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THE LAW SYSTEM OF UKRAINE UNDER CONDITIONS OF LEGAL GLOBALIZATION

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Summary

The article is concerned with the research of the law system of Ukraine under conditions of globalization. The author grounds the statement that legal globalization and legal integration determine transformation of the national system of law, promote the establishment of universal constitutional values; the transformation of the law system is carried out on the basis of neoliberal legal ideology; the interaction of international law and the national law is becoming more profound; the role and significance of law principles are increasing; «turning» of international norms into national ones by «deconcentration» and specification is being observed; the role and significance of international agreement as a source of the national law is increasing; international legal standards are being established; international decisions are recognized to be important in activities of state bodies; the role and significance of model laws and law of conflict are increasing; standardization of legal terminology is being observed; human rights and freedoms are extending; the process of the national law specialization is being intensified; the field of legal regulation is extending and enhancing; the convergence of private and public laws is occurring; the procedure regulation field is expanding.

Key words: international law, field of law, legal globalization, legal integration, legal standards, legislative system, system of law, standardisation.

Анотація

Стаття посвячена дослідженню системи права України в умовах правової глобалізації. Автор обґрунтовує, що правова глобалізація і правова інтеграція детермінують трансформацію отечественної системи права, сприяють утвердженню універсальних конституційних цінностей; трансформація системи права відбувається на основі неоліберальної правової ідеології; посилюється взаємодія міжнародного і національного права; зростає роль і значення принципів права; прослідковується «перехід» міжнародних норм в національні шляхом «деконцентрації» і конкретизації; зростає роль і значення міжнародного договору як джерела національного права; утверджуються міжнародні правові стандарти; міжнародні рішення признаються важливими в діяльності державних органів; зростає роль і значення модельних законів, колізионного права; прослідковується уніфікація правової термінології; розширюються права і свободи людини; інтенсифікується процес спеціалізації національного права; розширюється і углубляється сфера правового регулювання; відбувається конвергенція публічного і приватного права; розширюється сфера процесуального регулювання.

Ключевые слова: міжнародне право, галузь права, правова глобалізація, правова інтеграція, правові стандарти, система законодавства, система права, уніфікація.

Topicality of the research. The topicality of the research of the law system of Ukraine under conditions of globalization is stipulated by the fact that globalization as a determinant tendency of the present time intensifies co-operation and strengthens interdependence of legal systems, results in their gradual rapprochement, integration, formation of a single legal space; as well it is accompanied by substantial renovation of the national system of law and legislation.

Problem statement. The optimal process of integration of Ukraine in the outer legal space is only possible provided that global risks

are considered, timely and effective modernization of the state and legal system is carried out, which, alongside with reception of universal legal values and legal standards, upholds and protects national interests; this encourages to search for adequate forms of comprehending the transformation of the national system of law under conditions of legal globalization.

State of the research. When researching the general theoretical aspects of the national law and legislation development, achievements of the scientists, who investigated characteristic features of globalization influence on separate fields of law and



legislation, institutes and norms of law, are of major significance; in particular, works of the scholars researching the interaction of international law and the national law (M. Bajmuratov, V. Denisov, P. Rabinovych); globalization influence on the constitutional law development (O. Batanov, M. Buromens'kyj, M. Bondar, Je. Venizelos, Ju. Voloshyn, Ju. Dreval', I. Kresina, O. Kresin, L. Lutz, Ju. Shemshuchenko), administrative law transformation (V. Aver'janov, Ju. Bitjak, R. Vojtovych, V. Kolpakov, I. Koliushko, V. Tymoshchuk); globalization influence on criminal law (V. Navroc'kyj, M. Havronjuk, A. Bova, N. Dr'omina, N. Zelyns'ka, S. Lyhova, L. Novikova); globalization influence on economic law (V. Mamutov, Je. Kubko, R. Stefanchuk); characteristic features of the civil law development (A. Dvovgert, Je. Gida, V. Komarov, Je. Kubko, N. Sakara, O. Beljanevych, A. Hovorostjankina) and others.

Moreover, in understanding the essence and content of globalization processes in the national system of law and legislation achievements of foreign scholars, who investigated the development of law and legislation under conditions of globalization, are of importance, namely: V. Kartashkina, I. Lukashuk, M. Marchenko, Ju. Tyhomirov, B. Topornin, H. Korell, M. Korshunova, O. Lukasheva, R. Legeais, K. Zweigert, H. Koetz and others. At the same time there are no monographic researches of the Ukrainian law system development under conditions of legal globalization in the domestic general theoretical science.

The purpose and task of the article are research of the characteristic features and directions of the Ukrainian law system development under conditions of legal globalization, determination of major problems and prospects of its optimization under conditions of legal globalization.

