

The problem of transformation of law in the context of globalization

Philosophical analysis of the impact of globalization on the legal sphere implies the need to consider law as one of the types of social systems, which in social philosophy means "holistic entities, the main element of which are people, their connections, relationships and interactions, social institutions and organizations, social groups and communities, norms and values "[1, p.244]. The systematic nature of law as its essential characteristic is indirectly confirmed by the concepts of «system of law» and «legal system» firmly rooted in modern legal science. It must be taken into account the dissimilarity of these concepts. In contrast to the legal system, the concept of «system of law» reflects only the internal structure of positive law, its division into industries and legal institutions.

In the narrow sense in the theory of law the legal system means the national law of a particular country. It is a complex, systemic concept in which its elements (system of legislation, legal practice, dominant legal ideology) are genetically and functionally united into certain structural subdivisions. The system of law is a complex multifaceted phenomenon. For example, the Ukrainian system of law is characterized by the division of law into public and private, substantive and procedural, regulatory and protective. Branches and institutions of law are also distinguished in this system of law. In a broad sense, the term «legal system» is used to denote related national legal systems (legal families), as well as the global legal system that is currently being formed [2, p.159].

Consideration of law as a social system allows to apply almost any methodology used to study social systems. The methodology of dialectics, synergetic, as well as general systems theory is the most suitable approaches in our opinion.

For example, from the synergetic point of view, the legal system should be considered as a complex nonlinear feedback system that has a dynamic stability. As known, the internal mechanism of formation of structures and evolution of complex

nonlinear systems is the interaction (struggle) of two opposite principles - scattering and reproducing trends. According to experts in the field of synergetic, «if the mechanism of the destructive trend of development is embedded in the system's desire to achieve balance, then self-organization appears as the physical basis of the mechanism of creation. One of the main conditions of self-organization is availability of external energy to overcome natural tendency toward entropy» [3, p.166]. It follows that for its long-term successful existence, the national legal system must be an open system, interacting with other types of social systems and with the legal systems of other states.

According to Bogatyrev V., for its development, the legal system must receive a powerful flow of borrowings from outside, without which it is doomed to degeneration, which will be accompanied by a predominance of destructive, self-destructive tendencies. Thus, borrowing is a positive phenomenon for the legal system, but not any borrowing, but only those that are adapted to it. If you borrow a legal institution that works well in other conditions, but is not adapted to the conditions of the recipient and does not correspond to existing historical experience, economic, political, legal conditions, it will not be able to function effectively, that follows to degenerate and collapse soon [4, p.20- 2].

Borrowings in the legal system usually take the form of a reception. In law reception means the unilateral borrowing by one state from another state of certain elements of the legal system (or the entire legal system): legal concepts, legal structures, legal institutions, and so on. A special form of reception is the borrowing of legal terminology, rules and techniques of legislative techniques, legislative procedures and more.

It is known that reception as a form of interaction of legal systems has existed since ancient times. Suffice it to mention the reception of Roman law on the European continent, on the perception of the law and jurisprudence of the metropolises in the colonial countries of Africa and Asia. However, the convergence of legal systems take the form of one-way borrowing of legal experience without

critical consideration of the positive features of the legal systems of other countries only in the context of globalization.

The activation of the reception process occurs, as a rule, at the stage of formation of the legal system, that is associated with the formation of a number of new legal institutions. It follows that the strengthening of the receptor component can be considered as an indirect sign of the beginning of the active stage of formation of the legal system. However, the reception may increase in crisis moments of the legal system, when there is an objective need for external feeding of this system to overcome the growing destructive tendencies [4, c, 20-21.

Agreeing in general with this approach, it should be noted that the inflow of energy into the system from the outside can be carried out not only as borrowing in the form of reception, but also in the process of states active interaction; in the form of acute interstate conflicts; in the form of political, economic, etc. challenges to one state from other states that threaten the existence of the state, etc. Moreover, the classical form of reception, when one state borrows complexes of law from another, is no longer characteristic of the modern world.

In turn, the use of the methodological potential of dialectics allows us to consider the transformation of law in the context of globalization through the prism of the law of mutual transition of quantitative and qualitative changes, according to which quantitative changes cause qualitative changes at some stage, and new quality creates new opportunities and intervals of quantitative changes.

This approach allows us to present globalization transformations of law as a set of qualitative and quantitative changes manifested at the level of its subsystems and elements in the spread of global legal ideas, theories, liberal legal ideology, global and European legal standards, their reflection in legal policy, legal acculturation, globalization of legal culture and legal consciousness; in the emergence of new principles and norms that reflect and embody liberal legal ideas; in legal integration; in the processes of adaptation, harmonization, unification of national law and legislation; in expanding the range of subjects of the legal system; in the transformation of their legal status, etc. [5, p.154].

References:

1. Современный словарь по общественным наукам / Под общ. ред. О.Г.Данильяна. М.: ИНФРА-М., 2013. 314 с.
2. Суспільство, людина, право: досвід філософсько-правового осмислення : монографія / О.Г.Данильян, О.П. Дзьобань, С.Б. Жданенко та ін.; за ред О.Г. Данильяна. Х.: Право, 2018. 352 с.
3. Ровинский Р. Е. Синергетика и процессы развития сложных систем. *Вопр. философии*. 2006. № 2. С. 162-169.
4. Богатырев В. В. Глобализация права: автореф. дис. ... докт. юрид. н. Владимир, 2012. 44 с.
5. Удовика Л.Г. Глобалізаційні трансформації права / Велика українська юридична енциклопедія: у 20 т. Х. Право, 2017. Т 2. : Філософія права / редкол.: С.І. Максимов (голова) та ін. Х.: Право, 2017. С. 154-156.