

## Artículo de investigación

## Place of Ukrainian law among other legal systems of the world

## МІСЦЕ УКРАЇНСЬКОГО ПРАВА СЕРЕД ІНШИХ ПРАВОВИХ СИСТЕМ СВІТУ

## Lugar de la ley Ucrania entre otros sistemas legales del mundo

Recibido: 28 de julio del 2019

Aceptado: 12 de septiembre del 2019

Written by:

**Valentyn Fedorov**<sup>43</sup><https://orcid.org/0000-0003-3130-2602>**Nataliia Chipko**<sup>44</sup><https://orcid.org/0000-0002-4504-4627>**Yuliia Tishchenko**<sup>45</sup><https://orcid.org/0000-0002-7658-4116>

## Abstract

The relevance of the article is the need to clearly identify the place of Ukrainian law among other legal systems in the world. The study focuses on domestic and foreign legal systems, most notably Romano-Germanic and Anglo-American legal families. The following research methods were used when writing the study: comparative law, analysis, synthesis, induction, deduction, etc. The purpose of this paper is to determine the place of Ukrainian law among other systems of law in the world. To achieve this goal, the following research objectives were set: to analyze the main properties of domestic and foreign legal systems; to determine directions of improvement of the domestic legal system, using the positive experience of foreign countries.

The authors conclude that the Ukrainian legal system needs improvement and further integration into the Romano-German legal system. At the same time, some of the past generations of domestic lawyers and scholars deserve to be rethought in the modern era. By providing a starting point for the development of law in the form of already accumulated legal values, the hereditary connections of the considered legal phenomena bring together the past, present, and future, bringing to life new generations of ready-made achievements in the field of law. This condition determines the dynamism of law, its development, exerts a beneficial influence on law-making and law-

## Анотація

Актуальність статті полягає у необхідності чіткого визначення місця українського права серед інших правових систем світу. Об'єктом дослідження є вітчизняна та іноземні системи права, передовсім – романо-германської і англо-американської правових сімей. При написанні дослідження були використані наступні методи дослідження: порівняльно-правовий, аналізу, синтезу, індукції, дедукції тощо. Метою даної роботи є визначення місця українського права серед інших систем права у світі. Для досягнення зазначеної мети були поставлені наступні завдання дослідження: проаналізувати головні властивості вітчизняної та іноземних правових систем; визначити напрямки вдосконалення вітчизняної правової системи, використовуючи позитивний досвід іноземних країн.

Авторами був зроблений висновок про те, що українська правова система потребує удосконалення і подальшої інтеграції в романо-германську правову систему. В той же час, деякі напрацювання минулих поколінь вітчизняних юристів і науковців заслуговують на їхнє переосмислення у сучасний період. Забезпечуючи вихідну базу для розвитку права в вигляді вже накопичених правових цінностей, спадкоємні зв'язки розглянутих правових явищ з'єднують воєдино минуле, сьогодення і майбутнє,

<sup>43</sup> Ph. D., Associate Professor of Department of General Theoretical Jurisprudence of National University «Odesa Law Academy»

<sup>44</sup> Ph. D., Associate Professor of Department of Criminalistics of National University «Odesa Law Academy»

<sup>45</sup> Ph. D., Associate Professor of Department of General Theoretical Jurisprudence of National University «Odesa Law Academy»

enforcement processes, as well as defines topical issues of national and international legal development.

**Keywords:** Legal regulation, legal family, system of law, legal system, legal norm.

вводять в життя нових поколінь вже готові досягнення у галузі права. Такий стан обумовлює динамічність права, його розвиток, здійснює благотворний вплив на правотворчий і правозастосовний процеси, а також визначає актуальні питання національного й міжнародно-правового розвитку.

**Ключові слова:** правове регулювання, правова сім'я, система права, правова система, норма права.

## Resumen

La relevancia del artículo es la necesidad de identificar claramente el lugar de la ley ucraniana entre otros sistemas legales en el mundo. El estudio se centra en los sistemas jurídicos nacionales y extranjeros, especialmente las familias jurídicas romangermánicas y angloamericanas. Los siguientes métodos de investigación se utilizaron al escribir el estudio: derecho comparado, análisis, síntesis, inducción, deducción, etc. El propósito de este documento es determinar el lugar del derecho ucraniano entre otros sistemas de derecho en el mundo. Para lograr este objetivo, se establecieron los siguientes objetivos de investigación: analizar las principales propiedades de los sistemas legales nacionales y extranjeros; determinar las direcciones de mejora del sistema legal interno, utilizando la experiencia positiva de países extranjeros.

