of the Russian Federation. In 2015, along with a basic document, a responsible federal executive authority was restored under a new name – Federal Agency for Ethnic Affairs. New goals and objectives were established in the Strategy, and the entirety of changes aimed at implementing the course on national unity was eventually reflected in the revised version of the Constitution of 2020.

The Strategy defines that the Russian nation is reflecting all the ethnic, cultural and linguistic diversity of the country. Interethnic relations and national-cultural needs are defined; political priorities are set with the ultimate goal to maintain interethnic peace and accord. Subsequently, these provisions were reflected in Federal Law No. 131-FZ 'On the General Principles for the Organization of Local Self-Government in the Russian Federation' of October 6, 2003, where municipal entities, aside from rural settlements, were given the task of creating conditions to take measures to support interethnic and interreligious accord, to preserve languages and cultures of peoples, to help migrants adjust, and to take preventive measures against interethnic conflicts (Malkovets, 2018).

However, not all the transformations conducted in 2020 have harmonized the legislation. On the contrary, currently, some areas have appeared where further consideration in theory and practice is required.

1. According to Part 3, Art. 69 of the Constitution of the Russian Federation, fellow countrymen have the right to preserve the all-Russian cultural identity secured by law. However, the Strategy focuses on the all-Russian civil identity. The difference might be explained by the fact that civil identity is shaped, among other things, through the stable legal connection with the state, i.e., citizenship, while not all fellow countrymen are citizens. However, even without citizenship, fellow countrymen can still remain bearers of Russian culture. This has been confirmed by a few studies according to which the all-Russian identity consists of many components and includes national, cultural and territorial identity (Drobizheva, 2017: 27).

2. The Strategy of the State National Policy has shown several ways to combine terminology that actually attests to the lack of a single established glossary: 'interethnic accord' (clause 4, Section I), 'interethnic and interreligious peace and accord (sub-clause 'e', clause 5, Section I), 'interethnic peace and accord' (clause 13, Section II); 'interethnic (inter-ethnic) accord' (sub-clause 'c', clause 21_1, Section III).

It should be noted there is an additional reference to 'harmonization of interethnic (inter-ethnic) relations' (sub-clause 'd', clause 21_1, Section III).

3. The most controversial issue in the Strategy is the reference to national accord (sub-clause 'a', clause 17, Section III). National accord reinforcement is viewed as the purpose for the state policy, but it is not revealed in the document what this accord is exactly. Let us assume that national accord is the state of peaceful co-existence of the country's people, but the Russian people are multi-national. In view of such an interpretation, it is possible to suggest that it is interethnic (inter-ethnic), interreligious accord and peace that serve as the core underlying national accord.

4. Theoretical reasoning is required for the updated rule of Part 1, Art. 68 of the Constitution of the Russian Federation. It claims that the Russian people are a state-forming nation as Russian native speakers. At the same time, the people form a multi-national union based on principles of equal rights. On the one hand, provisions about the multi-national union support interethnic accord in the country. On the other hand, the declared 'state-forming' people status has some 'dark' consequences. They involve establishment of a potentially conflicting situation in the field of interethnic relations. When the constitutionally secured status of one ethnic group implies domination over another, then under certain circumstances, the latter will inevitably see such a state of affairs as an infringement on their interests based on their ethnicity.

5. Constitutional changes have already caused a review of the State Program of the Russian Federation for Implementation of the State National Policy. All the passports of the Program became invalid on January 1, 2022. Currently, only general provisions remain in the document. Such a situation appears to be a natural consequence of the transformation.

It is also important that in 2021, the national policy received protection in the form of measures implemented within the framework of the Security Strategy. Particularly, the latter included a definition of national security as a state when civil peace and accord, social and economic development, among other things, are maintained in the country. Further, as the text goes, the state of civil peace and accord is elevated to the rank of a national interest. Additionally, the Strategy points to the modern challenge associated with stimulating interethnic and interreligious conflicts both within the country and beyond, when Russian citizens or Russian speakers are subject to ethnicity-based and linguistic-based discrimination abroad.

The great value-based role of interethnic relations has been emphasized by the Russian Constitutional Court. In particular, the highest judicial body of constitutional control has worked out the following points:

– in the case over challenging the constitutionality of provisions in Federal Law No. 114-FZ 'On Counteracting Extremist Activities' of July 25, 2002, the Court held that measures aimed at counteracting extremist activity equally promote reinforcement of interethnic peace and accord, harmonization of interethnic (inter-ethnic) relations and, therefore, can not infringe on the constitutional rights of the applicant (Decisions No. 347-O and No. 245-O of February 17, 2015). In fact, the Strategy for Countering Extremism approved by the Presidential Decree in 2014 is aimed at protecting interethnic (inter-ethnic) and interreligious accord just like the Security Strategy. A new revised version of the Strategy was presented in 2020 to emphasize forecasting of developments in the country and in the world in the field of interethnic relations. No active measures, performance targets and expected results have been provided in the document because of its wait-and-see attitude;

– in the case over challenging the constitutionality of Articles in Federal Law No. 80-FZ 'On Perpetuating (the Memory of) the Victory of the Soviet People in the Great Patriotic War of 1941–1945' of May 19, 1995, the Court explained that the state of interethnic peace and accord serves as a benchmark of sort

against which it is determined whether there is a body of the offense per Part 1, Art. 20.3 of the Code of Administrative Offenses of The Russian Federation for violation of the ban on using Nazi symbols. In other words, it is necessary to establish a threat for accord that has actually caused disharmony of interethnic (inter-ethnic) relations (Decision No. 2923-O of October 24, 2019).

Finally, to demonstrate the evolution of practices of the Constitutional Court of the Russian Federation it is interesting to turn to Decision No. 18-P of December 15, 2004, on a complaint by the Russian Orthodox Party. In those pre-reform years, interreligious relations were not yet objects of the dispute as such in terms of the Court's legal position. The Court only protects civil accord. However, constitutional values represented by ethnic and religious specificities typical for Russian society were supported by the decision. The decision substantiates the need for a special approach to interaction between the state, ethnic communities and religious groups.

Conclusion

A tendency towards constitutional framework transformation can be observed in many states of the Euro-Asian Region. Facing the issues of migration, even European multi-ethnic spaces realize that they cannot avoid working out some legal control mechanism in the field of interethnic accord.

The Russian Federation with its unique polyethnic population that comprises almost 200 nationalities and practically all world religions has gained certain experience in the field of developing legal guarantees and specific measures to protect national unity in the diversity of its cultures. The accumulated experience laid the foundation for the changes in the Russian Constitution and updates in the program and strategic documents.

Over the last five years, other countries have also turned to changing the constitutional framework in order to maintain peace and unity in the country.

Thus, in 2017, the Republic of Kazakhstan updated Art. 39 of Part 2 according to which from now on, any actions violating interethnic and interreligious accord are deemed unconstitutional. The provisions were the government's attempt to protect a constitutional value – the national unity of Kazakhstan. In the context of a multi-ethnic population (over 130 ethnic groups) and an active flow of migrants that cross the borders of Kazakhstan, such changes were inevitable as additional legal guarantees (Jakupov, 2012: 115).

