

Artículo de investigación

The impact of globalization processes on the legal sphere

Вплив процесів глобалізації на правову сферу

Impacto de los procesos de globalización en la esfera legal

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Abstract

The purpose of the work is to investigate the peculiarities of the transformation of law under the influence of globalization and to determine the most significant trends of globalization of law. **The research methodology** is based on a complex combination of general scientific (analysis, synthesis, analogy, etc.), philosophical (dialectical, hermeneutical) and special legal (regulatory and analytical, comparative legal) methods. **The scientific novelty of the work** is in discovering the main aspects of the influence of globalization on the legal sphere, identifying the most significant trends in globalization of law. **Conclusions.** In the context of globalization, as a result of universalization and certain localization of legal processes, a “global” legal system emerges, in which international law and national legal systems become multi-level “branches” and “institutions”, and the entire social system of human civilization becomes the object of regulation. Legal globalization can be defined as the process of forming a new, global system of legal norms that organize and ensure global intergovernmental interaction in various areas of modern society, in which international law, national law, and the law of international business associations are in a state of close interconnection. The main ways of legal globalization are: legal integration, legal internationalization and implementation, the forms of legal internationalization include: reception, harmonization and unification, and the most significant trends of globalization of law are: the emergence of supranational legal arrays; expansion and deepening of legal regulation; the emergence of new branches and institutions of

Анотація

Мета роботи – дослідити особливості трансформації права під впливом глобалізації та визначити найбільш істотні тенденції глобалізації права. **Методологія дослідження** ґрунтується на комплексному поєднанні загальнонаукових (аналіз, синтез, аналогія та ін.), філософських (діалектичний, герменевтичний) та спеціально-юридичних (нормативно-аналітичний, порівняльно-правовий) методів. **Наукова новизна роботи** полягає у розкритті головних аспектів впливу глобалізації на правову сферу, визначенні найбільш істотних тенденцій глобалізації права. **Висновки.** В умовах глобалізації внаслідок універсалізації та певної локалізації правових процесів відбувається становлення «глобальної» правової системи, в якій міжнародне право і національні правові системи стають багаторівневими «галузями» та «інститутами», а об'єктом регулювання стає вся соціальна система людської цивілізації. Правову глобалізацію можна визначити як процес формування нової, загальносвітової системи правових норм, що організовують і забезпечують глобальну міждержавну взаємодію в різних сферах життя сучасного суспільства, у процесі якого міжнародне право, національне право, а також право міжнародних господарських об'єднань виявляються в стані тісного взаємозв'язку. Основними способами правової глобалізації є права інтеграція, права інтернаціоналізація та імплементація, до форм правової інтернаціоналізації можна віднести рецепцію, гармонізацію та уніфікацію, а найбільш істотними тенденціями глобалізації права є:

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law; politicization of law; humanization of law, etc.

Keywords: Globalization, globalization of law, reception, legal integration, harmonization of law, internationalization of law, humanization of law.

виникнення наднаціональних правових масивів; розширення і поглиблення правового регулювання; поява нових галузей та інститутів права; політизація права; гуманізація права тощо.

Ключові слова: глобалізація, глобалізація права, рецепція, правова інтеграція, гармонізація права, інтернаціоналізація права, гуманізація права.

Resumen

El propósito del trabajo es investigar las peculiaridades de la transformación del derecho bajo la influencia de la globalización y determinar las tendencias más significativas de la globalización del derecho. La metodología de investigación se basa en una combinación compleja de métodos científicos generales (análisis, síntesis, analogía, etc.), filosóficos (dialécticos, hermenéuticos) y legales especiales (regulatorios y analíticos, legales comparativos). La novedad científica del trabajo radica en descubrir los principales aspectos de la influencia de la globalización en el ámbito jurídico, identificando las tendencias más significativas en la globalización del derecho. Conclusiones En el contexto de la globalización, como resultado de la universalización y cierta localización de los procesos legales, surge un sistema legal "global", en el que el derecho internacional y los sistemas legales nacionales se convierten en "ramas" e "instituciones" de varios niveles, y toda la sociedad social El sistema de civilización humana se convierte en objeto de regulación. La globalización legal puede definirse como el proceso de formar un nuevo sistema global de normas legales que organizan y aseguran la interacción intergubernamental global en diversas áreas de la sociedad moderna, en las que el derecho internacional, el derecho nacional y el derecho de las asociaciones empresariales internacionales se encuentran en un estado de estrecha interconexión. Las principales formas de globalización legal son: integración legal, internacionalización e implementación legal, las formas de internacionalización legal incluyen: recepción, armonización y unificación, y las tendencias más significativas de la globalización del derecho son: la aparición de matrices legales supranacionales; expansión y profundización de la regulación legal; la aparición de nuevas ramas e instituciones de derecho; politización del derecho; humanización de la ley, etc.