Los autores concluyen que el sistema legal ucraniano necesita mejoras y una mayor integración en el sistema legal romano-alemán. Al mismo tiempo, algunas de las generaciones pasadas de abogados y académicos nacionales merecen ser repensados en la era moderna. Al proporcionar un punto de partida para el desarrollo del derecho en forma de valores legales ya acumulados, las conexiones hereditarias de los fenómenos legales considerados unen el pasado, el presente y el futuro, dando vida a las nuevas generaciones de logros ya preparados en el campo de ley. Esta condición determina el dinamismo de la ley, su desarrollo, ejerce una influencia beneficiosa en los procesos de elaboración y aplicación de la ley, así como define temas de actualidad del desarrollo legal nacional e internacional.

**Palabras clave:** Regulación legal, familia legal, sistema legal, sistema legal, norma legal.

## Introduction

The legal system of Ukraine and some other countries of the post-Soviet space continues to look for its place among the legal systems of the countries of the world. In the 19th - early 20th centuries, i.e. during the formation of modern comparative law, one part of the territory of Ukraine was part of the European space, and the other part was part of the Russian Empire. So, while the law operating in the territories of Western Ukraine was essentially European, the law of the territories that were part of the Russian Empire was a mystery to Europeans, although by default it belonged to the legal systems of continental Europe.

## Methodology

General scientific methods, as analysis, synthesis, induction, deduction, etc. were used in the article.

Among special scientific methods used in the paper, one should name the method of comparative law, the method of system research, the method of complex analysis and the method of legal modeling. The method of comparative law allowed the authors to reveal and analyze similar and distinctive features of domestic and foreign legal systems. With the help of the method of systematic research, the special legal features of different legal systems were discovered.

## Analysis of recent research

The scientific-theoretical basis of the research is composed of the works of Alekseev, S. (1993), Barczyk, I. (2000), Butler, W., Fedorchenko, A. (2003), Gladkyh, V. (2006), Glenn, H. (2011), Kuzmenko, V. (2012), Pugyna, O. (2004) and others. However, the updating of the legislation

that is taking place in Ukraine requires understanding and comprehensive analysis of current trends in the development of most profound legal systems.

### **Presentation of key research findings**

Immediately after its appearance, Soviet law, based on ideological axioms, began to claim a unique position among all existing and previously existing legal systems.

While most Soviet lawyers recognized the law as part of the new Soviet public order, regardless of whether it would stand the test of time or not, it was the claim to uniqueness that challenged the existing classifications of legal systems or families of legal systems.

Most Western comparativists categorically reject the claim of the Soviet legal system for uniqueness. From their point of view, it is only a kind of European Romano-German civil legal system, embellished with ideological impregnations. Professor A. Eirenzweig noted that if the Soviet legal system in the world of traditional private law can be called unique, he will have to "abandon the philosophical model of two and a half millennia and the comparative idea that goes back one thousand years". He believed that even if the Soviet legal experience introduced any novelties in public law, the "basic civil structure" of law in relation to family, property, succession, contract, and tort remained unchanged. There are only small changes to the established European criminal law structure and process (Butler, 2011).

As for the post-Soviet time, it can be assumed that during this period there was a return to European sources and the "destruction" of some Soviet legal forms without any significant consequences.

At the same time, the past three decades have seemed quite interesting, since the attempt to "democratize" and transfer to the market rails the Soviet legal system in Ukraine and other post-Soviet countries are more than just refusing or replacing "forms" and borrowing "grafts" from continental European and Anglo-American legal traditions.

The fact that the legal system of Ukraine has not yet got rid of the Soviet legacy is undeniable. The historical aspects of private law, such as a contract, commercial law, civil liability or tort, bankruptcy or competition simply decreased during that period, reaching relatively small

proportions, they were replaced by forms of public law. Government contracts (of countless bodies and structural production units) have largely supplanted private contracts; private commercial law and bankruptcy have become completely inapplicable; the state compensation regime almost completely replaced judicial compensation; the land was state-owned or collectivized.

The public law regime was based on formal law, which is more noticeable than in non-socialist Western law. However, this formal right had its characteristics, since its application was completely in the hands of the Communist Party (Glenn, 2011).

Judicial decisions of supposedly independent judges were subject to party control and review. Due to the creation of a huge powerful bureaucratic apparatus, corruption has reached incredible proportions.

At the same time, some of the legal innovations that Soviet law introduced into foreign legal systems were not without a positive effect. In the XIX century, the legal systems of Western Europe were mothballed and not undergone global changes. Soviet economic policy challenged the inviolability of private property and freedom of contract, believing that these principles "are a concession to economic injustice" (Alekseev, 1993).

Soviet law was one of the first to formally secure the right to work, social security, health and disability insurance, unemployment benefits, pensions, a 48-hour workweek (later 40 hours), elected work councils, annual leave, constitutional consolidation of the right to education, including higher, women's right to work and equality in marriage, the legal status of children and parents, the abolition of the ban on abortion, etc.

Over time, many phenomena of the economic, social and cultural sphere, developed by Soviet law, became the standards of European law.

