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PECULIARITIES OF THE FUNCTIONAL PART OF THE LEGAL SYSTEM AS A CRITERION OF TYPOLOGY OF MODERN LEGAL SYSTEMS OF THE WORLD

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SUMMARY

The article analyzes the functional part of the legal system of society, which is viewed as a complex of relations between subjects of law, which are objectified through their legal activities (law-making, law-enforcement and law-interpretation). It is stated that these types of legal activity are characteristic (with some peculiarities) for all modern national and interstate legal systems of the world. It is accentuated that it is the features of the distinction between these types of legal activity, as well as the specificity of each of them, enable to identify the legal features of the functional part of the legal system of society, which is an important indicator in the formation of criteria for typology of modern legal systems of the world.

Key words: legal system, functional part of legal system, type of legal system, typology, legal activity, modern legal systems of world.

ОСОБЕННОСТИ ФУНКЦИОНАЛЬНОЙ ЧАСТИ ПРАВОВОЙ СИСТЕМЫ КАК КРИТЕРИЙ ТИПОЛОГИЗАЦИИ СОВРЕМЕННЫХ ПРАВОВЫХ СИСТЕМ МИРА

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Аннотация

В статье проанализирована функциональная часть правовой системы общества, рассматриваемая в качестве совокупности связей между субъектами права, которые объективируются через их правовую деятельность (правотворческую, правоприменительную и правоинтерпретационную). Отмечено, что эти виды правовой деятельности характерны (с некоторыми особенностями) для всех современных национальных и межгосударственных правовых систем мира. Акцентируется внимание на том, что именно особенности разграничения указанных видов правовой деятельности, а также специфика каждого из них позволяют выявить юридические признаки функциональной части правовой системы общества, что является важным показателем при формировании критериев типологизации современных правовых систем мира.

Ключевые слова: правовая система, функциональная часть правовой системы, тип правовой системы, типологизация, правовая деятельность, современные правовые системы мира.

Introduction. Rapid development and change of the legal order are accompanied by numerous transformations in all legal systems in general and in their structural parts in particular. Vital changes also occur in the functional part of the legal system, which leads to the emergence of its new peculiarities and results in necessity of reconsideration of the content of criteria for typology of the modern legal systems of the world. The significance of the research of the problem of typology is acknowledged by the fact that the result of its conducting will enable to obtain a holistic understanding of modern legal map of the world, typological peculiarities of legal development, interspecific connections and interrelations of national and interstate legal systems.

Literary Review. In the scholarly literature, the issues of the classification of legal systems were covered in the writings of H. Behruz, R. David, A. Esman, H. Kotts, A. Levy-Ulman, J. Leger, M. Marchenko, K. Osakwe, A. Saidov, O. Skakun, Yu. Tikhomirov, K. Zweigert. At the same time, the problem of typology of modern legal systems, in particular its criteria, is not well studied, though some of its aspects were examined by L. Luts, S. Markova-Murashova, L. Udovyka.

The purpose of the article – on the basis of the analysis of the main types of legal activities (law-making, law-enforcement and law-interpreting) to explore the peculiarities of the functional part of the legal system of society as a criterion for the typology of modern legal systems of the world.

Presentation of the main material. Typology of the legal systems of the world requires the creation of adequate criteria by which the legal systems are grouped into corresponding types. In point of fact, the main legal criteria – the set of legal features of the institutional, functional and normative parts, as well as the level of normativity of the legal system – enable to distinguish the following main types of modern legal systems of the world: Romano-Germanic (continental); Anglo-American (general); mixed; interstate-legal. These four types form the basis of the "legal map of the world", its main typological scheme.

The functional part of the legal system covers the connections between the subjects of law, which are maintained through the legal activity, the quality and effective-

ness of which affects the integrity and stability of the legal system. Legal activity should be understood as legally significant acts of law, aimed at achieving legal consequences – the regulation of social relations. It is clearly documented in the current sources of law through the legal powers of the subjects, procedure, sphere and limits, forms of legal acts, etc. The analysis of the essence of legal activity gives grounds to distinguish a number of its features: it is a type of social activity; it occurs in the legal sphere of public life; it is carried out by subjects of law; it consists of legally significant acts; its result is the legal means, including the rules of law; it is aimed at achieving legal consequences – the regulation of social relations.

