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THE ISSUES OF INTEGRATION IN LAW: HISTORICAL AND THEORETICAL ANALYSIS

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Abstract. *The author of this study aims to form a comprehensive scientific view of integration in law as a part of legal integration in general. It is pointed out that the design and creation of new branches of law is carried out by means of communication of certain legal characteristics of legal institutions and legal aggregates, as well as specific legal norms. Integration processes, as a rule, create an individual sectorial legal regime, which includes a variety of ways of legal regulation functioning in interrelation with each other. Such an individual sectorial legal regime should be studied in more detail, as it is characterized by the presence of a single goal of legal regulation of social relations. From the historical point of view, legal integration began to develop from the moment when the state and law emerged, when national legal systems began to emerge. The author mentioned that, speaking about a particular society, one can see the connection with historical formation on the basis of its own cultural, national, territorial factors.*

Keywords: *legal integration, system of law, systemic method of legal research, integration in law, branch of law, legal institute, norm of law.*

Introduction

One of the modern trends in law is the processes of globalization, which have various effects on domestic legal systems. Legal literature emphasizes the positive role of these processes in the improvement of national legislation and the negative aspects that may be associated with the loss of independence and uniqueness of legal regulation.

Integration processes in law are influenced by the history of development of legal norms, the political structure of the state, fundamental principles of law, functions of law, etc. These factors can be called determinants of integration in law.

Methods

The author used the following methods when carrying out the research: general scientific methods (analysis, synthesis, induction, deduction, system method), private scientific methods (historical-legal, method of legal modeling, method of legal prognostics, interdisciplinary method).

Results and discussion

Integration, which is carried out in any system, is seen as something unified and whole, and determines the processes of uniting the constituent elements of a particular system. The content of the system of law is in constant change, which is associated, among other things, with the development of social and economic relations in society.

Formation and creation of new branches of law is carried out by means of communication of certain legal characteristics of legal institutions and legal aggregates, as well as specific legal norms. The processes of integration are aimed in this case at the creation of an individual branch legal regime, which includes a variety of ways of legal regulation, functioning in interrelation with each other. Such an individual branch legal regime is characterized by the presence of a similar aim of legal regulation of these public relations, common or identical methods of legal regulation and means used for this purpose, as well as the characteristic of the legal status of the subjects of these public relations.

From a historical aspect, legal integration began to develop as soon as the state and law emerged, when national legal systems began to emerge. If we talk about a particular society, we can notice that historically it is formed based on its own cultural, national, territorial factors.

Another historical aspect of legal integration should be called the characterization of man as a biosocial being, as human communication with other people is the basis for the emergence of social relations. These social relations are subject to unified legal regulation, which characterizes the processes of legal integration.

From a historical point of view, taking into account the factors affecting the functioning of integration processes, the following significant stages of integration are considered: the stage of branch integration (1950s), the stage of primary

economic integration (creation of free trade association, customs union, common European market) (1960–1980s), the stage of formation of economic and monetary union (1990s), the modern stage (2000s)¹.

Each of these stages is characterized by certain features of the development of social relations:

- 1) saving of customs and trade barriers to free economic interaction;
- 2) elimination of such barriers through the creation of free trade association and common customs territory, creation of interstate and supranational authorities;
- 3) formation of the European Union as an international organization, creation of a common legal basis;
- 4) massive expansion of integration to various countries².

The research of legal integration is of particular importance when considering the system of law. In the monograph “The system of law: history, modernity, prospects” edited by Doctor of Legal Sciences, Professor T. N. Radko considers the issues of differentiation and integration of structural formations as the dynamics of the system of law³.

In relation to integration processes in law, it should be noted that they are undoubtedly aimed at improving the quality of legal regulation, allowing to regulate as many social relations as possible. Conceptually, any dynamic processes in the system of law entail its confusion, the emergence of other, different from the previously existing, structural parts, such as norms of law, legal institutions, branches of law, inter-branch relations.

G. F. Shershenevich in particular said that the creation of law has its basis in differentiation, which occurs within the law, as well as in the integration of legal norms, reflected in the aggregation of legal norms into legal institutions⁴.

