CRISIS OF STATE SOVEREIGHNTY AS A SABJECT OF LEGAL GLOBALISTICS RESEARCH

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Summary

This paper discusses the subject of a new science – legal globalistics as interdisciplinary legal knowledge system. It was determined that one of the areas of subject's research priority is globalization issues of the day and their legal solutions. The main among these problems, namely the crisis of sovereignty of nation-states devoted special attention paid attention to its ontological essence and possibility of legal resolution. We're focused on the idea of legal realism, institutionalism and systemic- functional approach to the interpretation of the problem of the crisis of sovereignty.

Key words: legal globalistics, globalization, sovereignty crisis, globalization issues.

Аннотация

В статье рассматривается вопрос сущности предмета новой науки – правовой глобалистики как междисциплинарной юридической системы знаний. Определено, что одним из приоритетных направлений исследования ее предмета являются глобализационные проблемы современности и их правовое решение. Основной среди этих проблем, а именно кризису суверенитета национальных государств, посвящено особое внимание, обращено внимание на его онтологическую сущность и возможности правового решения. Автор сосредоточивается на идеях юридического реализма, институционализма и системно-функциональном подходе в толковании проблемы кризиса суверенитета.

Ключевые слова: правовая глобалистика, глобализация, кризис суверенитета, глобализационные проблемы.

Foreword. Globalization changes in the broad sense lead to a sharp complication of internal and external relations, legal and social transformation. There are modernist communications, integrated legal dependences changing international, interstate, social and individual relations between subjects of law. In this regard, the urgent problem of our time is to understand the nature of legal globalization, establishment of internal vectors impact of national and international law in terms of global changes, the level of influence the legal system of a particular state and determine positively useful and deviant consequences of globalization progressive development.

The task of this scientific article is a crisis of state sovereignty as a subject of legal globalistics research.

Body. Jurisprudence regulates present social and legal realities and provides prognostic feature of future regulation. Law science includes a system of learning that is not absolutely constant on the current development of understanding of law and state methodology formed a separate interdisciplinary jurisprudence – legal globalistics. The main subject of this science performs legal globalization, which contemporaries defined as «the process of creating a new, global system of legal norms that organize and provide global intergovernmental cooperation in various fields of modern life, during which international law, domestic law, and international economic associations law detected in a state close interdependence» [1, p. 4].

However, the subject of legal globalistics, in our opinion, is not only legal globalization, but also the global legal issues that it spawned.

The first most important legal issue has to be addressed to global crisis of state sovereignty. This is because the state itself is the basis for the legal system, so other global issues, such as the transformation of the legal system, leveling and other anthropological values are due to the crisis of the state and its sovereignty. The issue of the government sovereignty, the question of conceptual rethinking of the concept and, consequently, theoretical – practical implications for the development of internal spaces and the international community, is not that relevant as paramount, the core of the third millennium. The processes of globalization and unification of the political, legal and socio-economic organization of various social formations, legitimation (or delegitimation) of existing state law regime of the international community contribute to a fundamentally different era in the development of nation states, different geopolitical matrix evaluation of existing problems and threats – on the one hand, options and prospects of civilizational interaction – on the other.

The crisis of sovereignty as an issue of legal globalistics and is issues of sovereignty of the government, question of conceptual rethinking era is seen by many analysts as a «soft parade of sovereignties» gradual desovereignty of state legal spaces break «national-territorial instincts» of the state, suggesting a common (network) managing of global processes of «humanitarian intervention», standardization of economic and political reality. National scientific community picked up Henry Kissinger statement that the current global developments indicate the «death» of the Westphalian system and the meaninglessness of all ideas of state sovereignty and the idea of cultural development. If we talk about sovereignty today, it is only in the context of a united, global sovereignty, involving the integration of different states in some single network entity, a qualitatively new form of international legal organizations.

Ontological basis of this process is that in the period of post cold institutions of the global economy, international organizations and regimes have restricted independent of the state. State participation in the global economy leads to trade -type state, which measures its power share of world economic resources, not the size of the territory and military power. Commercial state directs most of its resources on the development and production of new products and gaining new positions in the international market. Commercial state is interested in maintaining economic prosperity in partner countries, as it has direct investment in their economies. Interdependence of trading power is accompanied by state disparities in

the degree of economic power. Developing countries in the post-industrial basis form a closed system, while industrial and pre-industrial countries are in a position of dependence on the system. This is evidenced by the closure of trade and investment flows within the post-industrial system, its increasing resistance to the peripheral crisis and the tightening of immigration policy.

