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INFLUENCE OF INTEGRATION PROCESSES ON THE DEVELOPMENT OF THE LEGAL SYSTEMS OF THE COUNTRIES OF CENTRAL ASIA

Abstract. Development of the modern legal integration expresses in convergence of legal families, both through development of international law, and through processes of regional integrations and interactions. However, it is necessary to mark that an entity of legal processes of the modern legal integration express, eventually, in convergence and integration at the level of specific legal systems of the states. Process of evolutionary development of law at the real stage, in the entity, is process of convergence of legal systems. The most important legal processes of legal integration are, first of all, harmonization of law, which defines the main direction of deformation of legal systems and also unification (assimilation) of law, legal expansion (or absorption), reception of law, etc. In this article the processes of a dimple integration of the legal systems of the countries of Central Asia in the Eurasian economic space are researched. The model of equivalent cooperation of the people, which reached the high level of consciousness and the civilization, and movable by aspiration to approve social and international peace and harmony of the people, is considered. The scale crisis response measures of the state aimed at restoration of sure rates of economic growth and support of strong social warranties to all population are studied.

Keywords: integration processes, the states of Central Asia, internationalization of the legislation, harmonization of law, legal mechanisms of regulation of integration, unification of law, emulation of law, legal expansion, reception of law, legal annihilation.

In the modern world some ideal model of building of the legal system of the state is developed. Each state has its own unique model. 26 - year experience of the Republic of Kazakhstan, since the independence, is based on the public image of sustainable development. An important role in the formation of the legal systems of Kazakhstan, Uzbekistan, Kyrgyzstan, Tajikistan and Turkmenistan play mentality, socio-economic and political conditions, cultural factors and integration processes. According to the opinion of the Prof. A.Kh.Saidov, “it is predetermined by the system of values and target orientation, national traditions and historical conditions, socio-economic and political environment, the established way of life and worldview of people, including religious beliefs, psychology, and norms of behavior” [1, p. 39]. Both Kazakh and Uzbek, Kyrgyz, Tajik and Turkmen model of the legal system related to the Romano-Germanic legal family. In Kazakhstan, the Declaration of state sovereignty (independence) was adopted in October 25, 1990; in the Republic of Uzbekistan, in June 1990, and in Kyrgyzstan, in August of the same year. As for the Supreme Laws of the three republics, in Kazakhstan the first sovereign Constitution was adopted in January, 28, 1993, and two years later, in August, 30, 1995, during the national referendum was adopted the current Constitution of the Republic of Kazakhstan. The Constitutional law in October 7, 1998 has been introduced 19 amendments on the presidential term, the term of office of Houses of Parliament, the Senate and the Majilis, etc.

The Constitution of the sovereign Uzbekistan was adopted in 1992. A.Kh. Saidov convinced, that “in contrast to the Soviet basic laws the new Constitution of Uzbekistan does not have the dominance of Eurocentric constitutional regulation, but there is a reasonable account of the rules of civil society, the separation of powers, the system of checks and balances of power inherent in the democratic constitution of the West” [2, p. 7].

The Kyrgyz Republic's Constitution was adopted on May 5, 1993. In all of these constitutions were established the constitutional traditions of the international experience and own national legal history. And the historical fact testimonies, that Uzbekistan was the first, who introduced, in March 1990, the presidential form of government. In Kazakhstan, the Law "On the Establishment of the Position of the President" was adopted in December, 1990. All three independent states are secular, unitary. Doctor of Law, Professor A.Kh. Saidov notes in this aspect: "The secular criteria can be considered as legal, in the fields, covered within the meaning of the Constitution, as a public, civilian-based real consciousness of the society. The phenomenon of the secular state is based on Islamic culture, showing democracy and pluralism in independent Uzbekistan" [1, p. 15].

