

Genesis of the Russian Legal System: Historical Regularities and Peculiarities

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Abstract: In the development of any legal family and system a special emphasis is laid on the process of Genesis which affects their basic characteristics. The analysis of the genesis of the legal family and system is supposed to say what we mean by studied category, what factors determine and initiate the beginning of its formation and the formation and influence the directions of its development. In the process of writing, it was used the universal principles of scientific cognition: philosophical categories of essence and phenomenon, scientific research methods (logical analysis and synthesis, functional and historical and legal methods). The Russian legal system is a set of interconnected structural elements of the entire legal reality of the Russian State at a certain stage of historical development. Based on the analysis of legal literature it has been identified and analyzed the following stages of development of the Russian legal system: the period of formation of the Russian legal system of ancient provincial government of IX-XIII centuries. The period is characterized by a territorial community-based organization of power; the stability in the power system in the form of assembly meetings; the actual unity of the legal sources on the territory of the Russian State in the period of feudal fragmentation. The legal system of the Moscow State of XIV-XVII centuries. To the peculiarities of the "Moscow-the Russian legal system one refers the flexibility and diversity of its sources while preserving the traditional fundamentals of the legislation. The customary law of the Russian lands kept on working, the *Russkaya Pravda*; the Middle of the XIX century beginning of XX century. Russia abandoned direct borrowings, the norms of the legal systems of Western Europe. The norms of law were adopted selectively, being thoroughly studied with regard to their legal realities. The Soviet legal system in the 20-80s of XX century. The Soviet period in the development of the legal system was characterized by proclamation of the ideas of the new law and state. The post-Soviet legal system of Russia the end of the XX century. Russia announced the construction of a new state. Important is the study of legal historical development of both rights and statehood from the point of view of legal continuity and the opportunity to avoid repeating the errors that could be a barrier to its development.

Key words: The Russian legal system, Genesis, chronological stages, local state, the Soviet State

INTRODUCTION

At the present time at academic and methodological levels the issues of formation of the Russian legal system preserve not only their significance but become even more actual. The problems of the Genesis and development of the Russian legal system and statehood not withstanding sufficient multiplicity and comprehensiveness of their study, stir scientific community (Ryabinin, 2001).

The study of the Russian legal system from the viewpoint of its historical development will help to form holistic view on the Russian legal reality under present-day conditions to determine the ways of its development and functioning (Estevez and Rachitskiy, 2013).

One cannot but agree with Andreyeva (2009) noting that "overall historical process is to be corresponded to by continuous legal process" which is also to be thoroughly studied and taken into account by historical-legal science turning for description of the legal systems.

Formation and evolution of the Russian legal system occurred on general regularities resident in development of any national legal system with its historical features and peculiarities.

Study of specifics of development of the legal system of a concrete historical period allows to reveal the general regularities of the legal phenomena and trace back the specific character of its change.

It is obvious that the development of the legal phenomena of the Russian legal system should be studied

within certain time and space limits. Knowledge of law, legal system beyond time frame is impossible (Rybakov, 2009). But it should be noted at once that universally recognized periodization of domestic state and law has not formed in history of domestic state and law. It is explained by the fact that the legal system is being developed simultaneously with the state, inconsistently interpreting a concrete historical epoch and time frames.

MATERIALS AND METHODS

In the process of writing the study it was used the general methods of scientific cognition: philosophical categories of essence and phenomenon, form and content, general scientific research methods (logical analysis and synthesis, induction and deduction, abstraction and ascent of abstract to concrete, system, functional) that allowed the researchers to disclose the historical regularities of formation of the Russian legal system.

Specificity of the subject conditioned applying technical, historical and legal and comparative-legal research methods. Thus, the technical method was used to identify methodological aspects of formation of the Russian legal system. The historical and legal method helped to explore the historical stages of formation of the Russian legal system.

The Native and Foreign literature on the theory and history of our state and law, the materials of round-tables and theoretical and practical conferences constituted the empirical base of research.