Palabras clave: Globalización, globalización del derecho, recepción, integración legal, armonización del derecho, internacionalización del derecho, humanización del derecho.

Introduction

Relevance of the topic of the research. At the beginning of the third millennium, a fundamentally new stage in the history of mankind came. The peculiarity of this stage is not just the qualitative change of the epochs, but the extent of the transformations that have affected practically all spheres - economic, political, sociocultural and spiritual. The new stage of history differs from the previous epochs as a radical change in the trajectory of human development, the rapid acceleration of the pace of change in the lives of every nation, every person. A new type of world community is being formed, and now we can assume that the new century will be called the century of globalization or the century of global civilization.

The processes of globalization have an impact on the sphere of law too. It has already become clear

that law in the new environment is the subject to intensive change, and it is being transformed, standardized and unified within the entire planet. It should also be considered that it is the law that has all prerequisites for globalization, since it is less than all other social regulators due to national characteristics and is more rapidly changing. However, for a long time in all countries of the world, scholars, studying law, focused their attention mainly on the national peculiarities of the legal systems. The need for reorientation of the paradigm of research in the legal sphere is objectively due to the need for regulation of new emerging global social structures, in which the old legal regulators (both national and international) no longer operate. Thus, the formation of global law and the integration of all national legal systems are objectively necessary and logical, and the

problem of transformation of law under the influence of globalization requires a careful consideration.

Analysis of the research and publications

In contemporary scientific discourse, the theme of the impact of globalization on the legal sphere is becoming more and more relevant and at the same time it remains insufficiently researched. Therefore, it is not accidental that the problem of globalization of law and the tendencies of its implementation are considered by specialists in different ways.

Thus, the famous French lawyer Jean-Bernard Auby thinks that the globalization of law is “a developing phenomenon whose equilibrium is difficult to determine and which ... tends to destabilize the principles and hierarchies that form the basis of our law” (Auby, 2017, p. 17). A fundamental understanding of the problem of legal globalization allowed the legal scientist to conclude that for a deep penetration into this phenomenon, it is necessary to study specific legal fields: legislation on financial markets, Internet law, public contract law, trade law, environmental law, etc. (Okano, 2018).

In turn, Romanian lawyer E. Ciongaru, under the globalization of law understands the penetration of global legal values into the national legal systems to which they traditionally do not belong. In his view, globalization is a phenomenon that practically extends communication bridges between states, and also leads to the situation where the internal legal order extends to a new legal order, namely, the global legal order (Ciongaru, 2014).

On the other hand, Brazilian researchers M. da Silva and M. Saliba Goncalves consider globalization as a phenomenon organized in the center of the world for the naturalization of a new world economic order based on the principles of neo-liberalism, which demanded the weakening of national states, especially peripheral countries, as well as the subordination of national constitutions in favor of private capital, mainly the foreign one (Da Silva & Saliba Goncalves, 2015).

According to the Mexican lawyer J. Cárdenas Gracia, globalization has given rise to a new form of law that is not yet completely clarified and even less grounded by the legal theory of globalization. Modern legal theories were built around the national state, and only some of them solved the problems associated with the current

dominant legal theory and practice (Cárdenas, 2017).

A number of researchers are discussing the place and the role of law in the world processes of globalization. In particular, Romanian scholars V. Gaina and A.-M. Gaina believe that law is the main component of globalization. Under conditions of globalization, law facilitates the transition of jurisdictional and institutional competencies from the domestic laws of the states to global law or to the law of communities. The construction of global law is based on existing legal cultures and some different legal systems, as well as different levels of national, regional and global type (Gaina V. & Gaina A.-M., 2014).

