
The Impact of European Law on the Development of Legal System of Russia

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Abstract:

The aim of the article is to identify the nature of the influence of European law on Russian legal system, carried out in the framework of the impact on the Russian legislation, the Russian Federation's participation in the European legal processes and the traditional reception of the positive European experience in the field of law.

Package and systemic approaches are used as the methodological basis of research to the analysis of the legal problems associated with the international obligations resulting from the need to implement the European legal standards into the Russian legal system. In the article the thesis is substantiated according to which the influence of European law on the legal system of Russia is the Europeanization of the Russian legal culture in general, as well as in the modernization of legislation on the basis of European standards and the Europeanisation of the Russian judicial practice.

Key Words: *European law, Europeanisation, Russian legal system, Russian public law, Russian private law.*

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Introduction

The European Union and the Russian Federation are geographical neighbors and prior trading partners for each other, demonstrating the expediency of the development of more compatible regulations and standards by Russia that is currently particularly evident in the field of regulation of relations connected with international economic activities, trade, service, investment, etc. This process is possible due to the relative openness of the modern Russian legal system. The interaction of the Russian and European law is based on both international and constitutional law. In accordance with the Constitution of the Russian Federation (Art. 15, part 4), "international treaties and agreements of the Russian Federation shall be a component part of its legal system." This constitutional provision is fully applicable to the European treaties and agreements in force in the territory of the Russian Federation.

It should be noted that not all European laws are enacted into the Russian legal system, but only that part of its Convention, which directly involves contractual obligations of Russia, resulted from the official Russian's accession to the Council of Europe (Pociovalisteanu and Thalassinos, 2008; Thalassinos and Pociovalisteanu, 2009; Stroeva *et al.*, 2016). Cooperation between the Russian Federation and the Council of Europe was marked by the change in conceptions of human rights in the Russian legal ideology and legal system in general. Investigations in the sphere of the influence of European law on the Russian legal system are very relevant at the present time, as the inclusion of elaborate EU standards into domestic legislation will make it possible to improve the Russian law, which ultimately will benefit the state and ordinary citizens.

Literature review

The important elements of the theoretical foundation of the article are the works of the Russian and foreign scientists having created and developing the modern doctrine of European law, including with respect to the study of the legal regulation of relations between the Russian Federation and the European Union. Among the foreign scientists having studied the legal aspects of the relationship between Russia and the EU are K. Hilliona, S. Blokmansa, R. Leal-Arkas. In the science of our country these problems are fundamentally highlighted in the works of Russian lawyer M.L. Entin. General aspects of legal regulation of the Russian Federation and the European Union's relations are studied in the works of E.J. Kovalkova, specific regulatory issues of the work of trade cooperation are investigated by O.F. Artamonova, and the problem of the EU-Russia cooperation in the field of freedom, security and justice are analyzed in the scientific works of E.V. Kiselyov.

In the scientific works of the prominent Russian researcher of legal regulation of the relations between Russia and the European Union P.A. Kalinichenko examines the impact of relations between Russia and the EU on the legal system of the European

Union, the implementation of the bilateral framework of EU-Russia relations in the Russian law and practice of the Russian courts. In general, a comprehensive study of the impact of European law on the Russian legal system is one of the problems in the unexplored domestic jurisprudence that determines the relevance of this article.

Methods of study

The methodological basis of the work includes various methods of scientific research: analysis and synthesis of ascent from the particular to the general, induction and deduction, systemic, dialectical, and others, and special legal (formal-logical, structural legal, etc.). As the methodological basis of research package and systemic approaches are applied to the analysis of the legal problems associated with the international obligations resulting from the need to implement the European legal standards in the Russian legal system.

In addition, an important place in the study was given to the historical and legal, comparative legal methods. Thus, the historical and legal method allowed establishing regularities of the historical evolution of the impact of European law on the development of Russian legal system.

Results

1. History of the Europeanization of Russian law

History of Europeanization of Russian law dates back more than one century. Its initial stage refers to the 10th – 12th centuries: the time of formation of the legal system of Ancient Russia. In the process of Europeanization of Russia's law it interacted with different states and legal systems. Respectively we can be distinguishing the East and the West directions of the reception of foreign legal experience. Initially a Byzantine legal tradition had a huge impact on Russian law. In the 10th century Russia cooperated with the Byzantine Empire in the political, military, economic, cultural, religious and legal aspects actively. In the 11th century the provisions of the Byzantine codes were used in the preparation of "Russkaya Pravda" - the first written legal code of the Old Russian state. Byzantine law remained a model of codification of Russian law for lawmakers until the middle of the 17th century. It is known that in the process of preparation of the Sobornoe Ulozhenie of 1649 Tsar Alexei Mikhailovich provided the codification commission with the task "to write out" the articles of the laws of the Greek kings that can be used to solve public affairs. As a result, the borrowings from Byzantine laws were few and fragmentary completing a long period of Byzantine influence on the Russian legal system.