Main part: Let us point out the beginning of the development of the Russian legal system from the moment of formation of the old-Russian state (Timonin, 2007). According to the above-stated conception it is a period of the development of the Russian legal system of the Old Russian local state (IX-XIII centuries).

The most ancient sources of the Russian Law were the customs of the Slavonic tribes (the Drevlyans, the Polochans, the Kryvychi and so on) and partly Finno-Ugric and Scandinavian (Norman) tribes, living on considerable grounds and having different cultures, beliefs, the level of social and legal development that also conditioned long coexistence of divergent pre-legal orders (Vladimirsky-Budanov, 2005). It was characteristic for Kiev Rus the regulation of certain spheres of public life by mononorms by means of traditions, myths and religious beliefs. Formation of the antique forms of law is connected with the activity of a private individual with its external manifestation having legal significance in the form of a result (Momotov, 2003). In IV-VII centuries, the lands were formed and the customs gradually transformed

into customary law. The custom stopped being supported by an opinion or a tradition but sanctioned by authority. The forms of customary law were the acts of juridical acts (their oral form), judicial acts, the symbols and sacred formulae, rites, principles in the form of proverbs and sayings, legal symbols (Isayev, 2002).

In IX-X centuries in Rus, there were no collected written common laws. The first official written source of law became treaties with Foreign states (Sergeyevich, 2004). It was first and foremost the treaties of Rus with the Byzantine Empire conditioned by political and military situation.

The texts of the treaties consisted of the norms of the Byzantine and Russian law, regulated international, trade, procedural norms connected with crimes and punishments.

It is worth noting also the availability of interprincely treaties, treaties with free Novgorod (XIII century). The establishment of christianity was another link in the development of religious and legal reforms. In Rus it was formed the canon law based to a great extent on Byzantine legislation (Ignatov, 2002).

It led to transformation of the old Russian cultural archetype, change of mentality and entry into orthodox Byzantine-Slavonic civilization as a result of adoption of spiritual and cultural Byzantine (and its ingredient-antique) experience. Two systems began to develop: Ecclesiastical Law and Russian Secular Law. There occurred symbiosis of principles of law, the ecclesiastical law became the standard of Christian order.

As systematized ecclesiastical sources consisting of legal norms, it should be noted that: the Code of Laws of patriarch Ioannes Scholastic (VI century), the books were called Nomocanons; Nomocanon of patriarch Photios, The Kormchaya Kniga, The Law of Judgement to People and many others.

Besides, the sources of independent written juridical form were princely statutes as manifestation of state power. These are church discipline of Saint Vladimir and Yaroslav the Wise (the end of X the beginning of XI centuries). In Vladimirsky-Budanov (2005)'s judgement, these were individual rules on one or several questions.

In XI century it was created a large-scale legislative act "the Russkaya Pravda", comprised by princely statutes, common law and Byzantine acts (Sinyukov, 1995). "Russkaya Pravda" is an important monument of Old Russian law. It included the norms of different branches of law and in the first place, law of criminal procedure and also defined the peculiarities of socioeconomic system of Kiev Rus (Polyak and Markova, 1997). "Russkaya Pravda" (Chistyakov, 1985) reflected the law of the Old Russian State, its social system most completely.

In the period of feudal division (XII-XIV centuries) the legal system kept on developing but not centrally and “reserved” that is in the territory of each separably isolated principedom besides general Russian sources such as “Russkaya Pravda”, Vladimir’s Charter, there acted internal principles of law. The legal system consisted of the sources of the secular law and canonical sources. Here it should be noted Pskov and Novgorod Judicial Charters; the charter of Prince Ivan Rostislavich Berladnik of 1134; Prince Vladimir Vasilkovich manuscript of 1287; the Charter of Volyn prince Mstislav Danilovich in 1289.