The Constitution of the sovereign Tajikistan was adopted on November 6, 1994. Historical and legal study of the Constitution of Tajikistan allows us to explore the fundamental political, legal and socio-economic changes in the country and to determine the degree of continuity of legal and other provisions of the preceding 70-year period of the Soviet system and the legitimacy of the use of foreign experience.

In the history of Tajikistan were adopted five Constitutions- in 1929, 1931, 1937, 1978 and 1994. Rigorous analysis of the laws and regulations in the period of adoption of the Declaration of independence and the Constitution of the Republic of Tajikistan, shows the unique independent path of the development of the Tajik people in the creation of law-abiding, democratic and secular state. After adoption in 1994 of the Constitution were appeared the several tasks: design and organization of the activities of new state on the basis of the constitutional principle of separation of powers, with the system of checks and balances, and the development and adoption of new laws on the spirit of national independence and the interests of the people in market economy. On September 26, 1999 the Supreme Law of Tajikistan has been amended.

A huge contribution to the study of this problem was made by the famous Tajik research-scholars A. Imomov [3], F.T. Takhirov [4] and others.

The Constitution of Turkmenistan was adopted on May 18, 1992. Turkmenistan is the most controversial and interesting at the same time. It is an example of research studying of the problems of building of the democratic society in the post-Soviet countries. At the same time, some international and non-governmental organizations of Turkmenistan referred to the successful transition from totalitarianism to democracy. Elections in the country and the establishment of the political institutions were held in accordance with the official ideology. The first step in the country was canceled the next presidential election. In December 1993, Parliament took the initiative to extend the power of the President until 2002, by the referendum. The current Constitution does not provide, as it necessary, the legal procedure. In addition, the law "On Referendum" regulates the popular consultation, which declares, those not less than two months after the decision by Parliament to conduct such procedure. In the Constitution there are number of progressive moments, that are supposed to guide the course of the political events in the civilized society, to create the conditions for the emergence of political pluralism and to guarantee the rights of the citizens to freedom of expression, the election of political leadership, etc. These progressive moments in the Constitution include provisions of law-abiding state, the direct effect of the constitutional norms, pluralism, and the proclamation of the principle of separation of powers, with the system of checks and balances, the right to private ownership on the means of production, land and other material and intellectual values.

In accordance with the Constitution, the Medzhlis is the legislative body and represents the appropriate branch of government. At the same time, in the hierarchy of Supreme Medzhlis of the state structure is as powerless, unable to influence the other branches of government. In addition to the Medzhlis are endowed with the right to make the laws with the President, the People's Council, which diminishes the role of Parliament as a legislative body. The number of the deputies of Medzhlis, anyway, is formalized. In particular, it remains largely declarative provision on the right of Parliament to amend the Constitution (Article 67). The fact, this right of Medzhlis belongs to Halkmaslakhats. The judicial power in the country doesn't not affect to the other branches of government, People's Council and the Medzhlis. According to the Constitution, the judicial power does not have the function of the constitutional review. This situation is completely formalizes the existence of the third branch of government in the country.

In all of these constitutions were established the constitutional traditions of the international experience and ancient legal history. It is well known, that the legal system of any state has been researched in close connection with the national legal system and international law. The Constitutions of sovereign

Kazakhstan, Kyrgyzstan, Tajikistan and Turkmenistan have established the mechanisms of functioning of all parts of the state apparatus, their competence, fixed the democratic foundations of social life, gave the priority to the individual rights and freedoms of the citizens. The main attention was paid to the role of elected bodies of state power, the system of checks and balances in the relationship of all branches of government, the status of local government, strengthening the independence of the judiciary, strengthening of law enforcement powers. All these points are related to the other Central Asian republics [5, p. 17].