Other foreign researchers study the problems of the impact of globalization on the legal relationship in society, as well as on the legal practice. So, according to Belarussian lawyer M. Miashchanava, the processes of globalization affect all spheres of human activity. Law, being a reflection of the objective phenomena occurring in society, can not stay away from this universal tendency. Globalization of law often requires a reassessment of many components of national legal heritage, in order to make the legal regulation of some issues more relevant and not to create the obstacles for integration into regional and universal international organizations (Martínez de Bringas, 2017).

In turn, English scholars D. Wilkins, V. Khanna, D. Trubek pay much attention to the impact of globalization on the landscape of legal practice in developing countries. In order to justify their ideas, they used the Chinese research project “Globalization, Lawyers and Developing Economies”, which was aimed at studying the problem of how globalization changes the market of legal services in important developing economies and how these events contribute to the transformation of political economy in these countries and beyond (Wilkins; Khanna & Trubek, 2016, p. 18).

In the domestic legal science, much attention is also paid to the problems of globalization of law. For example, L. Udovika defines legal globalization as “the process of forming a new, worldwide system of legal norms that organize and provide global intergovernmental interaction in various spheres of life of the modern society, in the process of which international law, national law, as well as the law of international economic associations is in the state of close interdependence” (Udovika, 2011, p. 475).

The analysis of the considered positions shows that there is no single approach to the definition of legal globalization, as well as to the trends and ways of its realization. Sometimes, researchers differ with their different approaches to the problem of legal globalization, and they also use different terminology. This allowed the authors of the article to formulate the purpose of the research - to study the features of the transformation of law under the influence of globalization and to identify the most significant trends of globalization of law.

Presentation of the main material

The term “globalization” got firmly fixed in modern scientific lexical circulation and is used to explain the changes taking place in various spheres of human activity. Under globalization, as a rule, the general civilization process of the planetary unification of various spheres of human activity, covering production, technology, finance, trade, culture, political and state institutions is understood. Globalization is a macro-trend of modern world development, it is a natural process that can not be stopped and difficult to adjust; it reflects a sort of “resultant” of diverse and multidirectional world forces (Gerasina, 2015).

The main consequence of globalization is the global division of labor, migration, concentration of capital in the planetary scale, labor and productive resources, standardization of legislation, economic and technological processes, as well as convergence and fusion of cultures of different countries. As a result of globalization, the world is becoming more connected and more dependent from all its subjects. There is an increase in the number of common problems for the states and an expansion of the number and types of integrating actors.

At the same time, globalization is a very complex process that proceeds unevenly. The activity of the globalization process in the modern world is connected with the level of development of science, technologies, which inevitably lead to inequality of the participants. There are the leading countries with high-tech economies (most often these are Western countries) that dictate the conditions to all other countries in the world; on the other hand, there are countries with a “catching-up” economy that live on the IMF loans. Thus, the participants in the process of globalization are initially in an unequal situation. This circumstance explains the ambiguous assessment of the impact of globalization on

society (including on the legal sphere) by the researchers. These, representing highly developed countries, tend to focus more on the positive effects of globalization. Conversely, the researchers from developing countries pay attention to the negative aspects of the impact of globalization on the modern world, including law (Cárdenas, 2017) (Da Silva & Saliba Goncalve, 2015).

When proceeding to the study of the impact of globalization on the legal sphere, it is rational to use the methodological approach of S. Schetinin, who points out that legal globalization includes legal integration, legal internationalization and legal implementation. In his opinion, if legal integration is more connected with the need to solve various worldwide global problems when fighting against organized crime, in environmental protection, etc., along with other states, members of various international organizations, then the essence of legal internationalization is that the domestic law is appeared to be in a close relationship with other domestic legal systems. In legal internationalization, as in globalization as a whole, there are two aspects: objective and subjective. The subjective aspect of legal internationalization is directed and provides a certain set of rules, principles and methods for its implementation. The researcher refers the reception, harmonization and unification to the methods of legal internationalization, also referred to as the forms (Schetinin, 2009). pp. 18-19.

