МІЖНАРОДНЕ ПРАВО ТА ПОРІВНЯЛЬНЕ ПРАВОЗНАВСТВО

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NEW CONCEPTS IN EUROPEAZATION OF PRIVATE LAW AFTER THE 2016 BREXIT REFERENDUM: SOME EXPERIENCE IN INTERPRETATION OF LAW

The paper deals with the methodological problems of the legal interpretation of the term «Europeazation». The relevance of the problem and the main sources of further research is investigated. This analysis allows us to make a conclusion that after Brexit the problem of legal Europeanization has come back to its starting point. The Europeanization of private law, just like the Americanization of these sub-systems of law, should be in the form of harmonization only. Europeanization of private law for all states, including Ukraine, should be interpreted as the legal cultural process

Key words: European Private Law, Brexit Referendum, Globalization, Europeazation, Americanization, Legal Integration, Unification, Harmonization.

Стаття присвячена методологічним проблемам правової інтерпретації поняття європеїзації. Досліджено актуальність цієї проблеми та основні джерела її подальшого вивчення. Здійснений аналіз дозволяє дійти висновку про те, що після Brexit проблема правової європеїзації повернулася до вихідної точки. Європеїзація приватного права, подібно до американізації цих підсистем права, повинна бути тільки в формі гармонізації. Європеїзацію приватного права для всіх держав, включаючи Україну, слід інтерпретувати як культурно-правовий процес.

Ключові слова: Європейське приватне право, референдум Brexit, глобалізація, європеїзація, американізація, правова інтеграція, уніфікація, гармонізація.

Статья посвящена методологическим проблемам правовой интерпретации понятия европеизации. Исследована актуальность

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этой проблемы и основные источники дальнейшего изучения. Проведенный анализ позволяет сделать вывод о том, что после Brexit проблема правовой европеизации вернулась к исходной точке. Европеизация частного права, подобно американизации этих подсистем права, должна быть только в форме гармонизации. Европеизацию частного права для всех государств, включая Украину, следует интерпретировать как культурно-правовой процесс.

Ключевые слова: Европейское частное право, референдум Brexit, глобализация, европеизация, американизация, правовая интеграция, унификация, гармонизация.

A problem statement. The issue of Europeazation of private law is an extremely multi-faceted problem. Indeed, Europeanization has «many faces», having been used by different scholars in very different ways. Sometimes this term is used to describe events, in other cases it is used to explain cause-and-effect relationship.

But there are three questions, which capture the underlying problem better than others.

First of all, to what extent can the Brexit – 2016 (United Kingdom European Union membership referendum) cause change sin doctrines of European private law ?

And secondly, what approach to Europeazation of private law is the most reasonable, stable an defective in the new context?

The third question is how Ukrainian doctrine can create the right type of environment for implementation of the goal of the European legal integration?

Analysis of recent research and publications. Thanks to a number of superb research's published in the past decade and a half, we now have much more sophisticated understanding of Europeanization . Among the most important we should mention the studies, written by academic lawyers: O. Lando, C. Valcke, C. von Barand by other scientists: T. Haughton, J. Hughes, G. Sasse, C. Gordon, V. A. Schmidt, F. Schimmelfennig, U. Sedelmeier, H. S. Wallace.

Each of these publications has already contributed to This «burgeoning body of literature», but in very different ways [1, p. 784]. But taking into account the recent events in Europe, it makes sense to rethink the approaches. This requires us to be open-minded and common-sense researchers.

The modern legal discourse in Ukraine shows clearly that such studies are not enough in our country. However, developing This area

of research is extremely necessary taking into account significant changes that took place in political and legal framework of European Union after the Brexit.

The objective of the publication is exchange experience in interpreting of the notion of «European Private Law» after the 2016 Brexit referendum and propose the common way of the coherent development legal Europeanization strategies on This base.

Description of the basic material. Before discussing the system of European Private Law once again, it is necessary to define a few terms.

European private law as a legal science uses many specific terms to represent processes, procedures, and the selected phenomenons unique to the certain legal system. But it is proposed to elect exactly the «*legal integration*» as the most general notion in the meaning of the targeted and manageable combination of the separate legal systems into a whole. That is the common word to all experts to describe the complicated formation of the new legal systems, including the European Private Law.

The legal integration has a two of old dimension: one involves the methods of integration; the other aims at the levels of the process.

There are two main methods (or techniques) of legal integration, unification and harmonization.

Legal *unification* focuses upon combining two or more legal systems and replacing them with a single system. This method of legal integration contemplate specific legislation, which is becoming the legal source common to both systems (for example, international treaty, which has been ratified by both Parliaments).

Harmonization of law is a soft technique of legal integration. It provides for transformation of discrete systems and norms in a direction to creation of more and more similarities of its contents, but keeping formal originality of the harmonizing systems.