Ontological economic constant displayed forms new classification and typology of existing states. Thus, under the new doctrine of international order all state – legal organizations should be divided into strong and weak. Moreover the characteristics of strength and weakness do not include traditional assumptions regarding front of military, financial, cultural power and independence, administrative and information stability. It is alleged that weak - uncontrolled and incompetent democratic government and national culture (closed) information interstate systems are a source of serious problems («problems of the first order»), particularly in developing and globalizing.

F. Fukuyama opinion is devoted to the idea of global governance and international control over intra-governments, quite clearly articulates this view, that proves that the post cold war «weak state», or, as he calls them «state – losers» become significant problem for international order. As for these «failures of» the concept of «sovereignty», according to F. Fukuyama, «becomes a fiction or a bad joke» because weak institutional structure of democratic governance and incompetence of these states undermine their sovereignty. «This is because the problems that weak states pose to themselves and others, increasing the likelihood that any of these countries in the international system wants to intervene in the internal affairs of weaker states against their will» [2, p. 152-153]. Thus we have the division into weak states and mega states performing dominant influence on international politics. Specified directly violates the principle of equality of states mentioned in the UN charter.

The UN system is designed to support the international relations between sovereign states through democratic compromise of equal representation of states in the General Assembly, openly and collectively regulating international life. The UN charter states the principle of equality of states, but actually gives the right of veto to the five great powers, placing them in a row of mega national countries. Despite these limitations and the difficult procedure UN is a effective international organization. It gives alternative principles of global governance over traditional geopolitics. They are based on collective decision-making by governments and non-governmental organizations and the goal – a consensual solution of international problems. The UN system needs serious reform to become more effective and legitimate. The UN charter contains prerequisites reforms; it is still an expression of unresolved conflict between two alternative principles of international coexistence.

Questions regarding the current reform of the UN system are consistent empirical fact, its transformation will occur, but there is no clear definition of the direction of change. One suggestion is the creation of the Global Civil Society Forum voting on certain political issues for transnational actors – apart from the nation state, the other is to establish the Assembly of Peoples of the world, elected together with the UN General Assembly Security Council. The benefits of these proposals – the development of identity in non-national states, the spread of democratic voting procedures (elections to the Assembly of Peoples of the world) in countries with authoritarian regimes [3, p. 278-279] and overcoming the separation on «weak» and «mega states».

Representatives of legal realism and institutionalism from opposite positions estimate the impact of globalization on the nation-state activities.

Radical position is occupied by institutionalists. They forecast the replacement of the nation-state by transnational institutions of globalized world. K. Ohmae argues that in a globalized word – nation state becomes «a nostalgic feature» [4, p. 12]. According to W. Reinicke, «Globalization challenges the sovereignty of the nation state» [5, p. 129]. Dominance in the global political and legal environment of international organizations and regimes, internatoinalisation of standards by local civil societies – lead to the erosion of state sovereignty.

Realists believe that in a globalized world, the government continues to pursue its own interests. «In international politics, – says N. Spykman, – all forms of violence are allowed, including a devastating war. This means that the struggle for power is identical to the struggle for survival, and the main task of domestic and foreign public policy is to strengthen positions of authorities. Everything else is secondary» [6, p. 18]. According to J. Donnelly, in a globalized world there is no world government that would rule the actions of nations in the international arena. To survive in this arena, the government should pursue their own interests and no one else [7, p. 12]. Realists deny the impact of globalization on the change in the functional properties of the state.

Native scientist D. Podyachev notes that «state remains the only internationally recognized structure of political association» [8, c. 4], while continuing assertion that «the development of modern nation-state always seeks a compromise between the need to follow the values of freedom and democratic coexistence for all the cultural and ethnic groups – in fact, the rules of time making up her challenge and significance principles that shape her face as a nation» [8, p. 9]. Nation state remains a major participant in the global system of relations and international institutions to express their will. Thus, T. Lowy lists the eight features that, according to his research, state requires: Conquest – ensuring law and order, to guarantee ownership, supervision of compliance with contracts, creating conditions for the exchange, creating opportunities for the transfer of state property in private hands, ensuring excess social capital, creating conditions to meet the needs of the workplace, ensuring allocation of responsibility for property damage, measures to provide compensation for property damage, measures aimed for reducing risk in the community. According to T. Lowy this list is not a simple enumeration. This is agenda for researchers who study how the past and future, namely the era of globalization of capitalism [9, p. 113].

