

COMPARATIVE LAW: POSTCLASSICAL EPOCH

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ABSTRACT

Article covers three blocks of the condition analysis for comparative jurisprudence of a post-classical era: 1) historical formation features – genesis of intrinsic characteristics of this development period of legal comparativistics; 2) features of evolution of a methodological basis of the comparative and legal analysis; 3) subject list change of comparativists. The post-classical development period of comparativistics in article is understood as the modern development period of comparativistics. Methods: the research is performed on a dialectic platform, at the same time historical approach is applied and system are structural the analysis of comparative jurisprudence as areas of legal knowledge. Knowledge of genesis of comparativistics has allowed to create idea of intrinsic lines of development transition of comparativistic legal knowledge from "infancy" to "an institutional era". It is important that then the system beginnings of legal knowledge processes happening in different legal systems have been put. The modern methodology of comparativistics undergoes development in a look complication of a complex of receptions and ways of comparative and legal knowledge of the law. At the present stage the principle of methodological pluralism begins to play a large role. The role of public law as subject of the comparativistic analysis since it becomes clear that in many comparative researches his elements aren't considered grows, and it needs to be made for achievement of comprehensiveness of knowledge.

Keywords: *institutional era, history of comparativistics, methodology, post-classical era, law, legal system, comparative law.*

INTRODUCTION

The law has come to a scientific comparativistics later, than other disciplines, for example, of science about language [1, p. 97]. Though a certain interest of scientists in life foreign political legal has been shown at the time of Antiquity. So, Thucydides compared customs of Persians and Thracians, Aristotle has expanded a zone of comparative search to 158 countries and poles, laws of the island of Crete became the model beginning for Plato and Strabo .

By the present period of time the comparative law has already passed two large stages in the development: infantile and institutional eras .

Infantile era is characterized by manifestation of interest of representatives of the humanity in the foreign law, an exit for a framework of own legal life, wide use of comparative receptions in the analysis of political and legal material of various states. Researches of the specified epoch-making accessory have laid the foundation for formation of comparative jurisprudence as methodological and world outlook system and her introduction in an institutionalization phase. Platon, in particular, in the late dialogue "Laws" convincingly proved a direct connection between a state system of various countries and a

qualitative orientation of their legislative life. At the same time as well as in "State", he absolutized the individual beginning at statehood bases, that is governor per se.

We can meet so wide comparative masks of a comparative order also at C.-L. Montesquieu. His work as "De l'esprit des lois" ("About spirit of laws") became for a humanitarian thought a brilliant sample of the multi-vector empirical models of a political legal order systematized by geographical criterion [2, p. 12].

Collective work of theorists of the American statehood A. Hamilton, J. Madison and J. Jay "Federalist" became one of the most almost directed works of the called epoch-making accessory. They not only have drawn attention of readers to experiences of political and legal life of the states of the past and the present (in the initial version this work came out on pages of a number of the New York newspapers), including the states of Ancient Greece, Rome, Great Britain, France, Switzerland, but also that especially should be emphasized, generated authentic model of the social device which has found the reflection in the Constitution of the USA of 1787 [3] subsequently .

The beginning of an institutional era in the history of the comparative law is the share of XIX a century. Then: 1) comparative and legal researches have gained system character; 2) the comparative jurisprudence has got the printing sources, researches have in the field received approbation at various scientific forums; 3) the legal comparativistics has stopped being business of the loner researchers movable by authentic scientific thoughts, having become the separate direction in law. At the same time significant effect on formation of the doctrine of comparative jurisprudence in the 19th century was had: historical school of the law and German classical philosophy. So, the founder of historical school Friedrich Carle of von Sawinyi in the work published in 1814 "About recognition of our era in the legislation and law" is law claimed that the law has to be based on studying of history. "History even of a people infancy, – F. K wrote. Sawinyi, – remains always the noble teacher, and in such century as ours, at her appears one more and lighter function which she has to execute. Only she keeps live communication with an initial condition of the people; with loss of this communication any people lose the best part of the spiritual life" [4, p. 136]. On the other hand, the representative of the German classical philosophy A. Feuerbach opposed at the same time and nationalism of historical school of the law, and universalism of the natural and legal doctrine. In his opinion, – though development leads to unity of the law, nevertheless it doesn't exclude big differences of the law of the different people. He claimed that only comparison of various legal systems will give the chance to turn law into original science. The general history or universal science which has remained unfinished had to become work of all his life it is law, based on the principle of an evolutionism. As Monteskyyo, and to some extent and historical school is law, he emphasized the individual, peculiar features of the people finding reflection in their legal systems. But he sought to comprehend the law in all his natural and social communications with the environment that pulled together him with Montesquieu and gave his concepts a sociological basis [5].

In the 20th century an institutional era in development of the comparative law has been continued. Then the channelized scientific has got the mature sounding and classical lines .

It is possible to call an era today's in development of the comparative law post-classical. What her main characteristics?

I. CHANGE OF THE LEGAL WORLD MAP

Legal world maps unlike maps became a subject of scientific developments of scientists rather recently. At the same time, as a space variable, so a variable of time remain dominating in determination of their shape. The first rather stable and invariable. Lawyers, in this case drew the posteriori cards, over already known political and geographical objects – continents, the countries and their unions. The second much more changeable and fragile by definition. It is obvious that, for example, the description by means of

palettes of homogeneous legal communities of the world of colonial great power statehood the beginning – the middle of the 20th century will significantly differ from space of "parade of sovereignties" in combination with an all-consuming mossiness mushroom of globalization of a turn of the 20th and 21st centuries. For the first of times to "artist" there will be enough several paints, the second time, in color expression will resemble rather pictures of the French impressionists whose palettes are difficult, multi-color, fancy and where even the shadow gains the color.