In 2020, provisions regarding a ban on creating militarized associations the actions of which could have spread discriminatory propaganda were reviewed in the Constitution of Turkmenistan.

The 2021 constitutional reform in the Kyrgyz Republic was also partially caused by the need to reinforce inter-ethnic relations, including in light of remarks made by international bodies.

In March 2022, amendments to the Constitution of the Republic of Belarus came into effect. According to them, constitutional values now also included national identity and peace, and establishment of a socially just society was now under legal protection (Preamble).

In 2022, the goal to reinforce the spirit of interethnic accord was set in the Development Strategy of New Uzbekistan before 2026 approved by Presidential Decree No. UP-60 of January 28, 2022. To achieve this goal, the state sets such objectives as support for mass media and the content that cover interethnic relations, creation of ethnic cultural centers, and improvement in the culture of interethnic communication while also reinforcing patriotism. A year earlier, the Strategy of the Republic of Uzbekistan for Countering Extremism and Terrorism established by Presidential Decree No. UP-6255 of July 1, 2021, was reviewed. It also emphasized the need to create interreligious and interethnic tolerance, especially among the rising generation. The required level of tolerance is expected to be achieved due to increased interest in history and culture, as well as in traditions of ethnic groups. Meanwhile, there are just two large ethnic groups in Uzbekistan: Turko-speaking majority and Russian-speaking minority, and, as researchers note, there is no issue with disharmony of national unity as such in the country (Kulueva, Farfieva & Rasulova, 2020: 44–50) which does not mean that legal guarantees are not required though.

Aside from transformation on the national level, the need for interaction between states on the global level is growing as well. Universal international organization usually choose to make a generalized statement regarding the principle of peace. Regional treaties, e.g., those signed within the CIS that propose certain measures for mutual enrichment and acceptance of each other's cultures look much more applicable. In fact, in regional international organizations, member states not only have adjoining borders responsible for migration issues, but also traditional cultural and everyday ties between the represented nations.

The transformations described above are pre-determined by the state national policy as well as by the actual ethnic and religious composition of the population. At the same time, they serve as the legal guarantee for preserving national unity. The lack of transformations can disrupt the balance in the peaceful co-existence of ethnic groups both within the state and beyond. Moreover, peace is the only condition for full-fledged encouragement and protection of human rights. In this regard, states should distinguish the concepts of interethnic peace (accord) and international peace. States are free to choose any definitions, but national unity is always built on interethnic, inter-ethnic and interreligious accord without any discrimination on the already mentioned and other common bases. Such a conflict-free state is impossible without supporting the non-discrimination principle and supremacy of law in general. Therefore, states should continue to reinforce peace within the society while building humanitarian cooperation with each other to spread interethnic accord as a universal human value.

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Research Article

LABOR ON ONLINE PLATFORMS: THEORETICAL AND PRACTICAL ISSUES

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Labor on online platforms has increasingly gained momentum in the recent years. However, there are still disputes regarding the nature of the established relations, such as whether such relations should be considered employer-employee, self-employed, civil law, etc. Foreign courts are recognizing these relations as labor relations more and more often, but the courts of the Russian Federation do not see it that way. As a result, workers on online platforms are still lack guarantees and benefits provided by labor law standards. The use of online labor has gained momentum particularly in the context of the COVID-19 pandemic. However, this is not only connected with development of delivery services or taxis. This area also includes IT work such as web design, financial consulting, social media marketing, handling documentation, administration, creative professions, blogging, teaching online, medical work, etc. This format of employment provides the opportunity to combine work with family duties, looking after children or parents, staying at home, and working in the most convenient time. Also, this work format provides the employer with extra opportunities for business expansion and cost savings such as saving on office rental costs, utility bills, etc. However, online work blurs the lines between work time and time for rest, puts the observation and guarantee of health and safety requirements, standards of social assistance and social security of workers under question.

Key words: *gig economy, worker, online platform, employer, international standards*

Introduction

Work on online platforms is becoming more and more popular. Thus, the need arises to define what sector of legal regulation for labor this category of workers belongs to. These labor relations have triggered new concepts and created a need to accept new standards of labor legislation. They are associated with the issues of using time for work and rest, resolving problems with labor protection, workers' social security, training and re-training, and the ability to receive medical and social assistance. Nowadays, an interdisciplinary approach to labor research of the abovementioned worker categories seems to be necessary, specifically when it comes to international labor standards. Modern digital platforms are ecosystems. Employers see them as an opportunity to find a worker or workers they need, no matter their place of residence. A worker has a chance to work for several employers, and it's a chance to get training or re-training. This system has extensive networks of interaction with corporations and enables the recruitment of workers in various industries to create industry-wide workforce ecosystems. Such an ecosystem allows everyone's interests

to be taken into account. Both for the employee looking for work and for the employer looking for a 'quality' worker and planning to develop their business, organize re-training of employees, etc. The goal of the research is to identify the sectoral affiliation of workers' labor on online platforms. Objectives: define the term 'gig worker', develop special features that allow the sectoral nature of labor relations of online workers to be established, examine special features of online workers' labor, formulate the main prospects of development for legal regulation of online workers' labor. Hypothesis: currently, the term 'gig worker' or 'platform worker' has no commonly understood concept, therefore, it needs to be created and codified. Workers on online platforms need these relations to be recognized labor relations, which will give them the opportunity to have labor rights and receive guarantees established by labor legislation.

Materials and methods

Digitalization and the development of online technologies allow us to discuss the opportunity to use the following methods when researching the issue of legal regulation for labor relations of workers employed on online platforms.

1. Description. In order to identify the attributes of labor relations on online platforms, these relations need to be examined and described as a legal phenomenon. Description as a method implies collecting data and analyzing their characteristics. Description allows us to analyze the phenomenon in question from different points of view, in different situations and for different categories of workers. This method is used both for Russia and for other countries.

2. Comparison. For the purposes of this research, this method needs to be used in the following areas: 1) to compare the identified attributes of labor relations with international standards, and 2) to compare the existing relations arising during work on online platforms with their equivalents abroad. It will enable the identification of features in common with international standards and analyzing positive and negative experiences of legal regulation for labor on online platforms in other countries. This method is used to examine international agreements, particularly documents from the International Labor Organization and the European Union, the standards of labor legislation in other states as well as judicial decisions from other states regarding the recognition of online workers' relations as labor relations.

Results

The conducted research has allowed us to come to the following conclusions:

1. There are more and more workers on online platforms. In Russia, this tendency was not mainstream until the COVID-19 pandemic. However, as an example, over 35 % of the working population is employed in this field abroad in the USA. Such a growth in people working in these conditions has required introducing some changes to the existing national legislation of most states.

2. Neither in Russia nor in other countries does a legal concept of an 'online worker', 'platform worker' or 'gig worker' exist, so the researched material has allowed us to formulate an authoritative definition of who such a worker is.

Discussion

1. Work on Online Platforms

Platform employment is a dynamically developing format that can serve as either full-time job or a part-time one. Though existing statistical data do not allow us to estimate the size of this segment of economy precisely, it can be said that in the last decade it has grown exponentially in terms of both population engagement and money turnover. Platforms are mediators and facilitators of the service delivery process. While not being employers, nowadays they have already become an integral element of the labor market infrastructure. Essentially, platforms' function is to match supply and demand, and in this sense they do not hire workers, but help them by providing a convenient venue to search of employment, clients and customers. In this context, those employed through platforms should be considered as the platforms' partners that provide supply of services within the ecosystem created by the platforms (Sinyavskaya et. al., 2021: 4).