In legal literature, diverse types of legal (juridical) activities are distinguished, but such criteria as the results of legal activity – legal acts have a more substantial practical and cognitive significance. According to this criterion in the legal activity it is possible to distinguish between law-making, law-enforcement, law-interpreting, as well as direct activity of subjects, which is objectified in lawful conduct in the process of implementation of their rights and obligations. The activity related to the direct implementation of law is the largest in scope, but is considered as actually ensured on condition that the law-making, enforcement and law-interpreting activity is effective, in the process of which the proper conditions for the realization of the rights and obligations of the subjects are created. Therefore, in any legal system of the world, special attention is paid to law-making, law-enforcement and law-interpreting activity. It is these types of legal activities, especially law-making, that is a system-forming factor for ensuring the stability of the functional part and the legal system as a whole, and their peculiarities are used as a criterion for the typology of modern legal systems of the world and as identification codes.

An imperative role in the legal systems of the world is given to law-making activity, that is, the legal activity of authorized entities in relation to the creation, modification, termination of legal norms and their objectification in the law-making acts, which is carried out in accordance with the procedure established by the current sources of law procedural order. In general, characterizing law-making activity, it is worthwhile to distinguish its features: 1) it is a kind of legal activity; 2) it is carried out by a specially authorized law-making entity; 3) it is a procedural activity, provided by the current sources of law; 4) it is aimed at the creation, modification or termination of legal command; 5) its result is law-making acts; 6) it is aimed at creating the proper conditions for regulating public relations. The main types of law-making activity are: law-making, by-law, normative-contractual, judicial. In modern legal systems of the world, legislative activity is of paramount importance.

Legislative activity is usually carried out by parliaments in accordance with the procedure established by the constitutions, constitutional laws or laws on the activity of the parliament (for example, the Law of Ukraine "On the Rules of Procedure of the Verkhovna Rada of Ukraine"). As noted in the legal literature, the legislative function of parliaments is fundamental, as discussed in all constitutions [1, p. 187].

As far as bylaw-making is concerned, as it is mentioned in the legal literature, authorities of state power (chiefly heads of a state, executive bodies, bodies of subunit of the federation) and local self-government are given authority to implement it. Ways for determining the legislative powers of these bodies vary from country to country. They can be divided into two types: law-making powers based on a constitution or a special law, which has a permanent nature, and law-making powers based on a constitution or a special law, but arise on the basis of a special legislative authority [2, p. 46].

The analysis of legal systems of the continental type gives grounds to state that they give preference to law-making activity, but a significant part of the subjects is authorized for by legislative law-making, certain spheres are covered by normative-contractual law-making, and only a small percentage is allocated to judicial law-making, carried out within the limits defined by the law.

Law-making activity in the legal systems of the general law has rather significant features. In scientific sources, it is noted that the subjects of law-making activity create statutes (laws) and delegated acts [3, p. 206]. There is also (in a small amount) bylaw-making. Indeed, the president of the United States has the following bylaw-making authorities: executive orders; plans for reorganization; other acts (military orders, regulations, rules, declarations, etc.) [4, p. 140]. The most important feature is that participation in the law creation is also taken by the courts, which is manifested, in particular, in the authority to establish precedents of general law by high courts, the creation of procedural rules for courts [3, p. 152].

Consequently, law-making activity in legal systems of general law has a number of peculiarities: expanding the scope of judicial law-making with the possibility of creating a legal precedent that is the source of law; a certain narrowing of the limits of legislative activity, the role of by legislative law-making is rather insignificant; establishing the parameters of international legal law-making and the forms of implementation of international treaties in the national legal systems.