Statement of the main material. The analysis of the present state of the Ukrainian system of law and of the system of legislation under conditions of legal globalization enables us to formulate a number of essential propositions and conclusions. They are as follows:

1. Legal globalization and legal integration immanently related to formation of the world law and order as well as of the transnational system of law determine the transformation of the national system of law and of the system of legislation, promote establishment of the universal constitutional values of modern democracy, human rights, rule of law. Prominent Ukrainian scholars emphasize on the urgent necessity of renovating the Constitution of Ukraine, first of all, in the field of protection of human and citizen rights as a basic premise in the further substantial renovation of the system of law and legislation [1, p. 50]. In a generalized view, the following should be referred to them: a necessity to harmonize the Constitution with the international legal standards by supplementing the text of the Constitution with the rights recorded in the latest international convention acts of the UNO and the Council of Europe; to make a record of provisions about the priority legal force of such international agreements in the source system of the Ukrainian law at a constitutional level; to give a recommendation to necessarily consider the practice of international legal bodies in application of international convention acts on human rights in the system of law. Under influence of the processes of globalization and integration, the order of the state sovereignty realization in the context of a multilevel pattern of administration is transforming. The establishment of the universal values of modern democracy, human rights and rule of law is being observed practically in all the fields of the national law and legislation.

2. Transformation of the national system of law is made on the basis of dissemination of the neo-liberal legal ideology and is a natural process of legal development related to the search of the universal, general, genuine ideals, values, principles of justice, freedom, equality. It affects transformation of democracy, activity of representative authorities, political and ideological pluralism, publicity, freedom of speech, etc. It is an essential fact that development of considerable part of legislative acts is under direct

or indirect international control, with the recommendations of the Venice Commission, the Parliamentary Assembly of the Council of Europe, etc. being considered.

3. Establishment of the liberal legal ideology largely embodied in international law determines more profound co-operation between international law and national law. Ukraine espouses the monistic conception; international agreements accepted as binding by the Verkhovna Rada of Ukraine are part of the national legislation of Ukraine. Legal globalization stipulates metalegal influence of international law on the national law; it is revealed in the following: establishment of the international and European legal norms; an increase in the role and significance of the principles and norms of international law; «turning» of international norms into national ones by «deconcentration» and specification, complete or partial reproduction of the standard in the wording of the national law; an increase in the role and significance of international agreement as a source of the national law; an increase in the role and significance of model laws in the national law and legislation; standardization of legal terminology; recognition of international decisions as significant for activities of legislative, executive and judicial bodies (first of all, the European Court of Human Rights and others); specialization of the national law under influence of international law specialization.

4. Legal globalisation enhances the role and significance of law principles, which, in a concentrated view, embody universal values and ideals and determine an intensional character of the system of law as well as directions of its further development, promotes their wider use in the national system of law. An important step in transformation of the role and significance of law principles in the national system of law was recognition of the principle of rule of law in the Constitution of Ukraine (Article 8) as a «fundamental principle of the legal and political system of Ukraine» [2, p.148], which embodies and provides the priority of rights and freedoms of



a person and a citizen. In the course of time, this principle was recorded in other laws (Article 8 of the Code of Administrative Court Procedure of Ukraine; Article 2 of the Law of Ukraine «About Law Courts and Status of Judges»). The notion of rule of law started to be used in Acts of the Constitutional Court of Ukraine, the Supreme Court of Ukraine and of other judicial bodies. Alongside with the establishment of the principle of rule of law, generally recognised principles of international law are set, which operate as norms directly incorporated in the national legislation. Thus, Article 18 of the Constitution of Ukraine says that the foreign-policy activity of Ukraine is carried out on the basis of the generally recognised principles and norms of international law [3, p. 61]. The establishment and expansion of the international principles of law is also caused by admission of Ukraine to a number of international bodies and institutes. Under conditions of globalization, among the principles of international law a determinant role is played by the following ones: the principle of sovereign equality of states, the principle of their territorial integrity, non-interference in internal affairs of other states, etc. provided for by the Charter of the United Nations (1945), the Final Act of the Conference for Security and Cooperation in Europe (1975) and by some other international legal documents. Appearance of new principles of law in the national system of law and transformation of the existing ones are promoted by the declared intention to enter the EU by Ukraine. An increase in the role and significance of the principles of law is also stipulated by strengthening the influence of the principles formed and set by globalization entities (in particular, by national and regional organizations, multinational corporations, financial and information groups, international non-governmental organizations and other supranational institutes).

5. The transformation direction of the national system of law and legislation under conditions of globalization is a process of «turning» of international norms into national ones by «deconcentration» and

specification, complete or partial reproduction of the norm in the wording of the national law. The given tendency is displayed practically in all the fields of law and legislation, namely: civil, criminal, administrative, ecological, labour, etc.