According to Owl Labs research[1], 16 % of companies have been completely eliminated across the world. The same research has shown that about 62 % of workers aged 22–65 say that they work remotely, at least from time to time. The survey by Owl Labs has shown the following: distance workers save 40 minutes per day on average on commuting; since 2020, people have started videoconferencing by 50 % more often than before COVID-19; 23 % of the respondents would agree to have their salaries reduced by 10 % if they could work from home permanently; people save by staying at home while working; only 20–25 % of companies partially compensate equipment and furniture for home offices; 81 % of respondents believe that their employer continues to support working from home after COVID-19; 59 % of respondents have said that they would most likely choose the employer that offers working from home than the one that doesn't.

However, in this case the issue is working from home, not work on online platforms. It should be noted that the number of workers in the gig economy is growing, their area of activity is expanding, too. In August 2021, Pew Research Center[2] held a poll among the adult population of the USA and found out that 16 % of Americans had at some point earned money working on online platforms by at least one of the following means: ride hailing apps; purchase or delivery of food products, household appliances; doing household chores such as cleaning, assembling furniture or performing assignments; deliveries from restaurants or stores using an application; using their personal car to deliver parcels via a mobile app, or a website such as Amazon Flex, etc. Earnings through these applications or websites depend on a few factors, primarily age, race and ethnic background, as well as family income. Three out of ten young people aged 18–29 have earned money using online platforms, but this share falls to 18 % among individuals aged 30–49, and even lower among individuals aged 50 and older. Aside from workforce composition, the research also identifies many ways people choose to work over the Internet and to integrate this work into their lives. Gig workers consider it not their main source of income, but a part-time job. And only a relatively small number of people that have done this kind of work over the last year say that they spend over 30 hours on it during a routine week.

The World Bank ascribes three outsourcing categories varying in qualification levels and time expenditures on carrying out operations to the gig economy: micro-work, freelance and business process outsourcing. In fact, gig employment covers a wider range of areas of activity. Since it provides for the execution of short-term orders at predetermined rates, it's also called 'the 1099 economy'. Strict criteria for a 'short period of work' and contracts based upon this period are yet to be worked out. Gig economy agents can work for more than a year under renewed agreements while being considered executors of short-term contracts. The major means of communication in this model is technological platforms where users can be considered employed in the gig economy. Labor platforms link workers with employers, and capital platforms link owners of assets with leaseholders. The first of the abovementioned categories includes Uber, Task Rabbit, Swiggy, Zomato, etc. Users of these platforms can attend to one or several customers at once. For example, a food delivery courier is registered on Swiggy and Zomato, and in their remaining time works part time as an Uber driver. In its turn, aggregators often have a multiservice setup. Thus, Uber, which specializes in passenger services, also organizes a food delivery service (Uber Eats). Capital platforms include Airbnb which serves as a mediator for lease of premises, as well as Zipcar and Hertz that provide car rental services (Banik & Padalkar, 2021: 21).

The gig economy goes beyond the provision of periodic, one-time services to a consumer. Platforms also work in the b2b segment and allows you to find executors for non-major projects at a given company, or for jobseekers, to find a project in another city or even another country[3].

By summarizing statistical data, survey results, and the opinions of scientists, positive and negative aspects of work on online platforms can be identified:

[1] Statistics on Remote Workers that Will Surprise You (2022). Available at: https://www.apollotechnical.com/statistics-on-remote-workers/#:~:text=Statistics%20on%20remote%20workers%20reveal,to%20an%20Owl%20labs%20study [Accessed: 9 March 2022].

[2] Pew Research Center. Available at: https://www.pewresearch.org/internet/2021/12/08/the-state-of-gig-work-in-2021/pi_2021-12-08_gig-work_0-01/ [Accessed: 9 March 2022].

[3] Platform Employment: Progress or Returning to the 19th Century. Available at: https://trends.rbc.ru/trends/sharing/61fa98119a79470a7a1997b7 [Accessed: 9 March 2022].

Table 1. Comparative Analysis of Work on Online Platforms

Positive	Negative
A chance to earn money quickly[4]	Gig work doesn't solve unemployment issues
Flexibility: an opportunity to control when and how much work to do	Gig workers don't have any labor guarantees, e.g. such as an annual paid leave, labor protection, social partnership
An opportunity to control one's schedule	Higher chances of being infected with COVID-19
The work is usually short-term, so you can change platforms quickly	Precarious employment relationships
You can combine several platforms	Low workforce cost
Opportunities for trans-border work	A narrow range of worker skills
	Problems with social partnerships and trade unions

Therefore, platform workers are workers with flexible working hours employed in the gig economy based on short-term contracts without being on the company's staff.

2. Platform Workers: Practical Issues

There are several megatrends today: rapid development of innovations and technologies; a change of size, age structure and location of the world population; changes in the balance of power between developed and developing countries; impending loss of fossil fuels; extreme weather conditions, a rising sea level; and a water deficit. All these things affect the labor market and, ultimately, work in the gig economy[5].

It appears necessary to turn attention to the following issues that require resolution:

The use of information data. There is much concern about safety of gig worker's personal data nowadays because of increased frequency of cyber attacks on various companies.

A human-centered approach. Since definition of the term 'gig workers' remain vague, a question about the sectoral affiliation of these relations arises. In Russia such workers are considered individual entrepreneurs or self-employed. However, it does not mean that everyone who works on cloud platforms is officially employed, so quite a large percent of workers remains in a sort of 'grey' sector of economy. In foreign countries this issue is addressed in different ways as well, and the courts never deliver identical judgements regarding platform workers, such as considering some relations labor ones (e.g., those of food delivery workers) and others are not (e.g., taxi workers) (Defossez, 2021). For instance, in 2018, the Court of Cassation (one of France's courts of last resort)[6] recognized the relations of Take Eat Easy workers (a food delivery company) as labor relations. The Court proceeded from the fact that there were certain criteria to recognize relations as labor relations, such as the fact that the work was to be done in the interests of the employer-platform; workers were to be monitored by the platform (a system of geolocation on bikes, calculation of distance in kilometers, etc.); the platform had to pay remuneration to workers and to hold them liable (a charging scheme). In a similar way, the issue with workers at Deliveroo and Uber was addressed, which allowed them to settle the matter of severance payment in the workers' interest. However, later on not all courts delivered similar judgements regarding platform workers, therefore leaving their legal status unclear.

In Spain, the relations of Deliveroo workers were also recognized as labor relations[7]. Additionally, Deliveroo was ordered by the court to pay 1.3 million euros as unpaid social contributions after the

[4] About at least a half of surveyed workers refer to their wish to get extra money (56 %) or a need to cover expenses or changes in their income (52 %) as the main reasons why they have taken up such jobs in the last 12 months.