The period of establishment of the Russian legal system of the Old Russian local state (IX-XIII centuries) has the characteristic features that are conditioned by the development and formation of the state system, authority and state-political institutes:

- Geographically-communal organization of authority was united by local system
- Stability in the system of authority as popular assemblies. Assemblies comprised the issues of lawmaking, internal state system, public relations; besides, Popular assembly could act as judicial body
- Factual unity of legal sources in the territory of the Russian state in the period of feudal division
- Impact of Greek-Roman and Byzantine ecclesiastical law on essence and content of legal source of Old Russian State

Great influence on the development of the Russian State and Law was exerted by such historical processes as Mongolian and Tatar invasion and wars of conquest of the Germans and the Scandinavians from the West that undoubtedly, affected further development of the Russian legal system.

By XIII century the tendency to unification of the Russian lands was growing very fast. In Sinyukov (1995)’s judgment in the Russian statehood there was amazing synthesis of monarchist, aristocratic and democratic on the basis of preserving territorial organization of power. All above-stated factors conditioned transfer to the following stage of the establishment of the Russian legal system.

The legal system of Moscow State (XIV-XVII centuries). Slackening and disintegration of the Golden Horde, the development of economic inter-princely relations and trade, the religious, ethnic, political homogeneousness of the lands conditioned the fact that in the second half of XIV century in the Northeast Rus the tendency to associations of lands around the Moscow principedom intensified. The period of formation of a

united centralized state discovers considerable continuity with the period of local self-governing. The peculiarity of this period is also a close link with Zemsky Sobors, succeeded the popular assemblies vanished in the period of appanage principalities. The local sobors as deliberative-legislative body played an important role in the development of law. Exactly in that period the main source of law became legislation. Since, the middle of XV century it had been established the elective bodies of the local self-government. Thus, the flexible and consistent system of legal sources had acted.

To the peculiarities of “the Moscow, Russian” legal system in that period one may refer the flexibility and variety of its sources in preserving the traditional fundamental of legislation.

The common law of the Russian lands, “Russkaya Pravda” kept on acting in the Moscow State. The constituent part of the legal system of the Moscow State also remained the ecclesiastical law, the norms of which were included in the Stoglav adopted by the Sobor in 1551. This monument of the Russian law adopted by the council contained the norms on government of the orthodox church, its rites on ecclesiastical court.

To the number of law sources, it should be also referred the letters patents for cloisters or laities in which the sovereigns granted different rights. Besides, the letters patents, the grand dukes issued charters sanctioned as for concrete persons their ancient laws and customs. With the purpose of centralization of the state for more total subordination of the authorizing places of the Moscow prince, it appeared the authorized charters of vicarial governing, regulating the local authorities of concrete bodies and determining the order of vicarial governing and the right of population of certain uyezds.

The first authorized charters were Dvinsk (1397 or 1398) and Belozersk (1488). The monument of the finance law is the Belozersk custom charter of 1497 and also labial and zemsky letters (Russian legislation of X-XX centuries).

The legal system of the Moscow system (XIV-XVII centuries) had integration feature that is the Russian principedoms as a result of the national and cultural community united around Moscow creating the common Russian Law of united centralized state, “it fell the flourishing of the Russian medieval legal system”. In the period under consideration the main source of law was legislation.

The most considerable monuments of law were the Codes of Law of 1497 and 1550 which were the acts of codification of law and secured mainly procedural and legal norms. The Code of Law of 1497 r. Introduced uniformity into the judicial practice of the Russian State, consolidated new public orders.

The Code of Law of 1497 and numerous charters underlay the new Code of Law of 1550 which contained more than one third of new articles. It was created the mechanism of renovation of law. The possibility of adoption and amendment to the Code of Law could proceed from both supreme state power (tsar) and orders and private persons.

The summit of the Russian medieval law may be called the Code of tsar Aleksey Mikhailovich. It was for the first time an attempt undertaken to compile the consolidated laws of all current rules including the codes of law and new standard researchers. The consolidated laws practically presented the act of codification of the Russian law where there were defined and arranged the individual branches of material and procedural law (Fitzpatrick, 2001).