A similar idea was expressed by S. S. Alekseev, who believed that law is characterized not only by the processes of integration, but also differentiation, which concretize normative prescriptions for a more fragmented legal impact⁵.

We would like to point out another work, in which S. S. Alekseev's thought about specialization in law was developed. The monograph by V. L. Kulapov and

¹ *Sologub V. I. Sovremennye integratsionnye protsessy v Evraziyskom Ekonomicheskom Soyuze. Diss... kand. politich. nauk* [Modern integration processes in the Eurasian Economic Union: dissertation of Candidate of Political Science]. M., 2019. P. 40.

² *Ibid*, p. 46.

³ *Sistema prava: istoriya, sovremennost, perspektivy: monografiya* [System of law: history, modernity, prospects: a monograph] / T. N. Radko, D. M. Azmi, A. A. Golovina [i dr.]; pod red. T. N. Radko. — Moskva: Prospekt, 2018. — 256 p.

⁴ *Shershenevich G. F. Obshchaya teoriya prava* [The general theory of law]. — M.: Izd. Br. Bashmakovikh, 1911. P. 508.

⁵ *Alekseev S. S. Struktura sovetskogo prava* [The structure of Soviet law]. — M.: Yurid. lit., 1975. P. 52.

E. G. Potapenko researches legal integration, and in particular, special attention is paid to such a type of integration in law¹. The authors consider national legal systems, as well as private components of national law, including legal institutions and branches, as the object of integration. They understand integration in law as “mediated by the legally significant activity of uniting the elements of the system of law into a structurally ordered holistic unity that has relative independence, stability, and autonomy of functioning, as well as maintaining the integrity and unity of the system of law, consistency, and interconnectedness of its structural parts”².

Issues of legal integration are often studied in the interstate sense. A. Ya. Kapustin³ considered this phenomenon. The scientist points out that through integration processes, international law is refreshed and updated. International law reacts to integration processes in different ways: new legal formations can be created, which are subsequently subjected to previously unknown legal regulation; national legal systems adopt already known to international law instruments for legal regulation; or both ways are mixed.

Considering the law of European integration, we can distinguish such theories as: federalist theories, international legal theories, autonomous theories and related theories⁴.

A. Ya. Kapustin considers various interstate associations that were created in the former Soviet Union: the Commonwealth of Independent States (CIS 1991), the Eurasian Economic Union (EAEU 1995), the Customs Union and the Common Economic Space (1999), the Eurasian Economic Community (2000) and others. The author concludes that Eurasian economic integration is not only the achievement of a new level of economic interaction, but also a significant unification of the legal systems of national countries⁵.

Another work — dissertation research by T. V. Kulapova — is devoted to the study of domestic and international legal experience, where the problems of integration and adaptation are considered⁶. The researcher points out that

¹ Kulapov V. L., Potapenko E. G. *Teoreticheskie osnovy pravovoy integratsii: monografiya* [Theoretical foundations of legal integration: a monograph]. — M.: Yurлитinform, 2011. — 184 p.

² Kulapov V. L., Potapenko E. G. *Op. cit.* P. 50.

³ Kapustin A. Ya. *Evropeyskiy Soyuz: integratsiya i pravo* [European Union: integration and law]. — Moskva: Rossiyskiy universitet druzhby narodov, 2000. — 436 p.

⁴ Kapustin A. Ya. *Pravo evraziyskoy ekonomicheskoy integratsii v fokuse mezhdunarodnogo prava* [The Law of Eurasian economic integration in the focus of international law] // *Gosudarstvo i pravo* [State and law]. — 2017. — No. 6. — Pp. 79–88.

⁵ *Ibid.*

⁶ Kulapova T. Yu. *Vnutrigosudarstvennyy i mezhdunarodnyy pravovoy opyt: problemy integratsii i adaptatsii: diss. ... kand. yurid. Nauk* [Domestic and international legal experience: problems of integration and adaptation: dissertation of Candidate of Legal Sciences]. Saratov. 2014. 185 p.

nowadays interstate cooperation is one of the very important fundamental principles of international law, which is subject to universal application. International law is the main legal instrument for the settlement of interstate relations and cooperation of states, which are expressed in the activities of two or more countries, has as its purpose the solution of common global issues, saving sovereignty and national traditions. However, the adopted and formulated legal norms within the framework of interstate interaction will in any case affect the national legal systems¹.