Multiple layers and polychromy of a palette of modern legal world maps in many respects are promoted by that fact that "the national law of the states is blocked by other types of legal regulations" [6, p. 20]. But who else except the states can apply for a role of the creator of precepts of law in modern conditions? Besides interstate and supranational educations it is necessary to pay special attention to multinational corporations .

By estimates of experts, today turnover of such giants of the transnational market as Wal Mart, ExxonMobil, Royal Dutch Shell is exceeded by a gross national product of the small European countries (for example, Greece and Denmark). Economic expansion is accompanied also by expansion legal on national spaces of the states. Let's ask a question: whether the Slavic, Soviet, Continental-European lawyer about "a corporate veil" and ways of its "piercing" how the representative corresponding classical legal community has to know potentially? The answer is negative. But whether the applicant for a position in the international legal bureau located in the territory of Russia to receive required vacancy has to be armed with the corresponding knowledge? Answer, certainly, positive .

Influence of the multinational companies in the sphere of private law is the most noticeable. It is about lobbying of creation of non-state mechanisms of regulation of the public relations by them through these or those professional associations and communities. So the Commission of ICC (International Chamber of Commerce) on the commercial law and practice has developed the document devoted to nonnational (a national rules) which can be used in the international commercial contracts.

Distribution of the transnational law can be compared to effects of universal franchizing of goods and services. It is some kind of "legal hamburger" with uniform recipes of preparation and tastes irrespective of the concrete country within which there is his functioning and use.

The transnational law, of course, isn't the only new variable in the legal field of legal systems of the world. His emergence a part of the general tendency on soft law presentation – the phenomenon multiple-valued and multilevel. According to one researchers the soft law covers only "optional rules or documents which interpret or tell people around idea of their creators of legally obligatory norms or represent the promises creating expectations about future behavior of persons" [7, p. 174]. Other researchers stand on wider scientific positions treats any international document other than the international treaty which contains the principles, norms, standards and other provisions concerning the expected behavior [8, p. 319].

In modern conditions also models of interaction between legal systems of the world change: to replace the national closed model sung in works of historical school of the law its transparent analog comes. Loans in the law [9] become a key form of communication between legal formations of national, international and supranational level].

II. EVOLUTION OF A METHODOLOGICAL PLATFORM OF THE COMPARATIVE LAW

The post-classical era of comparativistics development has set the new tasks of methodological search. In the conditions of modern information society it becomes more difficult to define genesis of this or that legal phenomenon. Requirement of development of methods of "high-speed" knowledge of the public

relations, creations of new mechanisms of "effective fixing" of manifestations of legal dynamics increases.

It is important to understand that the role of a legal comparativistics at the present stage changes. From an auxiliary method of knowledge of legal processes she passes into a phase of development of own methodology. The methodology of interdisciplinarity begins to get into comparativistic legal knowledge more deeply [10]. It is promoted by strengthening of systemacity in comparative and legal knowledge [11]. The comparativistic legal methodology of the 21st century embodies dialectic unity of complex, system, interindustry and cross-disciplinary knowledge.

It is important that the legal map of the modern world, by means of evolution of a methodological arsenal of comparative jurisprudence begins to incorporate and consider the integrated knowledge primary (extra legal) and secondary (mediated *пpaoBM*) the public relations [12].

The comparativist of the future has to know not only a foreign language and have skills of distinction of the legal phenomena in the different states, he has to be able to analyze the nature and genesis of norms taking into account different perception of the law in legal systems. In these conditions the role of methodological pluralism increases in system of methodology of a modern comparativistics.

III. Change of comparativists subject list

The general comparative jurisprudence it what we knew it earlier is in many respects scientific search of representatives of the private-law block of jurisprudence. And though the civil direction in law, certainly, have made glory of the comparative law, many aspects of public law in their comparativistic models aren't considered. So, according to classical comparative models of the country of the Latin American region, as a rule, on legal cards are presented in flowers of the continental law, legal community "droit civil" as his representatives of the European science call. From the point of view of development of private law the submitted data are certainly true. However, evolution of constitutional law took place in the specified regions under influences of traditions of the American legal science. What also you shouldn't forget about

In modern conditions we see a tendency to overcoming the defect given above through active participation of experts in public law in reconstruction of the legal world map. So, professor V. E. Chirkin has made successful attempt of the analysis of the political and legal beginnings of the legal world map. In this case it is about the presentation of three so-called global legal systems – Muslim, liberal and semi-social capitalist and totalitarian and socialist. In turn traditional legal families, according to V. E. Chirkin, declare themselves within and limits of the global legal systems [13] stated above.

CONCLUSIONS

Knowledge of genesis of comparativistics has allowed to create idea of intrinsic lines of development transition of comparativistic legal knowledge from "infancy" by "an institutional era". It is important that then the system beginnings of legal knowledge processes happening in different legal systems have been put. The modern methodology of comparativistics undergoes development in a look complication of a complex of receptions and ways of comparative and legal knowledge of the law. At the present stage the principle of methodological pluralism begins to play a large role. The role of public law as subject of the comparativistic analysis since it becomes clear that in many comparative researches his elements aren't considered grows, and it needs to be made for achievement of comprehensiveness of knowledge .

SUMMARY

So, we have given three key characteristics of the post-classical era in development of the comparative law connected with change at once of three indicator points of the analysis above: objects of a research of comparativists, their subject structure, and also the methodology used by them .

In the future, it is represented: the specified defined points will wait for new transformations. Complication of public life and new calls of the external environment will demand from comparativists of new conclusions, estimates and the conclusions .

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