Thus, the historical fortune of XIV-XVII centuries in history of native state and law is very contradictory and changeable. But, it was the time when the foundation of the state was underlain, it was that period the prosperity of lawmaking fell on. The important legislative acts appeared. Grand changes occurred in the development of law. The major legislative acts were established, the current legislation actively developed. It had been initiated the mechanism of developing and passing standard acts.

The development of the legal system of the Russian Empire (XVIII century early XX century). The peculiarity of development of the legal system of the Russian Empire is traditionally associated with reforms implementing by the emperors being in power. So, Peter I drastically changed the structure of both state formation and the law itself.

In the period under consideration the further development of the Russian legal system has the following peculiarities. Among the sources of law an especially important role was played by the acts of state authority (decrees, statutes, regulations) which is indicative of simplification of the sources of law. The contraction of the sources of law had occurred. The essential sources of law became the formal acts of state organs (statutes, regulations and others). Thereby, it had occurred the change of nature of law. Here, one should note wide incorporation of the legal form of the law.

Sinyukov (1995) says not about the progress of the native law in the present period but about degradation of juridical technique, vagueness and fuzziness of speech as a consequence of direct borrowing of the Swedish and German law. It results in loss of lucidity and legibility of normative legal exposition, degradation of juridical technique.

Among the most progressive and meaningful sources of law one should note the source, approved in 1714: the martial code number, the code of military legislation, the general regulation or the Charter of the board of 1720 regulating the sphere of administrative legislation, Clauses of patrimonial cases of 1725(b).

The development of law in XIX century is characterized by the systematization of legislation and the period of counter reforms. The preserved conservatism and reactionary character of political superstructure of Russia of the first half of XIX century predetermined the peculiarities of development not only the state regime but also the legal system.

By early XIX century especially acute problem was the problem of systematization of law. It is connected with the the Russian legislation being deeply neglected (Mitskevich, 2001). The reasons were the presence of numerous unordered charters, regulations, standards, direct adopted acts from German, Swedish, Polish Law, mess in realization of law and its application in the courts. Besides, the political situation in the country was in the last degree. The emperor oppressed authority in his hands that affected socio-economic situation.

There were he works on incorporation of Ostzeisk laws that reflected the privileged status of the local noblemen, petty bourgeois and priesthood.

So in the first half of XIX century it was formalized the system of the Russian Law, the multilevel system of law branches, preserved until the days of the Russian Empire.

In the second half of XIX century, the content of the Russian Law was substantially affected by bourgeois reforms. Popular became the idea of law-governed state, the principle of separation of powers and guarantees of personal rights (Sokolov, 1992).

In that period, the principal sources of law did not changed. As before, it acted the total collection of laws of the Russian empire. It had appeared the second and third Collections, it had appeared volume XVI of the Code of laws of the Russian Empire.

It had been published a lot of different legislative and departmental acts in which there was endeavour of their compilers to regulate everything to the smallest details.

The second half of XIX century is signified by substantial changes in public and state system. These are first and foremost, local, municipal, judicial, peasant reforms. In the course of implementations of law reforms, it was announced new principles: equality before the law, electiveness and removability of the judges, collective nature of consideration of cases and adversarial character of the proceeding, introduction of the institute of the members of the jury and others (Anonymous, 2006).

In the course of XVIII-XIX centuries the law of the Russian Empire presented the mix of the medieval and west legal systems. The remains of the juridical middle ages were not excluded in the Russian Law even after the reforms of the 60s of XIX century and the years 1905-1907: they preserved in the most important spheres of the public and private law (as the elements of feudalism preserved).

