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ВЛИЯНИЕ ГЛОБАЛИЗАЦИИ НА ПРОЦЕСС «МУЛЬТИТРАНСФОРМАЦИИ» ПРАВА

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GLOBALIZATION INFLUENSEON THE PROCESS OF "MULTITRANSFORMATION"OF LAW

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Аннотация: В статье рассматривается процесс глобализационного влияние на процессы мультивекторного развития права

Ключевые слова:глобализация, мульттрансформация, субъект публичного управления

Abstract'The shift in sovereignty accompanying globalization means that the citizens are more involved than ever in the issues relating to human rights. This development poses challenges to the international human rights law because, for the most part, this law has been designed to restrain abuses by the states.

Key words: globalization, legal and regulatory framework, public law,subject of legal relation, ecologization of law.

Owing to its essential purpose to be a means of settling conflicts in differently directed subjective interests which are formed and implemented in a multi-level system of public relations, law, beginning from the "embryonic" forms of its existence, has revealed the character that is quite remote from one-dimensionality and sometimes is internally contradictory. Furthermore, in the fundamental basis of own organization, legal norms must be arranged so that they can be considered

simultaneously as laws of compulsion and laws of freedom. The state shall guarantee both: on the one hand, the legality of the conduct of a person who generally follows the sanctioned norms, but on the other hand – the legitimacy of prescriptions that always provides an opportunity to comply with the norms with respect for the law. Thus, for every legal system the fundamental question is its “core meaning”: focusing on ensuring the inviolable freedom of the subjective determination or, conversely, establishing clear affiliation guidelines by means of which such freedom is limited and directed for its retention within certain regulatory frameworks. In particular, within the democratic legal systems, this inherent contradiction of law is resolved by means of the synthetic "permissive-prohibitive" interpretation of its content on condition of prioritizing the idea of freedom in relation to the idea of compulsory obligations. In fact, here the principle of law is a requirement of freedom confession as the highest value, and hence, the requirement of justification. The idea of law is expressed in the form of affiliation, it is not reflexive, the requirement of freedom here is presented as the first-ever duty.

After all, in any legal system there are numerous dilemmas related to the coordination of private and public law. The latter two aspects are in “paradoxical”, at first glance, relationship. On the one hand, they reveal mutually exclusive indicators of their “determinants of needs” and targets (as communitarian and personal interests are mainly opposite). On the other hand, the levels of law in question include the dialectic of their functioning, in accordance with which they become the integral parts of the process of legal enforcement that acquires its qualitative determination and balance due to the mutual equability of these oppositional components. The implementation of private interests can be guaranteed only if it is ensured by the responsibilities of the relevant persons whose activity is regulated by public law. Therefore, any rationale of private legal institutions is closely linked to the optimization of their correlation with public law, only to the extent of its solution that we can talk about *legal self-regulation* of the society, predicted by the idea of democracy itself. “Opimality” of the mentioned relation is essentially determined to the extent of which the normativity of each of these legal units is formed “from

below” (i.e, in real life of public relations by the activity of their members) and rises to the level of law and is provided by the authorities “from above”, not vice versa, because the interest socialized by the legal norm is protected by the citizens themselves as much as it is focused on securing their own welfare and, first of all, corresponds to their private interests.

From this point of view, for example, the approach which is still spread in the domestic finance approach, seems unreasonable, under this approach finances are a means of ensuring the interests of the state, first of all (in particular, through “primary” and “repeated” taxation, that is, by removing to the state property both added value established by a manufacturer and the values previously taxed), since the percentage of such divestiture often equalizes the economic interest in the private sector.. These institutions must become a means to achieve a long-term mutually beneficial compromise between the state and the society concerning public finances. Particularly, as the right of public property is derived from the private ownership right, the first one is principally impossible without the second one. It is clear that the true vocation of finance is a legitimate combination, optimization and harmonization of natural rights and legitimate interests of all subjects of legal relation equally regarding public finances.

Thus, in determining and justifying the legal normativity designed to regulate social relations even in individual (relatively “closed”) national and state limits it is necessary to consider a fairly extensive system of target parameters capable to influence the direction and “the power potential” action of legal law in which the said normative is materialized. However, when it comes to the modern democratic society, a key feature of which is its “ontological gravity” to acquire the forms of the structural-organizational and functional “openness”, the range of estimates for the degree of justification of the legal institutions and norms operating in it, is greatly expanded.

First of all, this fact is caused due to the expansion of the legal framework for account of its “internationalization” and the massive involvement of the population for participation in the political and legal processes through the growing network of

the civil society. Accordingly, an increase of the law action areas that is the result of the intensive growth of business activity of the legal system subjects, both natural persons, their groups and legal entities, stipulates the global breadth of legal activity and legal relations and requires the search of adequate mechanisms for the legal contact mediation (the constructive activity and behavior) of the global level. The regulatory law potential requires the intervention into new areas – transnational social relationship and contacts; the legal standardization of the basic spheres of the social reality in terms of the transition of the modern civilization to the values of pluralist democracy, the approval of values in the industrial society on a global scale and gradual "growing" of the national socio-political systems into a single global information system.