The United States also did not stand aside. "The Bolshevik revolution and the post-war fear of the Reds became the main incentives for the United States at this time." Western states responded to socialism with "legislative fixation of various economic rights."

However, for comparative law, the question of whether Soviet and post-Soviet legal novels are an integral part and the actual product of the

Romano-German legal tradition or a separate autonomous legal tradition that needs to be classified and analyzed remains open.

It seems that the Ukrainian legal system and the legal systems of the CIS countries are beginning to assert their new presence in the community of world legal systems. Each, as before, is very close to the continental European legal tradition, but is not a part of it, still torn off, still not connected, still in debt to the general legal heritage of the twentieth century, still in a transitional state.

Ukrainian law is in a transitional stage of development, it cannot yet be attributed to the family of Western law in general, to the system of Romano-German law in particular. Meanwhile, Ukrainian law is moving towards joining the German subgroup in the family of Romano-German law.

Of particular note is the relationship between the Ukrainian legal system and the Anglo-Saxon legal family. There is still uncertainty regarding the existence of a precedent as a source of law in the Ukrainian legal system. If we recognize that judicial precedent as a source of law is not alien to the Ukrainian legal system, then we should talk about the nature of its relationship with other sources of law, including the law, the priority of the law, the role of judicial practice, as well as and the similarities in this regard (albeit external) of the Ukrainian legal system and the Anglo-Saxon legal family. Thus, the Ukrainian legal system is a transitional system, given the experience of building a post-socialist state and law with qualitatively new characteristics and features of the legal system.

The transition period is a large-scale social upheaval. Its essence lies in the fact that two processes are taking place in our country on collision courses – the dismantling of traditional state institutions, habits and stereotypes in the exercise of power functions, on the one hand, and the building up of completely new, non-traditional institutional structures, as well as rules and norms of political behavior – on another (Kuzmenko, 2012; Pugyna, 2004). Denial of the enduring nature of the legal values developed by the long history of mankind, neglect of the continuity links that objectively exist between the various stages of development of state-legal phenomena, make it difficult to choose the right vector of development of the national legal system.

Modern scholars argue that the Ukrainian legal system, as one of the most powerful of all the previous socialist legal systems, is currently in a transitional state, open for the exchange of ideas, experience, and interaction with any legal system.

At the same time, many legal norms are lacking in its normative component, and social relations that are important for the developing system continue to be regulated by old legal means. Throughout the transition process, the legal system retains segments of the previous structural differentiation (Kuzmenko, 2012).

Of course, in order to function and develop normally, the Ukrainian legal system must go its way, but together with the main legal systems of our time. Moreover, one should be guided by international legal and advanced foreign legal standards, in particular, the Romano-German legal family.

The opinions considered are scientifically based and once again confirm the thesis about the complexity and ambiguity of the issue of the further development of the Ukrainian legal system. In our opinion, the continental style of legal thinking has become basic for the domestic legal system. It is possible that historically, geographically and partly even “spiritually” it stands closer to Romano-German law than to other legal families and legal systems (Gladkyh, 2006). However, one should not dissolve the Ukrainian legal system in the Romano-German legal family. Undoubtedly, in the “legal picture” of the Romano-German legal family and the Ukrainian legal system, common features of the elements of state legal development are traced. From our point of view, the Ukrainian legal system is part of a single “European civilization” and, by objective and formal signs, through evolutionary interaction and continuity, gravitates to the Romano-German legal family (Barczyk, 2000).

### Conclusions

Ukrainian legal system needs improvement and further integration into the Romano-German legal system. At the same time, some of the past generations of domestic lawyers and scholars deserve to be rethought in the modern era.

By providing a starting point for the development of law in the form of already accumulated legal values, the hereditary connections of the considered legal phenomena

bring together the past, present, and future, bringing to life new generations of ready-made achievements in the field of law. This condition determines the dynamism of law, its development, exerts a beneficial influence on law-making and law-enforcement processes, as well as defines topical issues of national and international legal development.

#### References

- Alekseev, S. (1993). *Theory of Law*. Moscow.
- Barczyk, I. (2000). *Typology of modern legal systems*. Moscow.
- Butler, W. (2011). The place of Russian law in the global legal space. *Journal of Russian Law*, 4, 96-104.
- Fedorchenko, A. (2003). *Principles of the Russian legal system: Theoretical aspect*. Moscow.
- Gladkyh, V. (2006). To the question of integration of the Russian legal system into the family of continental (Roman-German) law. *History of State and Law*, 10.
- Glenn, H. (2011). *Legal Traditions of the World*. Oxford University Press.
- Kuzmenko, V. (2012). The Russian Legal System and Legal Families of the Present. *Bulletin of the Saratov State Law Academy*, 5 (88), 29-34.
- Pugyna, O. (2004). *Implementation of elements of the common law system in Russian legislation. Implementation of elements of the common law system in Russian legislation*. Moscow.