In wartime (1914-1916), the law did not undergo any serious changes. Thus, one can resume, that the development of the Russian legal system in X early XX centuries is characterized by such features as:

- The perception in law of the Byzantine culture, orthodoxy, spirit of late Roman Law and also the European and Asian principles (Saidov, 2000)
- Wide spread of unlawful regulators in society: moral, religious, corporate and so on. One can say about dominance of ethical principles over legal ones
- Priority defence of common interests, common causes, spirit of conciliarism to the detriment of personal demands of an individual his rights and interests. The regulation of legal area related not to private but to public law were oriented to clear state regulation but did not defend the sphere of personal interests. The prerequisite for the case became the well-established as a result of peculiarities of historical development and long time preserved collectivism and communal system of life promoting dominance of collective right over personal right
- High degree of «presence» of statehood in public life, state ideology, government ownership of many sides of public life, subordination of law to state

The Soviet legal system (the 20-80s of XX century). In A. Kh. Saidov's judgment, making the Soviet legal system meant the appearance of the world history of:

- New historical type of law
- One of possible varieties of this type
- First concrete socialist system of law

Characterizing the development of the soviet legal system, Tikhomirov (1996) notes that in the first years of the Soviet government it was realized the course to renunciation of old law and formation of new socialist law. The legal acts were created from the class position and rejection of bourgeois (Foreign) law considered to be one of the major criteria. But there exist another position in particular, Yurkovsky (2008) notes, the legal system of the USSR related to the standards of jurisprudence of the Russian Empire and did not renounce the former standards of jurisprudence.

The second bourgeois-democratic revolution started in Russia in February 1917. As opposed to the first one, it achieved the victory-overthrow of tsarism. The Russian State took a new step towards conversion from feudal into bourgeois law. The socialist law did not expect anything from "bourgeois law" and did not seek anything to borrow from it or it was considered as a product of exceptionally socialist environment. Bourgeoisie did not intend to radically break down the law being actual in the days of tsarism.

The Soviet law appeared together and simultaneously with the Soviet State. Appeal of All-Russian congress of Soviets to "Working people, soldiers and peasants!" having proclaimed the establishment of the Soviet State, was its first legal act. As Sinyukov (1995) accurately observed, "Evolution of the Russian legal system in the post-October period is a complex interconnection of rather external ideological form with national specific content if law".

Instead of former Abridgement and Code of laws it was adopted the first Soviet codes: civil, criminal, agrarian of civil procedure of criminal procedure. In science the sectoral presentation of the legal system consolidated. The statement of V.I. Lenin on official character of law and legislation determined the direction of the state legal development. It was affirmed that socialism did not know the contradiction between personality and society and consequently, there were no the dualism of law (Kurdyuk, 2009). The legislation of the Soviet Republics consolidated the relations lying beyond the regulation of the common union legislation, thereby, supplemented its regulations (Gordon, 1996).

From the beginning of the 30s to the middle of the 50s of XX century the characteristic feature of the legislation of that period was intensification of its rigidity, sometimes even oppression. At the same time, observable is the emphasis on imperative methods of the legal regulation reflecting command-bourgeois style of governing in the state. The rights of the citizens, business entities were rigidly regulated (Michael and Skuba, 2014).

The constitution of the USSR of 1936 defined the law that affected more precise differentiation of the legal acts. The all-USSR juridical meeting in 1938 approved the rigid classification of the branches of law, predetermined the sectoral structure of legislation. But as before the number the law making acts proper was not great and the notion of the system of law comprised subordinate regulatory acts of sectoral character.

In the period of the Great Patriotic War (1941-1945) the sources of the Soviet Law did not undergo serious changes.

In the post-war period and especially in the 50-60s of XX century, the process of development of laws recommenced. In terms of theory, the investigation of the problems of the legal essence, the nature of legal relationship and legality, the entities of civil law was of great important. The works dealing with administrative, housing, inheritance, invention laws and copyright were issued. Essential was the analysis and evaluation of the subject and system of civil, state (constitutional) law.

In the 60s early 80s, it was formed the three-stage system of legislation: the codes of union republics, the principles of legislation in various branches and the code of laws of the Union of the SSR at last.