6. Entry of Ukraine into different types of international associations and institutes for the purpose of collective and agreed settlement of public problems is accompanied by an increase in the role and significance of international agreement as a source of the national law, appearance of voluntarily taken obligations, «legal relationship of the state» (for instance, on the part of the Council of Europe, UNO, WTO), certain restriction of sovereign rights. Thus, considerable part of the international institutes established in the middle of the XX century modernizes their activities, taking into account the processes of globalization. Ukraine should take them into account as well. Under conditions of globalization a specific gravity of the international and legal array in the national law and legislation is increasing substantially. Ukraine has extended the internal legislation due to implementation of a great number of international agreements.

7. Legal globalization promoted establishment of the international and European legal standards practically in all the fields of the national law. Legal standardization consists in establishment of common minimum norms and requirements for legal regulation of some or other public relations. Thus, in the national law and legislation there was recognition and confirmation of the international standards of human rights provided for by the Universal Declaration of Human Rights, the International Covenants on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, Conventions on the rights of some categories of citizens (children, women and others), the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols; the jurisdiction of the European Court of Human Rights [4] is recognised compulsory in the issues of interpretation and application of

the ECHR and its Protocols. Legal globalization is transforming the national voting right by introducing the system of international electoral standards. International standards set by different international, supranational and intergovernmental organizations and recorded in different documents are being more largely used in the development of the national labour law. The norms and standards formulated by the International Labour Organization are of great significance in the development of the national labour law as well. Unfortunately, the state of implementation and observance of the international and European legal standards testifies essential problems caused by absence of effective mechanisms of standards implementation, a low level of legal culture of enforcement entities, etc.

8. The influence of legal globalization on the national law manifests itself in recognition of international decisions (documents) as important in activities of legislative, executive and judicial bodies (for instance, the ECHR, the UN International Court of Justice, the International Criminal Court, etc.). The tendency of strengthening the role and significance of judicial case alongside with an increase in the role and significance of international agreements represents a more general tendency – transformation of the national law sources under conditions of globalization. Further development of the system of law and legislation is related to high activities of Ukraine as to the entry into international organizations, whose activities assist in development of public law and private law, law of substance and law of procedure, in particular, they are as follows: the Council of Europe (CE), the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (IBRD), the European Bank for Reconstruction and Development (EBRD), the Multilateral Investment Guarantee Agency (MIGA), the International Organization of Securities Commission (IOSCO), the International Maritime Organization (IMO), the United Nations World Tourism Organisation (UNWTO),



etc. The given tendency inevitably promotes strengthening of the role and significance of judicial practice, judicial discretion, legal positions of courts of appeal.

9. Legal globalization causes an increase in the role and significance of model laws in the national law and legislation. The important role and significance of model laws is caused by the fact that they, being a result of a deep comparative and legal analysis, represent a link, which ties the norms of international law and those of the national law. Embodying the generally recognised principles and norms of international law, a model law in a concentrated view incarnates the conception or general principles of regulation in a relevant field of public relations. Transformations of globalization promote an increase in the role of model laws on the whole, and of civil and criminal laws in particular, especially those developed with participation of experts from different states and representing a level of the global legal idea. The fact that separate model laws are developed in Ukraine (for instance, the law on ecological examination) is positive. Moreover, new forms of law – program laws, doctrine acts, forecasts, recommendations, frame laws are appearing in the national system of law.

10. Legal globalization and legal integration are strengthening the role and significance of collision law in the system of law and legislation of Ukraine. Collision law provides normal co-operation of complicated legal systems and legal regulation of a great amount of transnational relations, represents the basis of legal co-operation of new fields of law of states. These norms form a certain unity. Codification of the national system of law and the law of Ukraine «On International Private Law» approved in 2005 became an important catalyst of an increase in the role and significance of collision law in the national law system. The way to European integration of Ukraine sets an urgent task of Europeanizing the national collision norms, which should consist not only in reception but also in harmonization and standardization with further suggestions of improvement of

some norms and provisions of law.

11. Influence of legal globalization on the national law and legislation is revealed in standardization of legal terminology in the national law and legislation. Standardization of legal terminology is significant in civil, economic, administrative, criminal, labour and other fields of law. At the same time the analysis of the current legislation testifies that a considerable part of the concepts and institutes in the national legislation are not clearly defined and therefore they remain contradictory, for instance, in the ecological law: «environment», «ecological offences», «ecological crimes», etc.

12. Legal globalization and legal integration promote enhancement and extension of rights and freedoms of a person and a citizen in the Ukrainian system of law. In the domestic legal science and in the fields of the national law transformation of the maintenance and volume of human rights, extension and enhancement of practically all groups of human rights, appearance of new human rights are being observed; this complicates the mechanism of their realization substantially. It is about procedural rights (including a right to life, freedom and personal security; guarantees against illegal search or forfeiture of estate, unlawful detention or imprisonment; if arrested or imprisoned a right to be immediately informed of the reasons for arrest or detention, etc.), ecological rights, somatic rights, spiritual rights, right to development, etc. Not only these rights extend the content of separate groups and generations of human rights but some of them can form new generations of human rights in the near future.