[5] The Future of the Labor Market. Contradiction of Trends that Will Generate the Work Environment in 2030. Available at: https://www.pwc.ru/ru/publications/workforce-of-the-future-rus.pdf [Accessed: 9 March 2022].

[6] Cour de cassation, civile, Chambre sociale, 28 novembre 2018, 17–20.079, Publié au bulletin. Available at: https://www.legifrance.gouv.fr/juri/id/JURITEXT000037787075/[Accessed: 9 March 2022].

[7] See, for example, the Decision of the Madrid Court STSJ M 1/2020 – ECLI:ES:TSJM:2020:1. Available at: https://www.poderjudicial.es/search/AN/openCDocument/53b1b1721a75d34a10b129baa45c19bf179e3f439af7b2cc [Accessed: 9 March 2022].

Court of the 24th Social Tribunal in Barcelona established that 748 suppliers had been workers with labor contracts. The issue was completely settled after a decision of the Supreme Court of Spain unanimously declared drivers as wageworkers to put a stop to controversial decisions[8]. Recently, Spain has settled the matter by accepting a special law (Riders' Law)[9] according to which drivers and food delivery workers are recognized neither as self-employed nor independent contractors, but workers with labor contracts. It was a result of a three year long collective agreement, made on March 10, 2021, between the CCOO union trade (Workers' Commission) and UGT (General Union of Workers), the CEOE employers' organization (Spanish Confederation of Business Organizations) and CEPYME (Spanish Confederation of Small and Middle-Sized Enterprises) and the government of Spain. According to the Minister of Labor of Spain, due to the efforts of inspectors, 16,794 individuals managed to legitimatize their working status. It had an economic effect amounting to 29 million euros[10]. It should be noted that the Law legally binds enterprise platforms to inform food delivery workers about specificities of their labor relations, since their work is closely connected with the operations of artificial intelligence which helps to establish the interaction algorithm for the platform and delivery driver. In Spain, it is thought that adoption of the law will have an effect on similar relations in other industries as well, since the use of artificial intelligence is becoming practically ubiquitous.

It appears that the Law in question will not only influence Spanish national legislation, but can serve as a model for other states, and not just European ones. In this case, one may talk of the human-centered approach stated in the ILO Centenary Declaration in 2019.

Some countries have also adopted court decisions to recognize relations of platform workers as labor relations. However, Spain is the only place that has a special law regarding platform workers. It should be noted that judicial practice, however, tends to act in favor of workers and gig workers to recognize their relations as labor relations, which is, for instance, proved by legal precedents regarding Uber workers in Austria and the United Kingdom (Doyle, 2021).

In Australia, judicial practice also relied upon the fact that platform workers were self-employed, but Diego Franco v Deliveroo Australia Pty ltd (U2020/7066) was the first one where the court acknowledged the wrongfulness and unlawfulness of the dismissal of an employee by recognizing that relations between the worker and the platform had been labor relations (Fraser, Smith & Yeung, 2021).

Some countries chose another path. For example, in Belgium, platform workers are not granted any kind of special status in accordance with labor legislation. These workers can be either wageworkers or self-employed; it all depends on the contract between the worker and the company platform. Belgian courts mostly consider these workers self-employed. In Chile, for instance, judicial practice is based on the idea that platform workers are freelancers. A similar position can be seen in Malaysian judicial practice. However, it should be noted that such workers have no right to compensation for sick leave or payment for time spent in quarantine if they test positive for COVID-19 (Majeed & Hassan, 2022).

In some countries, gig workers have a hybrid status where platform workers are recognized self-employed, but some contributions to social security are provided, for example, in Columbia, a law has been adopted[11] to provide for contributions platform workers' social security depending on the number of working hours. A flexible system was created, in accordance with which contributions can be paid either by days or by hours.

Conclusion

Therefore, after examining of judicial practice and the opinions of scientists that specialize in labor, laws and regulations, the conclusion can be drawn that there are different approaches to the definition of platform workers' legal status in different countries. One can identify the following main approaches:

[8] See more: Decision of the Supreme Court of Spain: STS 2924/2020 – ECLI:ES:TS:2020:2924. Available at: https://www.poderjudicial.es/search/openDocument/05986cd385feff03[Accessed: 9 March 2022].

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1) gig workers are recognized wageworkers; 2) platform workers are recognized as self-employed or freelancers; 3) workers with an independent contractor agreement for the prevision of services; 4) hybrid workers.

It can be said that a new category of workers has been established specifically for the gig economy, and these workers are freelancers by status (independent workers), though platforms provide some labor guarantees, such as benefit payments, without recognizing these workers as wageworkers.

The unclear legal status of online platform workers testifies the fact that in the near future, it will be necessary to accept the Convention of the International Labor Organization regarding the activities of these workers. The suggested convention is to be based on the ILO Employment Relationship Recommendation, supplemented with new conditions that can capture the specificities of legal regulation of this worker category as well as issues of health and safety requirements, and social and medical support.

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Research Article

SYSTEMATICITY AS A WAY TO INTERNATIONALIZE THE DIRECTION OF CRIMINAL LAW IN RUSSIA

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The paper provides the rationale for systematicity of phenomena (processes) that serves (can serve) as a way to internationalize the direction of criminal law in Russia. The research methodology includes using historical, sociological, axiological, and logical methods of comparative legal studies that allows expanding the subject matter of research significantly. However, due to the specificity of the research, structured system analysis and functional analysis are used as the main methods. The accomplishment of the objectives set by the authors allowed them to be convinced that the internationalization of Russian law (just like the law of any other country) is not only possible but necessary in a number of cases. This fact is substantiated by the multipolar world order that also reigns in the criminal world, where the development vector has rapidly changed from unipolar to multipolar in the context of recent events. Internationalization of the measures countering such crimes as, for instance, illegal traffic, slave traffic, kidnapping, acts of terrorism, etc. can be taken as an example. Countering any of these crimes as well as any other similar crimes is more than one country can manage, particularly, when the country is less developed or dependent. In this context, efficacy can only be achieved through consolidated and highly organized unity of many countries, which in turn, is impossible without proper international efforts of many countries of the world or – in many cases – of their majority.

***Key words**: internationalization, systematicity, law, criminal law, legal system, system of punishment*

Introduction

In the face of global crises on a global scale, there are processes that have a direct impact not only (and maybe not so much) on the social criminal landscape in the country among other things but on the reasons that cause powerful outbreaks of crime here and there. In this context, the alarming thing is the close affinity between criminal acts notable for their sophisticated commission that would have never been possible without the perpetrator's use for criminal purposes of state-of-the-art developments in the field of technology, chemistry, biology, genetic engineering, and other areas of scientific advancement.

The progress of criminality towards transnational and regional scales puts on the agenda the issue of internationalization of criminal law, criminal-legal relations, criminal codes, crimes, criminality, criminal punishment, etc. In respect thereof, neighboring states join efforts to create various legal formats along

with national criminal law: criminal-legal acts, treaties, conventions, and other international documents to be able to confront the chaos of crimes as much as possible. In many cases, as time goes by, these regional criminal-legal examples become permanent, efficient, and quite acceptable for establishing more large-scale legal systems as exemplified by thematic or other multilateral conventions.