Hence, the middle of the 50s the end of the 80s of XX century is characterized as epoch of liberalization having led to the change of social and political system, desintegration of the USSR and change of all guidelines of both political and legal development. This stage is also characterized by technical legal achievements in legislative sphere by appearance of new complex branches of law and by adoption of the Constitution of the USSR and a number of laws of declarative democratic tendency in 1977.

The end of the 80s of XX years is a period of "perestroika" in our state. The cardinal changes of the Russian legal system began. It was recognized the conceptions of supremacy of law, legal autonomy of enterprises, cooperatives, the other legal entities.

After disintegration of the Union of the SSR the Russian Federation reached the new stage of development of the legal system. It should be noted that the study of the problems of post-socialist statehood and legal system prompts sharp debates in scientific community.

RESULTS AND DISCUSSION

Thus, making up a conclusion of considered principle stages of historical formation of the Russian legal system, one can give a summary.

The Russian legal system has its long history, its establishment subordinated to the laws of social, historical and evolutionary development. The vector of formation of native legal system often had inconsistent character owing to the fact that the legal system was always closely interwoven with the development of state and conditioned by it.

On its historical way the Russian legal system is traced back to the strata of intrinsic national culture being in search for legal principles and values. We have considered the following stages of establishment of the Russian legal system:

- The period of establishment of the Russian legal system of the Old Russian local state IX-XIII centuries. The considered period is characterized by steadiness and unity of the legal sources, common territorial organization of authority; impact of the Greek-Roman and Byzantine ecclesiastical law on the essence and content of the legal sources of the Old Russian State
- The legal system of the Moscow State XIV-XVII century. To the peculiarities of the legal system of the Moscow State one may refer the variety of its sources in preserving the traditional basis of legislation, the common law of the Russian lands keeps on developing, the *Russkaya Pravda* is working
- The development of the legal system of the Russian empire XVIII early XX centuries. The main sources of law are the acts of state power (decrees, statutes, regulations). The development of law in XIX century is characterized, first of all by systematization of legislation and the period of counter reforms. The first half of XIX century it was formalized the system of the Russian Law, the heterogeneous level system of the branches of law was made up. In the second half of XIX century, the content of the Russian law was considerably affected by bourgeois reforms. The complete code of laws of the Russian Empire was in force. Great many of various legislative and departmental acts were issued
- The Soviet legal system the 20-80s of XX century. One may single out the following features: the court system depended directly on party leadership; the private law was neglected; the ideas of Marxism-Leninism were formalized; the law was considered as phenomenon subordinated to the state and was declarative to greater extent. The peculiarity of the Soviet legislation was its insufficient being systematized and also difficult access to normative materials for the citizens, institutions, enterprises and organizations, departmental acts competed with laws
- The post-soviet legal system in Russia the end of XX century

Russia proclaimed the development of a new state giving its priorities to the formation of the civil society and legal state.

Each of above-mentioned periods of the development of the Russian legal system has its own certain specificity and peculiarities of forms (sources) of law, legislation, establishments and jurisdictional bodies and also legal culture and legal awareness of society.

At present the legal development of Russia acquires interrelated and sensible character as the stage of single, progressive developing historical process. Important is the study of legal historical experience of formation of law and statehood from the point of view of legal continuity and possibility to avoid repeating the errors that would be the barrier in its development.

CONCLUSION

Under modern conditions the complex contradictory though steadfast process of development of a new Russian legislation accompanying by its bringing in balance in accordance with universally recognized principles and standards of international law, direct action of norms of the Constitution of the Russian Federation is a complex process by its content demanding for system juridical thinking from the law user. Its integral attribute is an ability of the law user to know the system and hierarchy of the legal norms to have skills in interpreting and applying the common legal directions to concrete life situation without their causative detailed elaboration in legislation. It is observed that in the issues of the theory of applying the law, it is retraced the most distinctly the link of general theory of law with real life with urgent issues of judicial practice and including the very right embodiment, the concrete results of which are connected not only with the achievement of goals stipulated in law but the goals that are set by the privies in law (Zakharov, 2009).

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