It should be noted that among scholars there is no single approach to understanding the essence of law enforcement activities. The analysis of scientific developments of the scholars and the practice of law enforcement gives grounds to state that this is a legal activity of authorized entities, which is carried out in accordance with the procedure established by the current sources of law procedural order and aims at individualization of legal regulations and their objectification in law enforcement acts. It has a number of features: it is a kind of legal activity; it is carried out by a specially authorized subject for this activity; it is carried out on the basis and in procedural order, and provided by the effective sources of law; it is aimed at creation of individual legal requirements regarding the personified entities; it is aimed at achieving legal consequences – creation of proper conditions for the regulation of social relations through proper specification of legal norms; the results of this activity are objectified in legal acts. The most expedient is the classification of types of law enforcement activities under the powers of the subjects of enforcement (executive, judicial, law enforcement, etc.). These are the types of law enforcement activities that reveal its peculiarities in any legal system, which makes it possible to formulate criteria for typology or identification.

In legal systems of continental type, law enforcement activities are related to

the specification of legal regulations. In addition to the judiciary, which is authorized to apply legal acts, the subjects of law enforcement include: government, ministries, local authorities, etc. These bodies specify the requirements for specific life circumstances in the process of solving specific cases, creating conditions for proper legalization. During enforcement, within the limits provided by law, law-enforcement precedents may be created.

With regard to law enforcement activities in legal systems of general law, it is aimed at specifying the legal norms, and its subjects have wide powers to create judicial enforcement and law interpretative precedents. Although in the past decade the ratio of the precedent and the law in the system of general law has changed in favor of the law, case-law judicial decisions nevertheless have a very substantial significance. Importance of case-law judicial decision is conditioned by the fact that virtually no statute (the law) can fully regulate social relations, until the judicial practice of its application and interpretation is formed [5, p. 8].

An important place among the types of legal activity that is aimed at providing proper conditions for the regulation of social relations, is given to the law-interpreting activity. The reason for its implementation is general, abstract nature of legal regulations, availability of valuing concepts, numerous legal deformations, etc. It is worth noting that although legal interpretation is in general an integral part of enforcement, there is sometimes a need for an official clarification of the content of legal regulations for other entities.

In order to ensure the comprehensiveness of the characteristics of law-interpreting activity, it essential to distinguish its main features: 1) it is a kind of legal activity; 2) it carried out by a specially authorized subject for this activity; 3) it is carried out in the manner prescribed by the effective sources of law; 4) it is aimed at creating a rule-explanation of the content of the rule or principle of law, which acts only within their limits; 5) its result is formally binding for entities that apply the explanatory norm or principle of law; 6) its result is objectified in a special act (established by law in external form); 7) it is aimed at achieving legal consequences – the creation of appropriate conditions for normalization of public relations through the uniformity of understanding of the content of legal regulations. Consequently, law-interpreting activity is the legal activity of authorized entities, which is carried out in the procedural order provided by the current sources of law, aimed at creating rules-explanations of the content of norms and principles of law and their objectification in interpretative-legal acts.

In legal systems of the continental type, interpretation activity is carried out to clarify the content of the rules of law only by those authorized to do so. Sometimes in the process of interpretation, law interpretative precedents are formed to provide a uniform explanation of the content of law. Authorities for the interpretation of the Constitution and laws often have bodies of constitutional justice. The law of some states contains direct indications on the interpretation and legal activity of such bodies, however, in most European constitutions, such special powers of the constitutional courts are not recorded (indeed, the French Constitution does not provide the authority of the Constitutional Council to carry out an official interpretation of the Constitution). The Constitution of Poland (Article 239) generally deprived the Constitutional Tribunal of the power to formally interpret normative acts [6].

In the practice of English legal proceedings, the process of interpretation is regulated by a set of special rules, presumptions, linguistic maxims, laws, precedents, auxiliary facilities, which are of great importance for judges [5, p. 81]. Interpretation Act (1978) plays a special role among these regulators.