Materials and methods

The research methodology includes using historical, sociological, axiological, and logical methods of comparative legal studies that allows expanding the subject matter of research significantly. However, due to the specificity of the research, structured system analysis and functional analysis are used as the main methods.

To internationalize the educational process means to create a unified educational system for different countries, to integrate educational systems. This is a consequence of the globalization of the entire modern world.

Naturally, internationalization inevitably touches (will and must touch) upon the development of this issue not within a national branch of law, but within its individual parts, institutes, sub-institutes, etc. The internationalism of criminal law, among other things, expands the range of interpretations of the meaning of the criminal law concept.

Nowadays, a tendency for rapprochement between criminal-legal systems is observed. The modern process of globalization encompasses more and more different areas of public life. Trends for active rapprochement of different countries in the world determine the socio-economic, political, and many other factors on a global scale. While having their special features, the legal systems of states still have similarities.

As a social phenomenon, criminal law due to its diverse nature is usually perceived by average citizens (in the good sense of these words) with a reference to three main aspects: associative, every day, and official.

The first aspect, associative one, is tied to a deep ethnic perception of criminal law the same way traditions, customs and religious taboos serve as natural regulators of relations between people.

The second one, everyday aspect, is based on the idea that criminal law is a social value without which humans, communities, ethnic groups, nations, societies and countries can't live safely, since criminal law is the only way to resolve issues regarding crimes and punishment for criminal activities.

The third official aspect of criminal law allows seeing it as a unique phenomenon of the socio-legal reality, a product of the country's (or countries') activity, a subject of scientific knowledge and study in the process of professional training.

This fact once again proves the point that a uniform consolidating concept of criminal law that could be applicable for all cases is hardly possible. And there actually is such an imperative need for it. This is most likely explained by the fact that the concept of law as such cannot ignore the question of what the law is in general. It is to be interpreted despite the branch it belongs to. It should be noted though that it is the positivistic approach to defining this term that has quite a few supporters among legal theorists.

This is hardly an indisputable statement since on the pages of legal literature the positivistic approach is often accompanied by many interpretations of law, including the so-called natural law interpretation. Its definition is not tied to the emergence of a state or any human activity, but to the nature of God or people expressing their visions of kindness, freedom, justice, equality, etc. It is the natural law interpretation of criminal law that mostly gravitates towards internationalism that is often blurred in unbounded space.

Considering that the concept of law in its original definition generates so many different theories about its essence, origin, features, and so on, it is difficult to see the situation as logical when only one (positivistic) approach to the concept of this law branch is reflected in the current attempts to define criminal law. This inevitably leads to a situation where some legal theorists who have recognized the limitations of the positivistic interpretation of law conclude that law is some measure of freedom or 'a system of standards expressing a measure of human freedom adopted or sanctioned by the state and protected by it from any violations' (Kozachenko & Novoselov, 2013). With respect to criminal law, the reality is that Russian criminal-legal theory is not ready for such a concept of criminal law yet.

Aside from the positivistic methodology, what most of today's definitions of the concept of criminal law have in common is that they describe this law branch as a certain body of legal codes (internationalization of criminal-legal codes).

It has been established by the general theory of law that any legal code is a certain rule of human behavior. Hence, the criminal law code is also a certain rule of behavior. From the perspective of existing views, the specificity of criminal law codes should be viewed as the fact that it contains such a form of behavior that creates a risk for vitally important values and, therefore, such behavior is criticized from the moral point of view and prohibited by the legislator (Yatselenko, 1995).

However, it should not be overlooked that the criminal-legal code is always connected with a certain behavior of the law enforcer one way or another since it is the enforcer that must not only assess a socially dangerous act in terms of whether it is envisaged by the criminal law but also inflicting a punishment on the guilty person if necessary. Considering the latter, it becomes quite relevant for an understanding of criminal law as a body of codes to decide to whom the behavior patterns provided for by criminal-legal codes apply: to those who commit socially dangerous acts, to those whose responsibility it is to enforce the criminal-legal code, to classify the act as a crime and to inflict a punishment for this crime, or to both of them? The answer to these questions conceals the latent forms of a certain process that insistently points to the intersection of two kinds of forces (internal and external) that drive the internationalization of criminal law, criminality, etc.

Obviously, this is not the only problem caused by the concepts of criminal law as some body of codes. Actually, criminal law in national legal literature used to be interpreted not as a body of codes, but, for example, as a body of 'laws, customs and provisions of judicial practice' (A. F. Kistyakovsky) or a body of 'legal rules' (N. S. Tagantsev). However, subsequently, such views did not receive broad support.

Nowadays, the concept of criminal law as a body of codes is called into question because of some considerations according to which:

a) it is not criminal law, but criminal legislation that constitutes a body (system) of codes that establish principles and fundamentals of criminal liability, a range of acts considered criminal, types and scope of punishment for them, the grounds for absolution from criminal liability and punishment;

b) criminal law as a branch of law encompasses not only criminal legislation but also criminal-legal relations associated with lawmaking and law enforcement (N. F. Kuznetsova).

Still, the discussion stemming from this issue suggests that currently, the question remains as to what exactly is meant – criminal legislation or criminal law as a branch of law – when the definitions touch upon a body (system) of codes that establish principles and foundations for criminal liability, the range of acts considered criminal, types and scope of punishment for these acts, the grounds for absolution of criminal liability and punishment (Boyko, 2008).

The uncertainty of this issue is a naturally-determined phenomenon for the positivistic approach to the concept of criminal law that equates law to legislation. It is no coincidence that in the framework of this approach, legal theorists have faced the need to distinguish two kinds of law in the objective (objective law) and subjective senses (subjective law). This separation criterion has always caused debates in the general theoretical literature.

However, most authors perceive law in the objective sense as a body of legal standards contained in laws, codes, decrees, etc. as well as legal precedents, legal customs, and regulatory treaties; while the law in its subjective sense refers to various personal liberties, rights, responsibilities, and interests secured in legislation or inherent to people from birth. From the perspective of this interpretation of the law in objective and subjective senses, there is another shared feature of all definitions of the criminal law concept where a body (system) of codes, i.e., the law in the objective sense is meant by the term no matter the nuances (Zvecharovsky, 2001).

Unfortunately, unlike the general theory of law, the criminal-legal science does not pay enough attention to the issues of whether some definition of legal law encompasses its interpretation in the subjective sense, exactly what kind of liberties, subjective rights, and obligations are implied by such an interpretation of the criminal law concept, who is the bearer of rights and obligations in this branch of law, etc.

In the middle 19th century, when the positivistic approach to the concept of criminal law was just picking up momentum, representatives from a criminal-legal science expressed some interest in those aspects of the problem. They were particularly interested in what gave the state the right to enforce punishment for a crime committed. Debates on this issue that required going beyond the exclusively objective approach to the concept of criminal law led to theories that practically ceased to provoke any interest at all when positivism turned into an unchallenged methodology in jurisprudence.

Unfortunately, in the modern criminal-legal literature subjective rights and obligations are largely mentioned when analyzing relations that have come into existence as a result of the crime and are the subject matter of criminal-legal control.