The legal system expresses the legal infrastructure of the society. Therefore, the legal system is flexible, dynamic, and constantly changed. However, the legal system is quite conservative. Another question, some legal traditions should be preserved. The legal system in the narrow sense of regulations, emerging and applied on the basis of general principles. The value of the legal system is provided by the general legal principles and legal procedures of law-making and enforcement. Legislator in establishing a new legal act must clearly understand: how to act in the different cases, within this legal framework, institutions, branches. This position is trivial, but in practice, and in theory, it is very difficult to cover in each case, all the existing legal system [6, p. 58].

Summarizing the different interpretations of the legal system, we can give its most general definition. The legal system, in a broad sense, is the direct reflection of the legal life of the society and the functioning of its institutions: the state bodies, the legal rules by themselves (the core of the legal system), legal institutions, branches of the legislation and other legal phenomena. Law-making is an essential tool in public governance. The legal system, in the narrow sense, is a set of the regulations. The category “legal system” is a consequence of the integration of the positive law, historical and comparative law theory and the sociology of law. The legal system has the following components, elements: the system of legal norms, legal system, legal awareness, and the system entities. “The most impact on Kazakhstan, Tajikistan, Turkmenistan and other Central Asian republics has a political change and the change of power in Georgia. Actions of US politicians to change the political system of other countries of the Central Asian states are forcing management to reconsider closest allies. In this situation, the role of Russia as a regional center rises again, especially in the Central Asian states” [2, p. 31].

The Concept of Legal Policy of the Republic of Kazakhstan states that “as a result of the discussion of the policy of legal reforms in the society appeared the progressive development of the legal system on the basis of the Constitution. The Constitution of the Republic of Kazakhstan has the necessary legal capacity, which concluded not only in its legal norms, but also in its legal ideas and principles. Legal ideas of the Constitution should be implemented in the legislative, institutional and other measures aimed at strengthening democratic institutions in Kazakhstan, secular, legal and social state”.

According to the Kyrgyz research scholar T.B. Aitmatova, “in the first documents of the independent state laid the formal legal basis of the Declaration on sovereignty- the Declaration on the state independence of the Republic of Kyrgyzstan and Law “On the state sovereignty of the Republic of Kyrgyzstan”. They proclaimed the determination of the republic to build a state of law, guaranteed the rights and freedoms of the citizens. The Constitution of Kyrgyz Republic was adopted on May 5, 1993. These rights were fixed in the Supreme Law. These favorable targets remain utopia, if we do not improve and obey the laws, if we do not fight to eradicate crimes, if we do not form at those, who work in government, public administration, political parties, public associations and organizations of the market economy, the citizens, the society, law-abiding state with high level of the legal culture” [5, p. 25].

“The course of the history is irreversible. The historic event, which our ancestors dreamed about, embodied in the life in September 1, 1991, when the Republic of Uzbekistan declared its independence. Peace and stability that prevails in Uzbekistan, progress in the development of market economy, the expansion of the international relations of the country are highly recognized by the world community” [7, p. 18].

It is well known that the legal system of any state must to be studied in close connection with other national legal systems and international law. In some legal space they interact, influence to each other, and there are the variety of legal formations, which are based on the general processes, carried forward cooperation in all spheres of public life. The Constitution of the Republic of Uzbekistan of 1992, in Article 109 has recorded a provision stating that “the Constitutional Court determines the constitutionality of interstate contracts”. The general principles and norms of the international law are the most important criteria of the constitutionality of laws and regulations.

This provision we easily find in the Constitutions of the Republic of Kazakhstan and Republic of Kyrgyzstan. The different is only the name of the government agencies. For example, earlier, according to the Constitution of Kazakhstan of 1993 was really existed and acted the Constitutional Court of the country. It was later abolished. Now, in accordance with the Supreme Law of the Republic of Kazakhstan, the Constitutional Council was created in 1995 and works effectively. In the Republic of Kyrgyzstan, it is called the Constitutional Assembly. In order to conduct due diligence of the draft amendments to the Constitution of the Kyrgyz Republic and the various suggestions and comments, received by the Decree of the President of the Kyrgyz Republic on January 2, 2003 the expert group was formed.