D. E. Petrov's doctoral dissertation is aimed at studying the differentiation and integration of structural formations of the system of Russian law². His work pays special attention to the relationship between the processes of differentiation and integration in law. He points out that a certain confusion of the terms "unification of legislation" and "integration in law" is associated in particular with the fact that in modern studies the term "unification of legislation" is used to refer to comparable processes in law. Therefore, the characterization of the processes carried out in the content of law is connected with a broad understanding of the term "unification of legislation". But these terms certainly need to be distinguished so that they are not used as synonyms.

Foreign legal studies consider mainly the issues of external legal integration. Most of the works are devoted to the integration of national legal systems into the European legal space. These issues have been addressed by such authors as: Barwick C. (2021)³, Kidalov S., Vitiv V., Golovko L., Ladychenko V. (2020)⁴, Dubchak S., Goshovska V., Goshovskyi V., Svetlychny O., Gulac O. (2020)⁵, Bobkova A. G., Zakharchenko A. M., Pavliuchenko Y. M. (2020)⁶,

¹ Kulapova T. Yu. *Vnutrigosudarstvennyy i mezhdunarodnyy pravovoy opyt: problemy integratsii i adaptatsii*: diss. ... kand. jurid. Nauk [Domestic and international legal experience: problems of integration and adaptation: dissertation of Candidate of Legal Sciences]. Saratov. 2014. P. 30.

² Petrov D. E. *Differentsiatsiya i integratsiya strukturnykh obrazovaniy sistemy rossiyskogo prava*: avtoref. diss. ... d-ra jurid. nauk [Differentiation and integration of structural formations of the system of Russian law: thesis of the dissertation of the Candidate of Legal Sciences]. Saratov. 2015. 60 p.

³ Barwick C. (2021). Legal integration and the reconfiguration of identifications: Material and symbolic effects of Brexit on British nationals in Berlin. *Innovation: The European Journal of Social Science Research*, 466–482.

⁴ Kidalov S., Vitiv V., Golovko L., Ladychenko V. (2020). Legal regulation of waste management in Ukraine on the way to European integration. *European Journal of Sustainable Development*, 9(2), 422–430.

⁵ Dubchak S., Goshovska V., Goshovskyi V., Svetlychny O., Gulac O. (2020). Legal regulation of ensuring nuclear safety and security in Ukraine on the way to European integration. *European Journal of Sustainable Development*, 9(1), 406–422.

⁶ Bobkova A. G., Zakharchenko A. M., Pavliuchenko Y. M. (2020). Legal enforcement of state aid control in the field of healthcare: experience of Ukraine in the context of European integration. *Wiadomosci Lekarskie* (Warsaw, Poland: 1960), 73(12 cz 2), 2848–2854.

Marichereda V. G., Melnyk S. B., Borshch V. I., Terzi O. O., Lyakhova N. A. (2020)¹, Humeniuk T., Knysh V., Kuzenko U. (2019)², Pimenova O. (2019)³, Cardwell P. J. (2019)⁴, Leijon K. (2021)⁵, Lampach N., Dyeve A. (2020)⁶ and others.

The work of Barwick C. (2021) is devoted to the study of European citizenship. This issue is covered by the author in relation to the process of Britain's withdrawal from the European Union⁷. Similar issues are devoted to the article Cardwell P. J. (2019), where it is pointed out that the legal system of the EU is built on the principle of a single legal order, but the withdrawal of the UK from the European Union raises the question of the need for differentiation in various forms, but as an exception to the rule⁸.

Pimenova O. (2019) explores the different models of legal integration used in the European Union (EU) and the Eurasian Economic Union (EAEU). The issue of the competence of the judicial bodies of these supranational entities is also raised here. In the article, the author concludes that there is an absolute priority of integration law over national legislation, as well as the fact that for all participants of integration relations the decisions of the supranational court are binding⁹.