13. International norms are used in the national system of law both as methods of interpretation and as a legal argument in enforcement activity. Thus, in the interpretation of international commercial contracts the United Nations Convention on Contracts for the International Sale of Goods (1980), the UNIDROIT Principles of International Commercial Contracts (2010), the Principles of European Contract Law and the Draft Common Frame of Reference are of major significance. According to

Ukrainian researchers, the development of the principles of interpretation of international commercial contracts lies in «appearance of new principles» as well.

14. Legal globalization and specialization of international law promote the process of the national law specialization as separate fields and institutes of international law appeared earlier than the corresponding fields and institutes of the national law (atomic law, ecological law and others). Corporate law, company law, mass media law, Internet law, antimonopoly (competition) law, power law have become new structural elements of the system of law alongside with the given above. New fields are characterized by a complex character, combination of the elements of optional law and imperative law.

15. Legal globalization extends and enhances the field of legal regulation, which is caused by the following: intensive development of the established institutes and fields, namely human rights, ecological, information and medical rights, etc.; appearance of new complex fields of law and legislation, legal institutes (in particular, migration law, economic, transport, space and social laws), their complex character, combination of the elements of optional law and imperative law; intensive constitutionalisation of new, integrated, complex fields (in particular, constitutionalisation of the protection mechanisms of higher human values). Legal globalization causes the evolvement of traditional legal institutes, in particular, the institute of ownership rights is being reformed (qualitative and quantitative changes in objects of an ownership right); new objects of intellectual (literary, artistic, industrial) property are appearing; the volume of the so-called “immaterial property” (the list of objects of ownership right to “material” property has increased due to different energy resources) is substantially enlarging. Within the limits of traditional fields of law the norms as to anti-corruption drive, legalization of profits made illegally, etc. have been established.

16. Legal globalization is transforming the relations between



public and private laws, extends and strengthens their co-operation, interpenetration and integration. Separate scientists examine the given tendency as convergence of private and public laws. Convergence of private and public laws under conditions of globalization causes the appearance of a great number of new complex legislation fields, in particular: information, transport, space, social, environmental, customs, migration laws, laws on healthcare, education and technical regulation.

17. Under conditions of globalization the influence of national law on international law is strengthening. Mutual influence of international law and national law causes their co-operation. Co-operation between international law and internal law stipulates so-called internationalization or homogenization of the latter, representing one of the basic tendencies of this law in the XXIst century [5, p. 115]. The norms of national law influence international law in the part which concerns the order of creation of international law norms, determine its specialization and formation of its separate fields. Rather often norms, institutes and types of legal acts of states are copied in the structures of intergovernmental associations. In the structure of the international and legal norms a specific gravity of those institutes and norms, which are a direct result of national law norms, is remarkably growing. At the same time, the tendency of national law influence on international law is less significant than influence of international law on national law.

18. Legal globalization strengthens the tendency of expansion of the procedure regulation field, results in an increase in the amount of legal procedure norms, complication of procedures, improvement of a procedure form. The procedure regulation is becoming clearer and more detailed, first of all, in the field of protection of human rights and freedoms. Expansion of the procedure regulation field in the national law is reflection of a more significant regularity, that is an increase in significance of law of procedure in states' legal systems. It is likely that

with the development of the national law, the range of law of procedure will be expanding and improving, and its volume in the structure of law will be constantly increasing; the groups of legal procedure norms, which are sub-fields now, will be turned into independent fields (for instance, law of administrative procedure, law of constitutional procedure); the groups, which act as institutes of practice inside their «maternal» fields, will turn into sub-fields (for instance, labour procedure law, tax procedure law).

Conclusions. Thus, in recent years in Ukraine substantial transformation of the standard principles of public relations legal regulation has occurred by means of approving new codes, namely: Criminal Code, Code of Criminal Execution, Civil Code, Code of Family Law, Code of Civil Procedure, Code of Criminal Procedure, Economic Code, Tax Code of Ukraine, etc. At the same time this course should be carried on as there is a number of legal regulation directions, which require institutionalization or substantial renovation of their standard principles, in particular approval of the Agrarian Code, Code of Innovations, making alterations to the Land Code of Ukraine, etc., substantial renovation related to a possibility of signing a strategic agreement with Europe. The noted tendencies and characteristic features of development of the national system of law are reflected in the fields of the national law differently: in some of them they are reflected quite clearly and distinctly, in others – they are on a formation stage. Thus, the process of new tendencies formation in the national law and legislation development is under way. The fact that transformation of the national system of law is correlated with the alterations in the subsystems and elements of the national legal system under conditions of globalization.

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