Overcoming the extremes of the ideological orientation realists and institutionalists serves as a system – functional approach that focuses on the study of the processes of adaptation to the challenges in globalised world. In the category of the crisis of sovereignty is another problematic issue – overcoming of national and global ideological basis of state building. Globalism is interpreted as a tendency to spread cultural indifferent international standard, the global outlook, global network and consciousness of having «their darker sides and generate its own antithesis – the ideology and antiglobalisation movement». In this case we mean the humanitarian, economic,

political and legal unification of the existing state-legal spaces in accordance to certain «standardized» ideals and principles.

Conclusions. The process of rethinking the «sovereignty» category is natural and very obvious result of formation of a new phase of internationalization – global universe. Solving the crisis of national sovereignty as the pragmatic and empirically dominant is the prerogative of the scientific and practical nation and lawmaking.

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ТЕНДЕНЦИИ РАЗВИТИЯ ДОКТРИНЫ ХОЗЯЙСТВЕННОГО ПРАВА ФЕДЕРАТИВНОЙ РЕСПУБЛИКИ ГЕРМАНИИ НА СОВРЕМЕННОМ ЭТАПЕ

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Summary

In the article the theoretical research is identified characteristics, major trends in the economic doctrine of Germany. In the context of European integration voted an actual problem of harmonisation of the economic right of Ukraine to the right of EU taking into account experience of Germany. In article the basic concept of legal regulation of economic activities in Germany are considered. It is offered to exercise a number of conceptual positions of the German right in the theory of the economic right of Ukraine.

Key words: Federal Republic of Germany; the German concept of legal regulation of economy; an economic constitutional law of Germany; economic administrative law of Germany.

Аннотация

В статье определены тенденции развития хозяйственно-правовой доктрины ФРГ на современном этапе. В контексте европейской интеграции рассмотрены вопросы научной системы хозяйственного права ФРГ. Определены концептуальные положения публичного и частного хозяйственного права ФРГ. Определены ключевые моменты использования опыта ФРГ для совершенствования методологии правового регулирования хозяйственной деятельности в Украине.

Ключевые слова: Федеративная Республика Германия, правовое регулирование, хозяйственная деятельность, система хозяйственного права ФРГ, публичное хозяйственное право, частное хозяйственное право, хозяйственное конституционное право ФРГ, хозяйственное административное право ФРГ.

Постановка проблемы. Модернизация хозяйственного законодательства Украины в контексте международной интеграции предполагает гармонизацию национального законодательства с законодательством ЕС. Доктрина хозяйственного права ФРГ имеет свою неповторимую, отличную от других правовых теорий конструкцию, свои особенности и тенденции развития. Общеизвестно, что Германия относится к числу стран, где наиболее полно и гармонично сочетается хозяйственно-правовая теория и практика государственного управления и при этом наблюдается устойчивая динамика развития отрасли.

Актуальность темы исследования. Актуальность опыта Германии относительно правового регулирования экономики для Украины является чрезвычайно высокой, поскольку в настоящее время нет ни одной работы, в которой бы комплексно исследовалось хозяйственное право Германии в целом, а не отдельные его институты и нормы.

Состояние исследования. Вопросы хозяйственно-правовой доктрины европейских государств рассматривались в работах таких признанных украинских ученых-правоведов, как В.К. Мамутова [1], Е.Р. Кибенко [2] и др. В Германии признаны следующие ученые, которые занимаются исследованием проблем правового регулирования экономики: Рольф Штобер [3], Вернер Фротчер [4], Юрген Пелка [5], Петер Бадура [6], Хедвига Ламуру [7], Рольф Поль [7] и др.

Цель и задача статьи. Основной целью данной статьи является определение тенденций развития хозяйственного права ФРГ на современном этапе. На основе проведенного анализа автором поставлена задача решения вопроса о возможности прогнозирования дальнейшего развития хозяйственного права в Украине.

Изложение основного материала. Вопросы адаптации и гармонизации национального законодательства Украины с законодательством стран ЕС, в том числе ФРГ, наталкиваются на существенные отличия между доктриной хозяйственного права ФРГ и Украины. Сложности при сравнении с правовой системой Германии возникают в связи с наличием в ФРГ особых отраслей хозяйственного права. Хозяйственное право ФРГ в широком