The current Constitution of the sovereign Kyrgyzstan establishes mechanisms of functioning of all parts of the state apparatus, their competence, reinforces the democratic foundations of social life, and gives priority to the individual rights and freedoms of the citizens. Main attention was paid to the role of elected bodies of state power, the system of checks and balances in the relationships of all branches of the government, the status of local government, strengthening the independence of the judiciary, law enforcement powers.

The same provisions fixed the Supreme Laws of Kazakhstan and Uzbekistan, which are legalize the following provisions: the principle of democratic rule of law, citizens have the right to do anything that is not prohibited by law; secured guarantees of the rights and freedoms of the citizens, the right to private property, economic, political and social rights and freedoms of the citizens. In Kyrgyzstan, the adoption of a new Constitution means the move from a presidential to a parliamentary-presidential republic, and in two other independent republics, Kazakhstan and Uzbekistan, this fact marked the transition period from parliamentary-presidential to the super-presidential republic.

We emphasize that the category “legal system” in the scientific literature is relatively new. Its occurrence is related to the development of law. As some legal phenomena (law, legal awareness, regulations, etc.) has been attentively studied, there was the necessity for the concept picture of the entire legal validity. In jurisprudence was marked the diversity in the definition of the legal system. The state is an important, but not the single source of the social development. “The state came under the influence of a number of factors. And their role is not the same for the different people. It should be emphasized that their list is not exhaustive defined by economic factors. All this testifies the complexity of the emergence of statehood”. The society by itself actively participates and has the dialectical relationship with the state. And opposite, weak civil society leads to the strong state. At the same time, they cannot exist independently and complete each other.

The transition period from the Soviet system to the formation of the CIS democratic legal states is characterized by the fact, that currently analytical framework crossed the scientific theories. As for the available analytical data do not fit into the existing patterns of development, the need for synthesis and generalizations lead to a new theory (definition) of the legal system more adequately summarizes the data of the system analysis.

Further development of the modern society is inconceivable without definite legal order, stable system of the legal relationships, translated into practice the basic legal ideals of equality, freedom and justice, law-abiding state, the universality of rights and responsibilities, the rights and freedoms of men and citizen, fixed in our Constitution. For nearly two thousand years in jurisprudence the modern research scholars are interested in the study of the legal system. Its concept, structure, content, role and function in the society, the formation and development, the relationships with other legal phenomena, types of the legal systems have become the subject of studying by S.S. Alekseyev, V.K. Babaev, A.M. Vasilyev, O.A. Gavrilov, Y.P. Eremenko, etc. At various times, they were reflected in the foreign science in the works M.P. Golding, R. David, K. Joffre-Spinosi, J. Carbonie, G. Kelsen, etc.

Cultural aspects of knowledge of the legal phenomena make possible to determine the features of the legislation, the policy of the reforms, the relationships with other cultural phenomena in the legal realities.

The legal system is an institutional concept, the occurrence of which in legal science is not only legal reality of the phenomena, but also certain qualitative institution in the science, development of its methodology and conceptual apparatus are quite important. Therefore the primary importance in the genesis of this notion is given to differentiation and integration of the legal knowledge as prerequisites and conditions for the occurrence and development of the theory of the legal system, its importance in the structure in the general theory of law.

In the conclusion, we emphasize that the further development of the national legal systems of independent Central Asian Republics of Kazakhstan, Uzbekistan, Kyrgyzstan, Tajikistan and Turkmenistan is the result of new integration processes, strengthening the state independence of these republics on the basis of fundamental changes in the field of socio-economic development in these states.