Reception in law, as a rule, is understood as the borrowing by one state from another the specific elements of the legal system (or the whole legal system): legal concepts, legal structures, legal institutions, etc. A special form of reception is the borrowing of legal terminology, rules and techniques of legislative technique, legislative procedures, etc. At the same time, it should be noted that in the era of globalization the role of reception as a way of internationalization of law is reduced, as well as the form of reception changes.

In the conditions of globalization, the unification of law has significantly wider application, which usually refers to the process of bringing of existing law to the unified principles by the state, eliminating differences and providing uniformity to the legal regulation of the similar or close types of social relations. The main feature of the unification of law is that it takes place simultaneously in two different legal systems - in international law (the conclusion of an

international treaty) and in national law (the implementation of the rules of this agreement in domestic law). In other words, unification of law can be defined as cooperation aimed at creating an international mechanism for regulating relations in the sphere of common interests of the states.

Harmonization of law is “a complex of measures of an international legal nature aimed at convergence of the national legal regulation of certain spheres of social relations within the framework of the relevant regional or international law and order” (Teplyuk, 2017, p. 452-463).

In its turn, implementation as a way to directly implement international legal norms and their inclusion into the system of national law implies, on the one hand, incorporation (when the legal formulation of international agreements and treaties without modification is included in the system of domestic law); on the other hand, transformation (when there is some change in the text without changing its content in order to comply with the legal traditions of legal technology); and, finally, legal “references” directly to the original source, that is, to an international treaty. It should be borne in mind that some researchers suggest to consider two aspects of implementation - not only international, but also narrower the interstate one (Pigolkin, 2004).

The phenomena of globalization are directly linked to the emergence of supra-national legal arrays that go beyond national jurisdiction and territorial sovereignty of the state. An example of this can be the emergence of international air law, international maritime law, international space law, international criminal law, etc. The new supranational legal formations also include international humanitarian law, the international human rights law, which develop intensively. The legal form of extraterritorial action is the European Union law, a system of legal norms governing the process of European integration and is at the junction of national law of the EU member states and international law, etc. Together with global communities, supranational justice arises: The International Court of Justice, the Permanent Court of Arbitration, the European Court of Human Rights, etc., thereby leading to the consistent formation of the global law.

Under the influence of globalization processes, humanity is becoming more and more one-dimensional. As a result, the influence of global legal regulators on the most important spheres of

life in all countries and in the world as a whole is steadily increasing. International law both legally and in fact strengthens its position on the national states. In other words, the globalization of the world means that the state no longer monopolizes the function of legislative power in its territory, because it is limited by the legal regime of international obligations. In order to implement multilateral international agreements on the basis of the principle of reciprocity, modern states must bring their legislation in compliance with international norms and international practices. And this means, according to some researchers, that in fact, since the end of the twentieth century there is a significant reduction in the role of national states through the transfer of their functions, on the one hand, to the supranational level, and on the other hand - to the regional level, ranging from municipalities to non-governmental organizations (Gaina V. & Gaina A.-M., 2014; Miashchanava, 2016).

At the level of national states, globalization also stimulates such important trends in the development of law as expansion of the scope and intensification of legal regulation, the emergence of new branches, sub-branches and institutions of law. Extension of the sphere of legal regulation, above all, is associated with the spread of law as an entirely new sphere of social reality, and on those that were not previously in sight of lawmakers. There are new branches, institutions of law - environmental legislation, science and technology legislation, legislation on education, energy law, medical law, etc. The extension of the sphere of legal regulation at the level of national states in turn is accompanied by another trend – the deepening of the legal regulation of social relations with more complete, concrete and comprehensive regulation of them. (Danil’yan, 2018). p.165].

One of the tendencies of the transformation of the legal sphere in the conditions of globalization is humanization of law. Humanization of law is an objective conditionality for the influence of globalization on law, which is expressed in the fact that the norms of law begin to embody the principle of humanism, according to which the principles of the rule of common to all mankind human values and human rights become developed, as well as strict adherence to the legality and the law and order, and the principle of dispositivity is expanded; new institutions (judges of the peace, jury trials, rehabilitation, etc.) are introduced; the system of punishment, etc., is changing (Glatzova, 2015).