Quite a few works are devoted to specific issues of integration of the national legal system of Ukraine into the European legal space: article Kidalov S., Vitiv V.,

¹ *Marichereda V. G., Melnyk S. B., Borshch V. I., Terzi O. O., Lyakhova N. A.* (2020). Organizational, regulatory and legal aspects of European integration of higher medical education in Ukraine: A critical review. *Wiadomosci Lekarskie* (Warsaw, Poland: 1960), 73(6), 1290–1295.

² *Humeniuk T., Knysh V., Kuzenko U.* (2019). The influence of European integration on optimization of the legal conditions of social policy in Ukraine. *Journal of Management Information and Decision Sciences*, 22(4), 541–554.

³ *Pimenova O.* (2019). Legal integration in the European union and the Eurasian Economic Union: Comparative analysis. *International Journal of Agricultural Management*, 8(1), 76–93.

⁴ *Cardwell P. J.* (2019). The end of exceptionalism and a strengthening of coherence? Law and legal integration in the EU Post-Brexit. *Journal of Common Market Studies*, 57(6), 1407–1418.

⁵ *Leijon K.* (2021). National courts and preliminary references: Supporting legal integration, protecting national autonomy or balancing conflicting demands? *West European Politics*, 44(3), 510–530.

⁶ *Lampach N., Dyeve A.* (2020). Choosing for Europe: Judicial incentives and legal integration in the European Union. *European Journal of Law and Economics*, 50(1), 65–86.

⁷ *Barwick C.* (2021). Legal integration and the reconfiguration of identifications: Material and symbolic effects of Brexit on British nationals in Berlin. *Innovation: The European Journal of Social Science Research*, 466–482.

⁸ *Cardwell P. J.* (2019). The end of exceptionalism and a strengthening of coherence? Law and legal integration in the EU Post-Brexit. *Journal of Common Market Studies*, 57(6), 1407–1418.

⁹ *Pimenova O.* (2019). Legal integration in the European union and the Eurasian Economic Union: Comparative analysis. *International Journal of Agricultural Management*, 8(1), 76–93.

Golovko L., Ladychenko V. (2020) "Legal regulation of waste management in Ukraine on the way to European integration. European Journal of Sustainable Development"¹, Dubchak S., Goshovska V., Goshovskyi V., Svetlychny O., Gulac O. (2020) "Legal regulation of ensuring nuclear safety and security in Ukraine on the way to European integration"², Bobkova A. G., Zakharchenko A. M., Pavliuchenko Y. M. (2020) "Legal enforcement of state aid control in the field of healthcare: experience of Ukraine in the context of European integration"³, Marichereda V. G., Melnyk S. B., Borshch V. I., Terzi O. O., Lyakhova N. A. (2020) "Organizational, regulatory and legal aspects of European integration of higher medical education in Ukraine: A critical review"⁴, Humeniuk T., Knysh V., Kuzenko U. (2019) "The influence of European integration on optimization of the legal conditions of social policy in Ukraine"⁵ and others. At the same time, the authors point out the direct influence of European legislation on the legal regulation of social relations within the country, and suggest ways to improve the national legislation in accordance with the standards and requirements of the European Union.

Some scientific publications of foreign authors are devoted to the study of jurisdiction of supranational judicial bodies, which is also considered as one of the directions of legal integration, including within the framework of the European Union. The correlation between the jurisdiction of national courts and the Court of Justice of the European Union is studied in the work of Leijon K. (2021)⁶, where the author concludes that the most common behavior of courts is to support legal integration by referring politically important cases and expressing support for EU

¹ Kidalov S., Vitiv V., Golovko L., Ladychenko V. (2020). Legal regulation of waste management in Ukraine on the way to European integration. *European Journal of Sustainable Development*, 9(2), 422–430.

² Dubchak S., Goshovska V., Goshovskyi V., Svetlychny O., Gulac O. (2020). Legal regulation of ensuring nuclear safety and security in Ukraine on the way to European integration. *European Journal of Sustainable Development*, 9(1), 406–422.

³ Bobkova A. G., Zakharchenko A. M., Pavliuchenko Y. M. (2020). Legal enforcement of state aid control in the field of healthcare: experience of Ukraine in the context of European integration. *Wiadomosci Lekarskie* (Warsaw, Poland: 1960), 73(12 cz 2), 2848–2854.