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ИНТЕГРАЦИЯЛЫҚ ПРОЦЕССТЕРДІҢ ОРТАЛЫҚ АЗИЯ ЕЛДЕРІНІҢ ҚҰҚЫҚТЫҚ ЖҮЙЕСІНЕ ТИГІЗЕТІН ӘСЕРЛЕРІ

Аннотация. Заманауи құқықтық интеграция құқықтық жанұялардың бір-бірімен жақындау процессі арқылы, халықаралық құқықтың дамып жетілуі барысында, сонымен қатар осы өмірдегі интеграциялық қарым-қатынастардың күшейуі барысында қалыптасуда. Ескертетін бір жағдай, қазіргі кездегі құқықтық интеграциядағы заңнамалық процесстердің мәні, түп негізінде осы елдердің құқықтық жүйесіне тікелей тәуелді. Құқықтың жетілуінің қазіргі бет бейнесі, шын мәнінде, осы елдердің құқықтық жүйелерінің бір-біріне жақындауын талап етеді. Құқықтық интеграцияның басты заңнамалық процесі, ең әуелі, құқықтың гармонизациясын талап етеді, ал оның негізінде құқық жүйелерінің деформациясы жатыр, сонымен қатар құқық унификациясы, құқық ассимиляциясы, заңнамалық экспансия немесе жойылуы, құқық рецепциясы, және т.б. Бұл мақалада Орта Азия елдерінің құқықтық жүйелерінің интеграциясының тереңдеуі көрсетілген, ол қазіргі еуразиялық экономикалық кеңістіктегі қарым-қатынастармен байланысты. Осы қатынастырдың негізінде, өркениетті, өзіндік сананың жоғарғы дәрежесіне қол жеткізген, әлеуметтік және халықаралық бейбітшілікті жүзеге асыруға бағытталған халықтардың теңқұқықтық қарым-қатынасы моделі жатыр. Бұл бағытта мемлекеттердің кең көлемдегі дағдарысқа қарсы іс-шаралары мен экономиканың дамуының және басқа да тұрғын халыққа жасалатын іс-шаралардың бәсеңдемеуін қамтамасыз ететін механизмдер зерттеледі.

Түйін сөздер: интеграциялық процесстер, Орталық Азия мемлекеттері, заңнамаларды интернационализациялау, құқықтың гармонизациясы, интеграцияны құқықтық реттеу механизмдері, құқық унификациясы, құқық эмуляциясы, заңнамалық экспансия, құқық рецепциясы, құқық аннигиляциясы.

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ВЛИЯНИЕ ИНТЕГРАЦИОННЫХ ПРОЦЕССОВ НА РАЗВИТИЕ ПРАВОВЫХ СИСТЕМ СТРАН ЦЕНТРАЛЬНОЙ АЗИИ

Аннотация. Развитие современной правовой интеграции выражается в сближении правовых семей, как через развитие международного права, так и через процессы региональных интеграций и взаимодействий. Однако следует отметить, что сущность юридических процессов современной правовой интеграции выражаются, в конечном счете, в сближении и интеграции на уровне конкретных правовых систем государств. Сам процесс эволюционного развития права на настоящем этапе, в своей сущности, это именно процесс сближения правовых систем. Важнейшими юридическими процессами правовой интеграции являются, в первую очередь, гармонизация права, которая определяет основное направление деформации правовых систем, а также унификация (ассимиляция) права, юридическая экспансия (или поглощение), рецепция права и др. В статье исследуются процессы углубления интеграции правовых систем стран Центральной Азии, происходящие в настоящее время в евразийском экономическом пространстве. Рассматривается модель равноправного сотрудничества народов, достигших высокого уровня самосознания и цивилизованности и движимых стремлением утвердить социальный и межнациональный мир и согласие народов. Изучаются масштабные антикризисные меры государства, нацеленные на восстановление уверенных темпов экономического роста и обеспечение прочных социальных гарантий всему населению.

Ключевые слова: интеграционные процессы, государства Центральной Азии, интернационализация законодательства, гармонизация права, правовые механизмы регулирования интеграции, унификация права, эмуляция права, юридическая экспансия, рецепция права, правовая аннигиляция.

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