Among other features of humanization of law in the conditions of globalization one can distinguish: the prevalence of international law over national legislation; change of legal regulation in accordance with the principles of the rule of law, priority of human and civil rights and freedoms; increase of the role of the judiciary in society; improvement of legal proceedings; increase of the accessibility of justice; increase of judicial liability of state authorities and officials for observance of human rights, etc.

In the modern era, the humanization of law is a universally recognized achievement of mankind, the importance of which no one doubts. Unfortunately, in many countries humanization of the law is only proclaimed, enshrined in the system of domestic law, but is not realized in social practice. Often, an important component of the humanization of law - human rights - is used by world centers of force as an reason for intervention in the affairs of other countries, the change of objectionable political regimes, etc.

Due to the process of globalization, the complication of all aspects of human life is linked with the recent politicization of society, and alongside with the society many of its social institutions are politicized. Indeed, the mediation by the legal norms of a wider range of political relations in the state and on the international arena shows the tendency to politicize law. Despite the fact that in legal literature and official documents there are a lot of talks about the rule of law and the rule of law state, real life shows that in cases of law and politics collision, the politics prevailed in most of the cases. Especially today, when the law is used in many ways not so much as its purpose, but for justifying the interests of superpowers and consolidating the claims of international corporations. In conditions of globalization, V. Sorokin believes, "the legal norm has become a powerful offensive weapon, which is aimed at protecting the interests of one country, group, corporation to the detriment of others" (Sorokin, 2011, p. 493).

It should also be noted that the rapid transformation of the legal sphere under the influence of globalization processes can become a new source of social contradictions, conflicts of cultures and civilizations. Indeed, it in practice affects not only legal norms, but also national self-consciousness, legal psychology and ideology (Dz'oban', 2013). In addition, the processes of globalization are actively used by international criminal communities to trade such prohibited goods as drugs, weapons, people, human organs, works of art, etc.

One of the tendencies of the development of the legal system in the conditions of globalization is the contradictory and multi-vectored transformations of law. This is primarily due to the fact that, in the modern era, along with globalization and as the reaction to it by the defining processes of political and legal development, which essentially affect the transformation of law, its content and essence, are the processes of localization and glocalization (Udovika, 2017; Drori, 2018).

Under localization, researchers understand the process of social development, opposite to globalization, and aiming at preserving the special, traditional state of society, creating conditions for dissociating from non-traditional processes and phenomena of economic, political, social and cultural development. Localization in law (legal localization) is in a conscious desire to restrict, reduce the external legal relations, interactions, to cultivate national legal forms, institutes, traditions, customs, features of legal culture, as well as legal consciousness. An intermediate position between globalization and localization is glocalization, which is a contradictory process of combining global and local, global and regional economic, legal, political, cultural processes and phenomena (Udovika, 2017).

The basis of the existence of globalizational and localizational transformations of law are the basic megatendencies of global civilizational development, namely: "cultural polarization", "cultural assimilation", "cultural hybridization", "cultural isolation", which, on the background of strengthening the geopolitical processes of struggle for natural resources, the aspirations of individual states towards the strengthening of global or regional economic, political, military influence acquire new meaning and direction. Consequently, the permanent interaction of the processes of globalization, glocalization, regionalization and localization determine the diversity of law, modern legal systems, their integration and differentiation, interaction and opposition (Danil'yan, 2017; Udovika, 2017).

Thus, there can be concluded that in the conditions of globalization, due to the universalization and certain localization of legal processes, the formation of a "global" legal system in which international law and national legal systems become multilevel "branches" and "institutions", and the whole social system of human civilization is becoming the object of regulation. Legal globalization can be defined as the process of formation of a new, global system

of legal norms that organize and provide global intergovernmental interaction in various spheres of life of the modern society, in the process of which international law, national law, as well as the law of international economic associations are in a state of close interconnection. The main ways of legal globalization are legal integration, legal internationalization and implementation, and forms of legal internationalization include reception, harmonization and unification.

The most significant trends in the development of legal systems in the conditions of globalization are: emergence of supranational legal arrays; expansion and deepening of legal regulation; emergence of new branches and institutes of law; politicization of law; juridisation of social life; humanization of law; deepening the interaction of international and domestic law, etc.