The active penetration of Western European law into Moscow State dates back to the 17th century. So in the preparation of the Sobornoe Ulozhenie of 1649 the provisions of the Lithuanian Statute of 1588 were used. However, large-scale

Europeanization of Russian law is associated with the reforms of Peter I. At the beginning of the 18th century the law becomes the instrument of modernization of the Russian statehood. Under Peter I about 3,000 legal acts were issued, many of which were the result of the reception of German, Swedish, Danish, Dutch and French law. The modernization of the legal system is the essential part of the idea of the rule of law as the Emperor's will, which must comply with all state institutions, officials and society in general. Due to the active penetration of Western European rights into Russian legislation it acquires some new qualities: the enhanced level of legal technology, generalizations appear in legal laws, the sequence of legislative material is traced more clearly as presented, branch differentiation of legal rules appears, the right to acquire a certain system. However, it should be noted that the organic entry of the structures and institutions of Western European law into the Russian legal system occurred only in those cases when there were necessary conditions. There were the norms of European law which have not been used in practice in the legislation period of Peter I.

Since then, the influence of the Western tradition of law only intensified. Repeated attempts to systematize the Russian law taken during the 18th century demonstrate the will of the legislator to focus on emerging legal doctrine in the Western notions of preference for the abstract legal norms, the rule of law, a legal system. A significant step in the reception of European law was the systematization of Russian law, implemented in the first half of the 19th century under the direction of M.M. Speransky. The famous source of Roman law - the Code of Justinian - was chosen as the sample, the principles of arrangement established by Bacon were used as the methodological basis of the codification. As a result, a new source of law – the Digest of Laws of the Russian Empire, the French Civil Code of 1804 (Code of Napoleon) had a significant impact on its content. The final stage of the Europeanization of Russian law was marked by the great reforms of Alexander II in the second half of the 19th century and the transformation of the Russian state in the direction of a constitutional monarchy in the early 20th century. As a result the Russian legal system was upgraded on the basis of European principles of the rule of law, equality under the law and the courts, presumption of innocence, competitiveness, the right to judicial protection, etc. Reception of the Western European law implemented in the 19th century completed the process of integrating of the Russian legal system into the sphere of the Roman-German law. Its system-legal principles and institutions retained their value even in the conditions of Russian formation the socialist legal system, which allowed the Russian Federation to return to the Romano-German law at the end of the 20th century.

Thus, the Europeanization of Russian law was carried out with varying degrees of intensity throughout the existence of the Russian state. As a result, the Russian legal system has found the most important characteristics, such as the recognition of the law as the dominant source of law, the division of the right to private and public, ordering legal material on a sectoral basis, the codification of law. However, numerous borrowings from the Byzantine and Western sources are not just a

compilation of foreign law. For many centuries, the legislators have preserved Russian legal tradition, carefully including borrowed and adapted to Russian conditions, foreign legal norms and institutions in them.

2. The Impact of European Law on the Development of Public Law in Russia

Common rules, regulations and standards of European law contributed to the development and improvement of the Russian legal system. The notion "Europeanization" has already occurred in the 18th century in the Russian political and law doctrine. It characterizes the process of Russian legal system perception of certain legal models, constructions, terminology and other legal traditions, formed in the framework of the European cultural and historical civilizational system. This process can be analyzed in different ways: as the impact of European law on the Russian legislation, as Russian participation in European legal processes and as the traditional Russian reception of the positive European experience in the field of law. The development of mutually beneficial integrational process of Europe led to the creation of the European Union and contributed to the Europeanization of the legal systems of its participants and creation of their own unified legal models. Russia's need for partnerships, external economic relations with the EU determined the main trends of the Russian public law on the formation of an open legal system, the approval of the common European values of the rule of law, democracy and the recognition of the supreme value of human rights and freedoms.