That type of integration does not lead to formation of common sources, legal systems are combinated by legislators and judges under a various «iconic» or role models (for example, certain model act or Roman law in the process of its reception).

If the result of unification is a creation of unified rules, but harmonization leads to uniform rules.

Broadly, the levels (scales) of legal integration can be divided into convergence and approximation.

A *convergence* is a mutual penetration and enrichment of the several systems of law at the macro level of legal integration down to total fusion between them. It also known as the Catch-up effect. The real antonym for convergence is *divergence* [2].

It necessary to enter a reservation concerning the originality of integration of private laws. A field of the private law integration is a specific «convergence zone» in European legal space, where some national systems of private law can meet and interact without full intermixing.

Other type of legal integration or an *approximation* of the laws works on the microlevel of the system of law.

There are substantial differences among these levels. A convergence is the unification and/or harmonization of holistic systems of law. But unlike convergence, approximation is integration of certain legal norms. One of specific forms of approximation is *a standardisation.*

Summing up the classification, enormous complexity of the issue should also be emphasized. It is not limited only to the options considered. There is a multiplicity of terms, definitions and understandings of the different legal integration concepts.

Usually in these cases, a general methodology of systems analysis applies a «metasystem» (a system about other systems). One of such meta-systems, which is a framework or context of analyzing the system of legal integration, is globalization. It shapes a new focus (a geographic coverage) of our study.

As it has been noted by many people, «globalization is, perhaps, the most controversial of these terms, given the wide discrepancies in views of its sources, reach, and impact on countries' policy choices» [3].

Globalization can be defined most simply and broadly as a process of world-wide international integration arising from the interchange of many world views, products, ideas, and other aspects of culture on a global scale (across the planet) [4, p. 7—9].

But what is a Europeanization in This context?

Europeanization can be defined equally simply and broadly as a type regional international integration.

However, This meaning is not so simple, it is proved by a complex set of interrelationships between globalization, Europeanization , and others terms, which are close in their meaning.

Exact meaning of «Europeanization» will be derived by distinguishing it from certain closely related concepts.

Indeed, a direct comparison of «globalization» and «Europeanization» can be accurately made due to logical operation of a genus-differentia definition, in accordance of classical Aristotle's logic .

So, a *Europeanization*'s genus (or «family») is notion *Globalization*. And it means that *Europeanization* is a sub notion for *Globalization* or its special type, shape or form.

Given that these notions designate the similar processes but not stable phenomenon, it would be useful to recognize that Europeanization is one of models of Globalization.

In This regard clarification was needed of the meaning of model. We can consider that This semantics provides desired results and method in order to gain a full result. For example, the final result of realization of the legal Europeanization model must be a well-developed law system of European Union, established by methods of unification and harmonization.

But are there other similar models of Globalization?

There are two main and some alternative models.

Apart from Europeanization there is one more basic model of Globalization, which is commonly termed «Americanization». The general issues of globalization are the objects of one science, globalistics or global studies. Americanization and Europeanization being explored by American studies and European studies respectively [5, p. 8—14].

The most circulated alternative models of Globalization include Eurasiatization and islamization. The last two models are original, but absolutely irreconcilable versions of global development. But detailed discussion of such models is beyond the scope of the present research [5, p. 171—178].

So what is the dominant characteristic of the term «Europeanization»?

The uniqueness of it is that etymology of This word is contrary to its own semantics. It is clear that the term actually derives from the «Europe», but its content relate to the «European Union».

For example, Frank Schimmelfennig and Sedelmeier Ulrichargue: «Much of the literature on European integration refer to the domestic impact of the European Union (EU) as «Europeanization» [6, p. 1].

That's how Danish scientist Ole Lando interprets such terms. In particular, he explained: «To European is e means to unify or harmonised European law». And he clarified that «the term Europe

covers those countries, which are or will become members of European Union»[7, p. 346].

Key point of paper is this let us think about the specificity of Anglo-American approach and what means multiplicity or plurality of the systems of private law in the USA and UK? Why, for example, Washington does not unify the legal systems of states and London does not standardize Scottish law?

All because according the Anglo-American legal tradition private law and public law must be categorical separated. From the American and British points of view, existing systems of private law cannot be co-mingled, even within one state. The unification is exactly the opposite of the private law.

It is important to understand that the unlimited and ultimate unification kills the fundamental principle of private law – *lex personalis*. It is happening because unification of domestic systems of private law severely restrict the choice of applicable law freedom. If there is but one legal system - no one has a Choice (apart from judge of course). When the state bodies have an absolute power and exclusively in charge of the person's private affairs, interpersonal relations shall no longer be a private matter.

Few words about a main mental consequence of the British exit from European Union (BREXIT-2016). Immediately we all witnessed a unique historic event. It sounds impossible for most people, but Suddenly EU self-identification with all Europe is destroyed by one act. Why did it happen immediately? Why did it happen suddenly? I had an opinion on This matter a long time ago - all This happened because level of European Union identification was very excessive [5, p. 169—171].