Results

When the concept of criminal law is officially articulated in Russian legal literature, it is usually based on the fact that it is some body (system) of codes approved by the highest legislative body (state) and it establishes which socially dangerous acts (acts or inactions) are considered criminal and what punishment should be inflicted for their commission. When this term is defined, it is often additionally mentioned that the codes forming this body: a) are a part of a single legal system; b) are arranged in strict logical order; c) are accepted as federal criminal laws; d) are duly put into force; e) express the people's will; f) are based on certain principles, etc.

Additional information of another kind can also be found in existing definitions of the criminal law concept. Thus, for example, attributing qualitative singularity of criminal law to the specific subject of legal regulation and the main social designation – with protection of social relations from criminal attack, some authors (A. I. Korobeev) essentially provide two independent definitions of the concept of criminal law:

1) as a system of codes established by the top lawmaking body of the state to define the principles and foundations for criminal liability, criminality and punishability of socially dangerous acts, the procedure and kinds of absolution from criminal liability and (or) punishment, as well as the grounds and limitations for applying criminal-legal measures that do not constitute punishment;

2) as a system of standards that regulates the relations that have come into existence as a result of socially dangerous acts committed to protect individuals, society and state from criminality.

In modern scientific knowledge, the main focus is on the issues associated with system research of objects, and law is no exception. Within the framework of the system approach, law is seen as a system-based construct.

Regardless of whether it is specified in definitions of the concept of criminal law, when these definitions are established, it is customary to proceed from the premise that this branch is a body of codes that serves as an independent element of a single legal system. Viewed from such a perspective, criminal law can be ascribed to the branches of intrastate law considering its specificities that provides for identification of interrelations between the concept of Russian criminal law, on the one hand, and criminal law of other countries (foreign criminal law), on the other hand.

With respect to the first interrelations, it should be noted that any domestic (national) criminal law, including Russian criminal law, differs from international criminal law significantly in terms of the accepting subject entity, the objects of criminal-legal protection, forms of exercising, means of enforcement, structure of regulatory instructions and so on.

Many of these specificities are usually reflected in definitions of the concept of international criminal law, as in the case with the systems of codes established as a result of collaboration between sovereign countries or between state bodies or organizations aimed at protecting peace and security of nations, and international law and order not only from grave international offenses against peace and humanity, but also from other crimes of international scale provided for by international treaties, conventions and other legal acts of international scale punishable in accordance with special acts (charters, conventions) or treaties entered into by several states in accordance with standards of national criminal law.

Discussion

The interrelations between Russian criminal law and criminal law of other countries (foreign criminal law) were called upon to identify universals and particulars in order to solve the problem of major criminal-legal systems (families) and the affiliation of modern national criminal law to one of them based on comparative legal studies.

In most cases, the following criminal-legal systems (families) are identified in the legal literature: a) the Anglo-Saxon criminal-legal system (family); b) the Continental-European (Romano-Germanic) criminal-legal system (family); c) religious criminal-legal system (family).

Russian criminal law, as well as national law in general, is assigned to the Continental-European system by most researchers. Typical features of this system are: widespread occurrence; Roman law as the basis; the pursuance of written law with the rejection of common and precedent law; the most abstract and laconic formulations of legal instructions; a codified form of laws and regulations (Tagantsev, 1994). The abovementioned diversity in world systems and families is just a fraction of the entire global and criminal-legal entity. The aspiration to understand this legal phenomenon is not feasible without a deep and detailed analysis and synthesis of the process of internationalization of national criminal law.

In view of the aforesaid, it is reasonable to note that criminal law essentially manifests itself as a multilevel system-based construct. And the institution of criminal punishment is undoubtedly one of these system-based constructs. To some extent this explains our authorial interest in this issue.

The conceptual framework of the science of criminal law creates the theoretical basis required for cognition of objective patterns typical for enforcement of criminal-legal standards. In this regard, the system of punishment as an inherent part of criminal law has its own conceptual framework underlying cognition of objective patterns for functioning of the penalty system. The concept of a 'system' appears to us to be basic. It is systematicity of the researched phenomenon that allows identifying the main patterns for functioning of the penalty system.

Moreover, 'if specifically system-based concepts are ways to represent objects as systems, then specific system procedures serve as ways to implement the system approach as a certain direction of research' (Blauberg, 1973). The system of legal punishment encompasses historically established means and mechanisms the state uses to respond to the most dangerous criminal acts. Efficacy of the penalty system in general is ensured by the optimal structure, i.e., a set of such elements that can work together smoothly.

Analysis of systems of legal punishment existing in legislations of other countries is destined to reveal the most optimal structure for the penalty system. However, there is not a perfect punishment system for all states and there cannot be. Any punishment system reflects the specificity of the state where it was created and continues to function. It seems most important to identify similar trends and principles of punishment system establishment, the most stable elements in the punishment system and ways to improve it in criminal-legal systems of different states.

Attention should be paid to the fact that such punishments as imprisonment or fines exist in the structure of all the penalty systems abroad. Thereby, it can be acknowledged that punishments in the form of imprisonment or fines are the most stable elements in the penalty system for the majority of foreign countries. In this case, the Russian penalty system is not an exception.

Moreover, in most countries there is a tendency towards reducing the number of primary punishments and increasing the number of additional punishments. In the majority of countries, criminal law along with the system of criminal punishment provides for various additional criminal-legal consequences for committing an illegal act as well as some security measures as independent systems.

Conclusion

Internationalization of Russian criminal law is not only possible, but necessary in a number of cases. This fact is substantiated by the multipolar world order that also reigns in the criminal world, where the development vector has rapidly changed from unipolar to multipolar in the context of recent events. Internationalization of the measures countering such crimes as, for instance, contraband, slave traffic, kidnapping, acts of terrorism, etc. can be taken as an example. Countering any of these crimes as well as any other similar crimes is more than one country can manage, particularly, when the country is less developed or dependent. In this context, efficacy can only be achieved through consolidated and highly organized unity of many countries, which in turn, is impossible without proper international efforts of many countries of the world or – in many cases – of their majority.

Criminal law essentially manifests itself as a multilevel system-based construct. And the institution of criminal punishment is undoubtedly one of these system-based constructs.

In the legislation of the Russian Federation, criminal punishment is a way to fight against criminality, and the penalty system is tied directly to the criminal policy of the state. The modern criminal-legal policy of the state in the field of punishment is currently enforced in two opposite directions: humanization and toughening.

The process of humanizing punishment covers more and more countries, and the existing national criminal legislation must respond.

Thereby, currently the criminal-legal policy is carried out consistently with a focus on expanding the application area for so-called punishment alternatives that are not connected with isolation of the convict from society.

However, at the same time, a process of tougher punishment for certain crimes is being observed. This is confirmed by numerous recent changes in the Criminal Code of the Russian Federation. In particular, in order to counter certain types of crimes, the legislator consistently expands the categories of crimes for commission of which a life sentence can be imposed: especially grave crimes against public security; especially grave crimes against sexual inviolability of minors; crimes against the health of population and public morality.

However, the problem with criminality can not be solved by toughening the punishment, although, undoubtedly, criminal policy must be protective rather than liberal. Perhaps, the legislator adheres to 'a deeply mistaken opinion that only toughening enforcement actions against criminals can solve the social problem of combatting crime' (Petrashev, 1988). Additionally, punishment toughening is meant for reasonable criminals able to calculate all the benefits and consequences of the committed crime. Obviously, not all criminals belong to this category.