Public law of the Russian Federation was under the significant influence of European law. Standards of public branches of Russian law are close to the rules and standards of the EU in many ways. RF Constitution reflects European standards and values and is largely identical with them and allows our state to be involved in European integration. In part 4 Art. 15 of the Constitution of the Russian Federation it is stated that the "The universally-recognized norms of international law and international treaties of the Russian Federation shall be a component part of its legal system. If an international treaty or agreement of the Russian Federation fixes other rules than those envisaged by law, the rules of the international agreement shall be applied." These limits are part of the Russian legal system, and the concept of "legal system" is different from the concept of "law" as it is more voluminous category encapsulating the addition to the right and expresses its law enforcement system and the process, and a number of other legal phenomena. This formula determines the position of the principles and norms of international law and international treaties of the Russian legal system, in which they interact with the Russian law in the legal relationship, in the law enforcement process in the field of rule of law and intrude into domestic law indirectly.

In 1996 Russia joined the Council of Europe, acceded to the European Convention on Human Rights and Fundamental Freedoms of 1950 and accepted ECHR jurisdiction. The Convention affirms the right of every person to life, protects the right to liberty and security of a person. Everyone has the right to privacy, the

inviolability of their homes, correspondence, freedom of thought, conscience, the right to the freedom to opinions, and to receive and impart information and ideas. Article 11 of the Convention protects the right of a person and the citizen to assembly and association. In Article 17 it is claimed that the state bodies and officials are impermissible to violate and restrict rights and freedoms guaranteed in the Convention. Human rights in Russia are sacred, immutable and inviolable. Development of the Russian public law reflects on the problems of implementation of the individual legal status. The use of the constitutional norms in order to ensure the interests and needs of the individual is the most important commonly shared value. Approved Convention guarantees of human and citizen's rights are expressed and protected at the constitutional level of the Russian legislation. The domestic courts in their decisions refer not only to the Russian legislation, but also to the provisions of the Convention and decisions of the ECHR, and ensure the implementation of these solutions in its legal order. Many of the concepts, categories, structures and characteristics of European law are used in the Constitution and other legislative acts of the Russian Federation. In accordance with the Constitution of the Russian Federation a new law was formed in the Post-Soviet Russia. It provides the legal regulation in all areas of public life. All subsequent years, Russia has carried out harmonization of national legislation with the principles and norms of the EU. Europeanization process "stimulated the development of the convergence process of national and European political and legal systems."

The consolidation of political and economic interdependence of the European states suggests the compatibility of their public-law systems, the ability to interact with each other and with the European system of public law in general, as its component parts. It should be noted that the Europeanization of the public law in Russia must not be a threat to its national sovereignty. Russia's national interests in public-legal sphere are to ensure its sovereignty, to strengthen the international situation and to develop mutually beneficial relations with European countries. "All the international agreements and treaties of Russia failing to come into effect must undergo legal review by the Constitutional Court of the Russian Federation for their compliance with not only the Constitution and constitutional law, but also with Russia's national interests. This requirement involves the production of public-legal system of eligibility criteria to national interests and national security of the state. "Significant joint work should be done to reform and harmonize Russian civil legislation in order to deal with the bureaucracy of the state apparatus, to cope with corruption effectively. The European Commission has carried out a number of projects in cooperation with the Russian state structures to form recommendations for improvement of this sphere and its full implementation.

3. The impact of European law on the development of Private Law in Russia

In the early 90-ies of 20th century a rapid return of Russian legal system to Roman and German legal system began. It implied significant changes in the legal development of our state. It is necessary to take two important factors into account.

First, the leading role of private law in the legal systems of continental Europe (besides, the US comparatives called the Romano-German legal system the civil legal system). Second, the special role of the legal systems of Germany and France as well as the European Union law in the Romano-German legal system. For the legal systems of member states of the European Union the phenomenon of Europeanization means that their national law is determined by the European law to a greater or lesser extent. As noted by some researchers, this effect can be vertical, as EU law has precedence over national legal systems, and horizontal, implying free competition of legal systems of the European Union states.

The process of Europeanization of the Russian Private Law, which is its modernization, involves the use of the reception and harmonization. Reception is the perception of the rules and standards developed by both the European Union and some of its member states. It got possible due to the principles of openness of our legal system, which had been enshrined in the Constitution. In turn, the harmonization of law is understood as a method of law-making, carried out on the basis of certain model rules aimed at the convergence of legal systems, but without their complete unification. It means that only those portions of the law can be harmonized, which are similar with foreign counterparts and important and beneficial for the state. Ultimately, the Europeanization of Russian Private Law is a process of progressive perception of the experience of European continental legal systems and the legal system of the European Union. Due to the processes of Europeanisation the Russian private law has been completely updated (or even reorganized). However, the course of economic and social transformations in our country demanded for its further development strongly. And the next stage in the process of Europeanization of Russian Private Law was marked by the edition of Presidential Decree of July 18, 2008 №1108 «On the improvement of Civil Code of the Russian Federation.» The main goals of the civil rights were defined in the Decree: "The convergence of the provisions of the Civil Code and the rules of the relevant regulation of relations in the law of the European Union" and "the use of the latest positive experience of the modernization of the civil codes of the European countries in the Russian Federation civil legislation."