It is obvious that the degree of the functional complexity of law increases: the subject field of its direction is expanded simultaneously in two multi-ordinal planes – "internal" (local) and "external" (regional and global) ones. Just as within the first plane it is designed to coordinate the interests of private and public law subjects of the internal national ranking, at the level of the second plane the states and supra-state institutions being "elementary" subjects. Therefore, in the content of political and legal globalization and law functionality, it has to be evaluated not only in terms of achieving the "internal" equilibrium of the subjective interests within a particular national legal system, but also from the perspective of the indicators of the appropriate balance outside it – in the sphere of foreign policy and international legal communications. In addition, there is a need to harmonize the national and international law, since the contents of the former are to a great extent determined by regulatory standards of the latter, which, in its turn, come into force on the territory of a particular country only through the implementation into the system of the national and state laws.

Due to "the rise" of the law over its content, determined by the narrow national boundaries, it is possible to interprete the legal status of any human individual not only as a citizen of a state, but as a person and a citizen in general. Accordingly, in this regard, the determination of the content and scope of the inalienable subjective

rights and freedoms beyond the “mercy” of the national government is added firstly, and, secondly, the concordance of the regulatory basis of this regulation with the terms of the inviolability of these rights constituted as the basic criteria of legitimacy of any law or legal mechanism for its implementation in the system of social relations.

Such reorientation of the legal priorities from the right of the state to the human right apparently makes further development of the legal regulation towards its humanization. However, the reverse side of this process should be noted: along with quite positive aspects of the mentioned direction there is also a kind of anthropological paradox of globalization, which consists in the fact that the number of people involved in the process is much less than the number of the excluded ones; among those involved quantitatively dominate people experiencing the negative effects of globalization – the population of the less developed countries is perceived only as a cheap labour force. The migration of the population from “the countries of the South” to “the countries of the North”, which is a natural response to the flow of industrial goods, services, capital, etc. is strictly controlled, as well as the agricultural product export from “the South”. It is a factor of the aggravation of the progressive growth process of a part of humanity excluded from opportunities to succeed in today's social, economic, cultural and political progress.. The increased terrorist activities, where the subjects of realization are not political, religious or other organizations and groups, but some individuals (such famous "lone shooters" as Breivik, Vinogradov et al.) confirm this fact.

We should also mention that the development of the industrial civilization, which, on the one hand, gives a person previously unheard possibilities in terms of the self-realization in the natural and social life and, on the other hand, it increases the degree of risk associated with the use of threats of these capabilities against “their own kind”, it also has a reverse effect in the form of the numerous environmental problems caused by the disbalance between the society and nature. This includes the negative technogenic effect on the environment and the multiple excess of the depletion rate of the natural resources in relation to the speed of its recovery, and

global warming, and many other manifestations of the ecological crisis in the modern world . Thus, in the system of the legal regulation there is a need not only to normalize intersubjective relations in the society, but also the environmental safety of the mankind. Indeed, such problems can not be solved only at the local or national level..

In other words, at this stage of the cultural and civilizational development of the society in determining and justifying the regulatory framework of the legal regulation, we have to deal not only with the economic, social, political, anthropological, moral, religious and other foundations on which the above regulatory framework could be justified but with rather broad issues of their agreement with the objective conditions and consequences of this development. Although such effects are often associated with so-called human interference “subjective factor” in the global order, they, somehow, are an objective reality that, regardless of our attitude towards it, requires a careful control (primarily on the regulatory and legal framework), implemented by the globally integrated humanity. Thus, one could say that the modern progress has bilateral nature, according to which it is appropriate to talk not only about the consequences caused by globalization, but also about the causal conditionality of further expansion of the global integrative processes by the human activity results that can not be controlled otherwise than at the global level of coordination of the international relations.

As the situation has already been characterized in the preface to D. Held’s famous work "Democracy and the Global Order", now the classic theory and practice of the democratic development face the serious challenges and a strong opposition, which are determined by the latest socio-political trends. “The key tradition of democratic thinking, above all those which stem from republicanism, liberalism and Marxism, appear to be severely strained in the face of major twentieth century developments" [1, p. VIII]. Among them, in particular, the dynamic development of the global economy, leading to destabilization and major complications (both within countries and in international relations) that are out of reach for control by any single national government is mentioned; the rapid growth of the transnational relations that

have stimulated the uprising of the new forms of the collective decision making involving different states, intergovernmental organizations and international political pressure groups; the scope expansion and the intensification of the transnational operation of the communication system; proliferation of the military technology and weapons as "the persistent sign and stabilization means" of the modern political world, as well as the aggravation of such global problems as the environmental damage from acid rains, damage to the ozone layer and “the greenhouse effect”. While these problems arise in completely different planes of the human existence, however, the general outline is that they do not recognize national boundaries and frontiers.

It is clear that the described conditions and trends in the social and political development will demand new methodological approaches and models of the justification of the legal framework regulating relations and processes in the system “man – society – nature”. These models are multilevel, because in today's world, the implementation of the law regulatory capacity is necessary not only in the context of the intersubjective relations regulated on the basis of the national institutions of private and public law, but also at the level of the international relations of the regional and global scale.

Thus, globalization processes, covering practically all spheres of life in the modern society have become a significant factor of expanding the essential functional characteristics of the law and its regulatory trends in a complicated system of this life. However, without the compliance with the optimum balance between the multi-directional vectors of the legal normativity, the latter will lose its effectiveness as a means of achieving the orderliness of human behaviour in the social and natural environment which would guarantee self-preservation of mankind, the coherence of the organizational forms of its existence and further development.

References

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