European academic lawyers spoke about it previously. In particular, it was stressed that they do not subscribe to the overly European Union-centric notion «*Europe*» that the term *«Europeanization»* implies. However, they went along with the widely used term «*Europeanization*», while noting its obvious inaccuracy [6, p. 1].

As it has been noted before, the «extremist wing of the Europeanization brigade» have tended to view the European states as little more than passive recipients duly implementing dictate of Brussels. The reality, however, has been very different[1, p. 784].

Europe in the near past and now (I don`t know about the far future) is the set of the EU and another European states factually and legally.

Therefore, notion Europeanization has regained its old meaning. But it is not the convergence of members-states of the EU only. This process is described better by the neologism «EU-ization». The *relativity of novelty* of This problem could be seen in the development of new language to describe the concept. So a British expert in European studies Helen Sarah Wallace (Lady Wallace of Saltaire) in 2000 has noted, the term «EU-ization» would be more accurate to denote the impact of the European Union on other countries [6, p. 1] . Such attempt of the verbalization of This content can be considered using the term «EU-Specific Europeanization» [8, p. 20].

The recent events in the Europe have highlighted the fragility of the official conception of legal Europeanization .Artificial or unnecessary complexity of these sophisticated tools of legal unification and absurd oversimplifications of relationship between subsystems of public and private law are two techniques that some European academics-comparativists (primarily O. Lando and C. von Bar) use to obfuscate the fundamental cross-cultural problems of the legal Europeanization , that have non abstract, but practical sense.

The real Europeanization now is the convergence of different legal systems based on European cultural legal tradition. It is the interlocution or dialog between the main types of European legal culture – English, Romanic, Germanic and Scandinavian. I presume that it has always been in Modern and Contemporary history of Europe, but I'm sure it will last forever.

Of course, «EU-ization» faces great challenges in perfecting its of ficial model, but This modernization should take into account the current different phenomena and cross-cultural inconsistencies of the broader process of the legal Europeanization .

General Conclusions:

1. In a way, after Brexit the problem of legal Europeanization has comeback to its starting point. Europeanization strategy, which prescribes that «harmonization can be seen as a step towards unification of systems of private law» [9, p. 332] has been dead wrong all along.

2. Legal unification, from the point of view of its effectiveness, is advisable in the area of public law exclusively. The Europeanization of private law, just like the Americanization of these sub-systems of law, should be in the form of harmonization only.

3. Europeanization of private law for all EU member states should be understood as the «EU-ization», but it should take the form of a

legal harmonization too. Europeanization of private law for all States, including Ukraine, should be interpreted as the legal cultural process or the common base of a s of t harmonization of laws.

And for This purpose academic lawyers should use This term as referring to the cross-culture comparing of legal paradigms at the domestic level. These paradigms could be the keys for understanding the legal convergence problem. They go to the very heart of the national (domestic) legal systems in Europe.

A List of the Used Sources:

1. Reviewed Works: The Europeanization of Central and Eastern Europe by Frank Schimmelfennig, Sedelmeier Ulrich; Europeanization and Regionalization in the EU's Enlargement to Central and Eastern Europe: The Myth of Conditionality by James Hughes, Gwendolyn Sasse, Claire Gordon; Review by: T. Haughton// The Slavonic and East European Review Vol. 84, No. 4 (Oct., 2006), —P. 784—786.

2. Valcke C. Convergence and Divergence between the English, French, and German Conceptions of Contract / Catherine Valcke. // European Review of private law . — Vol. 16, No. 1, — 2008. — P. 29–62.

3. Schmidt, Vivien A. Europeanization and the Mechanics of Economic Policy Adjustment (2001)/ Vivien Ann Schmidt // European Integration on line Papers (EIoP) Vol. 5 (2001) N° 6; <http://eiop. or. at/eiop/texte/2001-006a. htm>

4. Globalization, Knowledge and Society: Readings from International Sociology / edided by Martin Albrow, Elizabeth King. —London, New Park, New Delhi, 1990, — 280 pp.

5. Gaydulin O.O. Eurasiatisation of contract law: monograph / Oleksandr Oleksandr Gaydulin. — K.: KNEU, 2012; — 293 p. [*inUkrainian*].

6. The Europeanization of Central and Eastern Europe / Edited by Frank Schimmelfennig, Ulrich Sedelmeier. – Cornell University Press, 2005 – 256 pp.

7. Lando O. Some Features of the Law of Contract in the Third Millenium / Ole Lando // Scandinavian Studies in Law. 2000. – № 40. – P. 343–402.

8. Bache, I. Europeanization and Multilevel Governance: Cohesion Policyin the European Union and Britain / Ian Bache. – Rowman &Littlefield, 2008 – 193pp.

9. EnglishforLawyers :manual / edition by V. P. Simonok. – Kharkiv :Pravo, 2011 . – 648 pp.