A key question is how strongly the humanization process affects the existing penalty system. The extent of this influence is restricted by the repressive nature of the penalty system in general. It is impossible to exclude the punitive factor completely from the penalty system, and this also does not make any sense, since the institution of punishment will lose its essence as a result. An example is the radical criminal policy in the field of punishment in the Soviet period that proclaimed a complete shift from measures of criminal punishment to compulsory measures of educational influence, so that 'the penalty system was completely replaced by a system of measures of an educational nature' (Noy, 1973). However, it is generally admitted that punishment cannot replace other regulators of social relations, just as they cannot replace the punishment.

Still, not only the repressive nature of the institution of punishment as such withstands the humanization process. The opposite trend, as it has already been noted, is toughening criminal repression in order to fight against certain kinds of crimes.

A significant disadvantage of the criminal policy is that these two opposite trends have selective enforcement within the framework of Russian criminal legislation. Liberalization is for economic crimes, for example. Toughening is for corruption, terrorism, sex crimes and other offenses. Also, selective enforcement comes with inconsistency. Particularly, any toughening in anticorruption efforts should be out of the question as long as there are so many exemptions in the form of additional guarantees and exclusive procedures for criminal prosecution of officials at various levels.

As it can be seen from the latest changes in Russian criminal legislation, criminal policy in the field of punishment is extremely controversial and based especially on current problems. It is necessary to reach a certain balance, to develop the optimal functioning system aimed at implementing a criminal-legal policy in the field of punishment.

It has been long recognized as a given in the science of criminal law that the inevitability of the punishment is most important, not its severity. So the system of penalties should not be too severe or too weak, but should include the elements of various degree of severity. The issue of punishment severity should be resolved in each particular case when the punishment is imposed on the person found guilty of committing a crime through individualization of the punishment.

To summarize the abovementioned, it is impossible to disagree with the opinion of V. N. Petrashev that the legislatively provided 'extensive scope of criminal-legal means to take compulsory measures against law breakers <...> is the most brilliant manifestation of the principle of actual humanism in criminal law' (Petrashev, 1988). Therefore, the criminal policy of punishment toughening or humanization must be implemented within the existing penalty system that can offer enough alternatives. Anyway, legislation should preserve its main features in the process of development and improvement, and the penalty system is no exception in this case.

The deep internationalization process is aimed at smoothing out strictly internal problems and inconsistencies.

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Research Review

LEGAL TECHNIQUE, CRITERIA AND METHODS OF THE BULGARIAN LEGISLATOR WHEN FORMULATING SANCTIONS IN THE CRIMINAL CODE

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This article is aimed at studying the problems of criminal law-making when determining sanctions in the Criminal Code of the Republic of Bulgaria. The theoretical basis of these problems includes legal aspects on the following issues: a) functional connection between the disposition and sanctions in the structure of the criminal law provision; b) legal technique, criteria and methods of the Bulgarian legislator when formulating sanctions in the Criminal Code; c) need to modernize the foundations of the criminal law in connection with the determination of sanctions of legal provisions.

Key words: *problems, criminal law-making, criminal law provision, sanction, crime, formulation, criteria, compliance*

Introduction

The task of the modern criminal law is to achieve greater certainty and clarity between the disposition and the sanction of legal provisions. This means that the Bulgarian legislator in the process of law-making shall express the provisions in the Special Part of the Criminal Code in the way that ensures the maximum degree of logical connection and *conditionality between the content of the disposition and the content of the sanction*.

Discussion

1. Functional connection between the disposition and the sanction

The implementation of this task can be achieved only when the signs of a criminal act are precisely specified in the disposition – so that they correspond to the punishment specified in the sanction of the legal provisions. For this reason, if the disposition is fixed in a generalized manner and covers a wide range of socially dangerous acts according to its structure, then the punishment provided for in the sanction shall be defined in a broader sense. The generalized formulation of one element and the specific definition of another in the structure of a legal provision leads to complications in determining their content.

Achieving the maximum compliance of the disposition with the sanction is especially important, since it will turn a criminal law provision into a certain legal instrument of regulating certain categories of social relationships. With respect to the problem of the relationship between the two parts of a legal provision, it is necessary to emphasize the following: the function of the disposition is to outline the act, which the law defines as a crime, by means of objective and subjective signs; the function of the sanction is to indicate

the type and amount of punishment, that is, to represent an objective legal definition of a crime. The unity and logical conditionality of this functional connection is not interrupted until the legislator, for technical reasons, formulates the legal provision in such a way as to arrange the disposition in one provision, and the sanction in another. Such is, for example, the case with the amended provision of Chapter 253b, Volume 2 of the Criminal Code; there is no clearly enough expressed sanctioning part in its structure, and it is explained that the punishment for this crime is imposed under paragraph 1 of Chapter 253 of the Criminal Code.

It is also important to note that the relationship between the disposition and the sanction is not absolutely defined, but is relative and *mediated by the will of the legislator*. The latter has a certain freedom to assess the need to change the structure and content of the elements of a legal provision, in accordance with the changes in the objective conditions.

The theoretical basis for solving the problem of compliance and relationship between the disposition and the sanction can be the allocation of the theory of criminal law-making as a section of the criminal law system with the corresponding conceptual apparatus. Just as they are guided by the basic principles and provisions in the criminal law, the representatives of the doctrine should develop clear rules that will simplify the task of the legislator to make correct and scientifically sound decisions. The modern criminal law needs to create criteria for both the correct formulation of dispositions and the correct determination of sanctions for individual legal provisions of the Special Section of the Criminal Code.

The concept of the legislator in the process of law-making should be created on the basis of the characteristic essential features of the sanction.

First of all, it must be borne in mind that the sanction is characterized by a negative public assessment that the legislator gives to the committed criminal act and the person who committed it. This assessment condemns the actor as a negative person in the society. The amount and degree of certainty of the punishment, retrospectively, is a consequence of the degree of its public danger and blame. Another feature of the essence of the sanction is that it is a way for the state power to punish the crime committed. The content of the sanction reflects the scale of the powers that the legislator represents in court in order to impose this or that punishment on the person who committed the crime. In this sense, it is necessary to focus on the fact that in case of some absolutely certain sanctions, the scope of the court's powers is less, and the possibility of assessing specific circumstances on its part in individual cases is excluded. This leads to the fact that the role of the court is limited to ascertaining the crime committed, with which the law associates one specific consequence of the sanction.

In case of relatively certain sanctions, the court is given a greater scope of powers to assess and determine a specific amount of the punishment within the framework defined by law, or when choosing from several types of punishment specified in the Criminal Code. It is particularly important to understand that the structure and the content of the sanction represent a reflection of the law's fairness. The punishment fixed in the sanction part of the legal provision must be a fair retribution for the crime committed. And the last but not the least is the fact that, being a specific legal instrument of counteractions to criminal acts, the sanction has a corrective and educational effect.