A direct consequence of the Decree was the establishment of the Presidential Council for Codification and Enhancement of Civil Legislation. This Council has developed a number of conceptual documents, among which is the Concept of Development of the Civil Service Legislation of the Russian Federation. The concept highlighted that for the period since the 1990s. Economically and socially based modern civil law has been developed and adopted as a whole and the main

core of it was the Civil Code of the Russian Federation of 1994-2006. However, further development of the relations of civil sphere required new developments in the civil law. It is strongly recommended to borrow successful solutions from the field of European Contract Law.

Special attention in terms of public-legal regulation has been paid to conflict of laws. Council even adopted a separate concept for improving the Section VI of the Civil Code of the Russian Federation "Private International Law". This is relatively small in size, but very significant on the content of the section. Almost each of its provisions affects a fairly wide range of relations. The concept states that the study of law enforcement, Russian and foreign scientific literature, as well as the perspectives of practice confirms the correctness of the main approaches set out in Section VI of the Civil Code. At the same time it is noted that the intensive development of the conflict regulation in the world continues. And we should pay particular attention to the Regulation (EC) of 17 June 2008 on the law applicable to contractual obligations ("The Rome I Regulation") and to the European Union Regulation of 11 July 2007 on the law applicable to non-contractual obligations ("The Rome II Regulation"). In these regulations the most important developments in the field of conflict of European Union law reflected, realizing a variety of new approaches and of particular value for the further improvement of the Russian legislation. It was stressed that active and effective efforts of the recent years for the development of conflicts of law in the European Union encourage to significant changes in the domestic private international law. In particular, it is proposed to study the possibility of harmonizing approaches to the formation of the conflict rules, dealing with extrajudicial offset counterclaims.

Discussion

The study provides us with a number of fundamental conclusions:

- 1) The Europeanization of Russian law has been carried out with varying degrees of intensity throughout the existence of the Russian state. As a result the legal system in Russia has gained such important characteristics as the recognition of the law as the dominant source of law, the division of the right into private and public, ordering legal material on a sectoral basis, codification of the law.
- 2) Russia's need for partnership, external economic relations with the EU determined the main trends of the Russian public law: the formation of an open legal system, the approval of the common European values of the rule of law, democracy and the recognition of the supreme value of human rights and freedoms. Public Law of the Russian Federation has been under the major influence of European law, so that the rules of the public branches of Russian law are close to the rules and standards of the EU.

3) Europeanization of Russian Private Law implying its modernization on the basis of the experience of continental European legal systems involves the use of reception and harmonization. Reception is the perception of the rules and standards developed by both the European Union and its member states. In turn, the harmonization of law is understood as a method of law-making, carried out on the basis of certain model rules aimed at the convergence of legal systems, but without their full unification: only those portions of the law can be harmonized, which are similar to foreign analogues and important and beneficial for the Russian state.

Conclusion

In general, taking into consideration our research we can make a final conclusion that the impact of European law on the legal system of Russia means, on the one hand, a certain historical tradition being preserved over the centuries and, on the other hand, the use of all of the best that has been accumulated in European countries. At the present time Europeanization of the whole Russian legal culture is actual, due to the fallout of the Russian legal system of the Romano-German legal system for seven decades after the revolutionary changes in 1917.

The authors of the article having investigated the influence of European standards on the Russian legal system identified the most effective mechanisms for their implementation. These are, firstly, the inclusion of European standards into national law, so that the international nature rules become domestic law and, secondly, the direct immediate impact of European standards on law enforcement, admitting them to prevail over Russian legal norms. The certain issues occur as the part of the process of rapprochement of the Russian Federation and the European Union legislation. They are connected, on the one hand, with the political purposes of Russia and the nature of the European legislation, and on the other hand, with the features of a real legal system and the legal situation in Russia.

There is an urgent problem: the creation of specific institutional arrangements as the process of harmonization providing the basic agreements and treaties between the EU and Russia. The Russian Federation needs an effective system of institutions and mechanisms of harmonization, taking into account the strengths of the European law and legislation being in demand in our country.

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