References

- Cárdenas, J. (2017). Teoría jurídica y globalización neoliberal. *Problema anuario de filosofía y teoría del derecho*, 215-272.
- Ciongaru, E. (2014). Influence Of Globalization On The Law Systems. *AGORA International Journal of Juridical Sciences*, 24-30.
- Da Silva, M., & Saliba, M. (2015). Globalização e direito perda de soberania do estado e reforma constitucional na periferia do capitalismo. *Revista Brasileira de Direito*, 83-103.
- Drori, G. (2018). Glocalization: A Critical Introduction. *Contemporary Sociology: Journal of Review*.
- Gerasína, L. (2015). *Globalízatsiýa / L. Gerasína. Polítologíchniy yentsiklopedichniy slovník // uklad.: L.M. Gerasína, V.L. Pogribna, Í.O.Políshchuk ta ín.; za red. M. Trebína. KharKív: Pravo.*
- Glazatova, T. (2015). *Sovremennyye tendentsii razvitiya prava v usloviyakh globalizatsii: avtoref. dis. ... dokt. yurid. n.: 12.00.01 – teoriya i istoriya prav i gosudarstva, istoriya ucheniy o prave i gosudarstve.* Moskva: T.S. Glazatova.
- Auby J.-B. (2017). *Globalisation, Law and the State.* Hart Publishing.
- Udovika, L.G. (2017). *Glokalízatsiýa prava / L.G. Udovika // Velika ukráíns'ka yuridichna entsiklopediya: u 20 t.T 2. Filosofiya prava*, 156-160.
- Liu, S., Trubek, D., & Wilkins, D. (2016). Mapping the Ecology of China's Corporate Legal Sector: Globalization and Its Impact on Lawyers and Society. *Asian Journal of Law and Society*, 273-297.
- Martínez de Bringas, A. (2017). Law, Sovereignty and Legal Pluralism in the context of globalization. An analysis of its tensions and complexities. *Cuadernos Electrónicos de Filosofía del Derecho*, 127-148.
- Miashchanava, M. (2016). Globalization and International Commercial Contracts: the UNIDROIT Principles. *ADAPT University*, 48-65.
- Danil'yan, O.G. (2017). Globalízatsiýa kul'turi: protíchhya ta tendentsii rozvitku / O.G. Danil'yan, O.P. Dz'oban' // *Vísnik Natsional'nogo uníversitetu «Yuridicheskaya akademiya Ukrainy imeni Yaroslava Mudrogo».* Seriya: *Filosofiya, filosofiya prava*, , 29-41.
- Dz'oban', O.P. (2013). Vplyv hlobalizatsiynykh protsesiv na natsional'ni pravo y pravovu kul'turu / O.P. Dz'oban'. *Hileya: naukovyy visnyk*, 529-534.
- Okano, N. (18 de October de 2018). *Book Review Jaen-Bernard Aubys "Globalization, Law and the State" Hart.* Obtenido de <http://www.icconnectblog.com/2018/03/book-review-naoyuki-okano-on-jean-bernard-aubys-globalisation-law-and-the-state/> [in English].
- Sorokin, V. (2011). *Yuridicheskaya globalistika: uchebnik / V.V. Sorokin. 2-ye izd. Novosibirsk: Izd-vo NGTU.*
- Tepliyuk, M. (2017). *Pravova garmonízatsiýa / M.O. Tepliyuk, O.Í. Yushchik // Velika ukráíns'ka yuridichna entsiklopediya: u 20 t. Kharkiv: Pravo. T 3. Zagal'na teoriya prava // redkol.: O.V. Petrishin (golova) ta ín. Kharkiv: Pravo.*
- Udovika, L. (2011). *Transformatsiýa pravovykh sistem v intellektual'nykh sistemakh: antropologíchniy vímír: Monografíya / L.G. Udovik.* Kharkiv: Pravo.
- Gaina, V. & Gaina, A-M. (2014). The Globalization of law and sovereignty of the states. *Globalization intercultural: multidisciplinary perspectives. Law*, 106-113.