2. Legal technique of sanction formulation in the Criminal Code

At the regulatory level, the legislator determines the general rules regarding the definition of the punishment for a committed crime in the content of Articles 54–55 of the Criminal Code. However, the principles of legality and individualization do not fully reflect the complexity of the problem with respect to legal technique in the formulation of sanctions. These imperative requirements of the law regulate the actions of the court when determining the punishment. Any material relating to the relationship between crime and punishment should be considered on a legislative basis. Modern criminal policy and criminal law-making require the creation of effective rules for overcoming the mechanical formal approach in determining the punishment in the sanctions part of the legal provision. It is especially important when choosing the type of punishment and determining its size to find the exact measure between individualized certainty and excessive generalization. The legislator will be able to find this exact measure when he gives a correct quantitative assessment of the severity of the criminal act and fixes this severity in the sanction of a specific provision.

The task of establishing the compliance of the crime with the punishment has two main stages. First, it is necessary to select the types of punishments for each category of crimes in the Criminal Code and

only after that specify the amount of these punishments. To achieve full compliance of the crime with the punishment, it is necessary to preliminary measure these categories and assess their value. This means that the severity of the crime, which is contained in the disposition, should be correlated quantitatively with the quantitative severity of the punishment, which is described in the sanction part of the legal provision. In this direction, the compliance coefficient should be found, i.e. it must be established how much punishment corresponds to the unit of the severity of the crime. As a result of the measurement done, a system can be created in which the punishments for certain categories of crimes in the Special Part of the Criminal Code will be ranked in the view of their severity. Such a system would be especially effective if the boundaries (limits) of punishments were fixed in it.

Measuring the specific severity of certain types of punishments for various crimes in practice will make it possible to more accurately determine the upper (maximum) limit of the punishment when being formulated in regard to certain sanctions. Something more will serve as the basis for guidance of the legislator – both when structuring sanctions in the process of criminalizing new criminal acts, and when assessing the sanction consequences already defined in the Criminal Code. Further, this system will affect the degree of certainty of punishments and lead to an improvement in the structure of the relative determination of the sanctions. It is known that today in the current Criminal Code there are some relatively certain sanctions, in which the punishment is determined in such a way that it can be individualized.

Despite the fact that the absolute certainty of a sanction is excluded as a principle of the modern legislative policy, arguments in favour of the need to create this type of sanctions exist and are conditioned by both the emergence and development of new forms of criminal encroachment, and the forms of criminal activity already described in the Criminal Code. Here we are talking about unlawful social violations with a high degree of social threat, such as terrorism (Chapter 253, Volume 1 of the Criminal Code), etc. From the point of view of the criterion of 'degree of punishment's certainty', the sanctions in the structure of criminal law provisions, considering the compositions of these crimes, belong to the category of relatively certain.

In this aspect, it is obligatory for the legislator to change his view and *de lege ferenda* to transform the form of these sanctions into absolutely definite ones. This approach, on the one hand, will exclude the principle of individualization of punishment, but, on the other hand, it will prevent the court from making mistakes when assessing the specific circumstances of crimes with a high degree of danger to society.

3. Concerning the issue of criteria and methods of formulating sanctions

The concept of 'criteria' in this article should not be interpreted in the sense of the classical criteria of the criminal law theory of differentiating the types of sanctions in accordance with the degree of certainty of the punishment provided, but in the sense of the criteria for structuring sanctions in accordance with the severity of punishment. The presence of signs of individual crime components in the current Criminal Code leads to the conclusion that our criminal law prioritizes the objective characteristics of the act, that is, its degree of public danger and moral inadmissibility. The argument in support of this claim is contained in the criminal law itself. According to the order of Chapter 35, vol. 3 of the Criminal Code, the punishment corresponds to the crime. This means that the severity (that is, the type and amount) of punishments provided for by law for various categories of crimes in the Criminal Code system shall be consistent with the severity of the criminal acts themselves. From this it follows that the free will (point of view) of the legislator, whether to establish a less or more severe punishment, depends on the severity of the act.

The severity of the punishment is determined by the degree of public danger of the act. Objective properties that determine the degree of public danger of an act are mainly associated with the objective negative impact that it had or may have on the object of the crime, the type and severity of the criminal result, the method and means of the action, and the danger they created. Therefore, it can be concluded that the specific severity of the crime is the main criterion that is decisive in choosing the most correct punishment. More precisely, the maximum severity of the crime is the basis that shall be considered in the process of law-making when establishing the upper (maximum) limit of the punishment. When the lower (minimum) limit of the punishment is regulated, the legislator can go below the minimum objective severity of the crime in order to enable the court to carry out an individual assessment of the personal qualities of the offender.

It is the personality of the offender that is another criterion that has an important criminal law significance when formulating sanctions. The individual characteristics of a criminal's personality, which characterize

his behaviour, are the basis for differentiating the criminal responsibility for the crimes committed. In this sense, if a certain quality of the person who committed a crime significantly affects the degree of public danger, the legislator emphasizes the importance of this quality in a more easily or more severely punishable composition. A crime cannot be a legal fact on the basis of which a criminal legal relationship arises and, accordingly, a punishment is imposed, if in this case the personality of the criminal is isolated.

The significance of the offender's personality is reflected in the order in Chapter 35, volume 1 of the Criminal Code, according to which the criminal responsibility is individual. For this reason, when formulating sanctions in the process of law-making, it is necessary to combine two main criteria in a dialectical unity – the act and the personality of the offender. The content of the sanction shall be formulated in the way that ensures a balance between these two criteria. This conclusion stems from the fact that the legislator gives a holistic comprehensive assessment of the act and the offender in the sanction of the criminal law provision. Ignoring, underestimating or absolutizing any of these criteria will create difficulties in fair determining of the sanctions.

Considering the technological progress of mankind and the development of computer technology, this legislative concept is likely to undergo certain changes. In the future, the criminal law will have to decide whether the decisive criterion in formulating the structure and content of sanctions will be the personal qualities of the offender or the objective properties of the crime – for example, for commissioning of a crime by the so-called 'artificial intelligence'. From a methodological point of view, the correct consideration and solution of the problem in connection with the definition of sanctions is possible only with the consistent application of the materialist dialectical method. This method requires, when fixing the sanctions consequences in new legal provisions or when making changes in the sanction part of the provisions already established in the Criminal Code, not to approach abstractly, but to bear in mind the inextricable connection of the legal provision with the social relations regulated by this provision.

Conclusion

Considering the present judicial reform, the discussion of the problems of criminal law-making in connection with determination of sanctions in the Criminal Code shall not pursue only scientific-applied purposes, but shall turn into a priority task of the modern criminal policy.

In connection with the study carried out in this article and the arguments presented, we can conclude the following. **Firstly,** the severity of the crime and the search for compliance of the crime and the punishment shall be critical in choosing a proper penalty. **Secondly,** on the basis of the legal technique discussed above, each crime contained in the Special Part of the Criminal Code shall be compared with the degree of its public danger and, in this regard, the fairest punishments shall be offered that will correspond to the purposes of Chapter 36, Volume 1 of the Criminal Code. **Thirdly**, the effectiveness of the proposed legal technique in practice will be expressed in limiting the manifestation of subjectivity on the part of the legislator and minimizing the possibility of excessive increase in the criminal repression or, conversely, underestimation of the repressive elements.

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