The analysis of the mixed type of legal systems gives grounds to state that in all its subtypes the law-making activity (law-making and bylaw-making, normative-contractual, principally of all international-legal, and in the systems that have adopted the signs of the common law) is also carried out by law-making. It is worth noting that Scandinavian and Latin subtypes of mixed legal systems are characterized by the following features of legal activity: increasing attention to law-making activity; increasing the role of normative-contractual (in particular, the conclusion of international legal treaties); dualism, receptivity of signs of legal systems of the general type concerning judicial law-making, legal interpretation (which is, however, significantly narrowed compared to the English legal system). The similar algorithm is the implementation of law-making, law-enforcement and law-interpreting activity in the traditional, religious, customary subtypes of mixed legal systems, however, in addition to the prescriptive signs of the continental and general type of legal systems, the religious principles and outlooks, customs, traditions, as well as other social norms.

The analysis of the interstate type of legal system indicates that international organizations evolve through the creation of their own legal systems. International type of legal systems is characterized by international contractual and judicial law-making. As for the interpretation of law and enforcement, they are combined in the process of examining specific cases.

Conclusions. The analysis of the types of legal activity through which the functional part of the legal systems is formed gives grounds to conclude that law-making, law-enforcement and law-interpreting activity are characteristic (with certain peculiarities) for all modern national legal systems of the world, as well as for interstate legal systems. It should be emphasized that in the world there is an increase in the importance and share of law-making activity in all national legal systems; strengthening the role of law-making in concluding international treaties; a combination of law enforcement and law-interpreting activity; convergence on the main features of law-making, law-enforcement and law-interpreting activity in different types of legal systems, their assimilation under the influence of interstate legal systems; the emergence of problems in ensuring the interaction of international and national law, on the delimitation of international and national jurisdictions on law-making, law enforcement and interpretation.

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УРЕГУЛИРОВАНИЕ ПРАВА НА СВОБОДУ МИРНЫХ СОБРАНИЙ В ДЕМОКРАТИЧЕСКИХ СТРАНАХ МИРА

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АННОТАЦИЯ

Сегодня права человека являются одной из ключевых научных проблем и изучаются с самых разнообразных позиций. Применяя право на проведение публичных мероприятий человек, безусловно, действует в обществе, подчиняясь его требованиям, или выдвигает свои. Правовое демократическое государство, воплощая эту идею, достигает целей уважения достоинства и защиты прав каждого члена общества путем развития законодательства о правах и свободах человека и гражданина. Права человека приобрели юридическую форму и рассматриваются демократическими государствами как основа конституционализма. В свою очередь, охарактеризована необходимость обеспечения реализации права на мирные собрания надлежащим образом в Украине.

Ключевые слова: мирные собрания, права человека, законодательное урегулирование, уведомительная процедура.

SETTLEMENT OF THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY IN DEMOCRATIC COUNTRIES OF THE WORLD

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SUMMARY

Today, human rights are one of the key scientific problems and are studied from a wide variety of perspectives. Applying the right to hold public events, a person, of course, acts in society, obeying his requirements or making his own. A legal democratic state, embodying this idea, achieves the goals of respecting the dignity and protecting the rights of each member of society by developing legislation on the rights and freedoms of a person and citizen. Human rights have acquired a legal form and are considered by democratic states as the basis of constitutionalism. In turn, characterized by the need to ensure the realization of the right to peaceful assembly properly in Ukraine.

Key words: peaceful assembly, human rights, legislative regulation, notification procedure.

Изложение основного материала. Основой эффективного функционирования демократической системы государства является право на свободу мирных собраний, наряду с такими существенными правами, как свобода самовыражения и свобода объединений. Возможность проводить мирные собрания является основополагающим и неотъемлемым компонентом многогранного права на свободу мирных собраний, которое принадлежит каждому человеку.

Право на свободу собраний и ограничения этого права четко изложены в ст. 11 Европейской конвенции по правам человека [1]. А также пункт 1 ст. 20 Всеобщей декларации прав человека устанавливает, что каждый человек имеет право на свободу мирных собраний [2]. Право на мирные собрания признается и в ст. 21 Международного пакта о гражданских и политических правах [3]. В Хартии основных прав Европейского Союза в ст. 12 записано: «Каждый имеет право на свободу мирных собраний и на свободу ассоциаций на всех уровнях» [4].

Эти документы следует назвать основополагающими для урегулирования права на государственном уровне