⁴ Marichereda V. G., Melnyk S. B., Borshch V. I., Terzi O. O., Lyakhova N. A. (2020). Organizational, regulatory and legal aspects of European integration of higher medical education in Ukraine: A critical review. *Wiadomosci Lekarskie* (Warsaw, Poland: 1960), 73(6), 1290–1295.

⁵ Humeniuk T., Knysh V., Kuzenko U. (2019). The influence of European integration on optimization of the legal conditions of social policy in Ukraine. *Journal of Management Information and Decision Sciences*, 22(4), 541–554.

⁶ Leijon K. (2021). National courts and preliminary references: Supporting legal integration, protecting national autonomy or balancing conflicting demands? *West European Politics*, 44(3), 510–530.

legislation, while national courts can regularly contribute to achieving a balance between EU integration and autonomy of member states. Research papers by Lampach N., Dyevre A. (2020)¹, Garben S. (2020)² are devoted to a similar issue. Speaking about the jurisdiction of supranational judicial bodies, it should be pointed out that separate issues are raised regarding the jurisdiction of the International Criminal Court (ICC)³.

Attention should also be paid to the works devoted to legal integration on specific issues: in the field of environmental protection⁴, in the field of business registration and entrepreneurial activity, trade and economic relations⁵, in the field of migration policy regulation⁶ and others.

Summary

The analysis of legal literature shows that legal studies devoted to legal integration or integration in law should be divided into two categories:

- authors to a greater extent consider the processes of internal integration and connect it with the study of the system of law,
- the other category of authors considers legal integration as external processes of unification and convergence of national legal systems of different states within the framework of international cooperation.

The separation of internal and external integration is essential for lawmaking and law enforcement.

¹ *Lampach N., Dyevre A. (2020). Choosing for Europe: Judicial incentives and legal integration in the European Union. European Journal of Law and Economics, 50(1), 65–86.*

² *Garben S. (2020). Collective identity as a legal limit to european integration in areas of core state powers*. Journal of Common Market Studies, 58(1), 41–55.*

³ *Fon N.N.A. (2019). An “African justice”: Legal integration and the emergence of an African judicial system. Journal of Asian and African Studies, 54(4), 485–497.*

⁴ *Rehbinder E., Stewart R. (2020). Environmental protection policy: Legal integration in the United States and the European community. Environmental protection policy: Legal integration in the United States and the European community. Pp. 1–350; Metz F., Angst M., Fischer M. (2020). Policy integration: Do laws or actors integrate issues relevant to flood risk management in Switzerland? Global Environmental Change, Volume 61, March 2020, Article No. 101945.*

⁵ *Pázmándi K., Pétervári K. (2019). Regional trends-integration challenges-various legal models of business registration in the EU member states as a competitive factor. DETUROPE, 11(3), 283–296; Glazatov M.V. Subsidii v zakonodatelstve otdelnykh stran — chlenov VTO i integratsionnykh obedineniy: sravnitelno-pravovoy analiz [Subsidies in certain WTO — members and integration associations’ legislation: Comparative legal analysis] // Gosudarstvo i pravo [State and law]. — 2021. — No. 4. Pp. 120–130.*

⁶ *Poli S. (2020). The integration of migration concerns into EU external policies: Instruments, techniques and legal problems. European Papers — A Journal on Law and Integration, 5(1), 71–94.*

Internal legal integration is characterized by the fact that it is a direct process of existence of the system of law itself. Without integration processes, it would be impossible to carry out legal regulation. The reverse processes of differentiation in the system of law could not occur in a qualitative way, if it were not for the integration of structural elements of the system.

Conclusions

Legal integration within the system of law is aimed at connecting certain isolated structural elements, while existing each time at a qualitatively new level. This process, as a rule, is objective, but at the same time the existence of subjective factors is not denied, since the law is directly related to those social relations that it regulates. The legislator can regulate arising public relations in various ways, and the choice of this method can be regarded as a subjective factor.

External legal integration has been carried out since the emergence of the first states, and is a determining vector for the development of national legal systems, the creation of interstate associations and unions, as well as the harmonization of international law.

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