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ON THE QUESTION OF THE MAIN DIRECTIONS OF COMPARATIVE JURISPRUDENCE

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Abstract

In modern conditions, legal systems interact closely and influence each other. This influence becomes especially noticeable in the process of serious reform. However, such a process cannot proceed smoothly, the main problem is primarily in connection with the adoption and implementation of the experience of foreign states. The main feature of this process is that the adoption of the best foreign practices occurs haphazardly, chaotically and taking into account certain political interests, without taking into account the interests of the state and national interests. This situation arises when studying international and European law, comparing the standards of regulation of certain public relations. Knowledge of the essence of these norms, the possibility of their compatibility with national norms, the ways of their harmonious interaction should become systemic. The legal reality of our time is determined by the process of mutual influence of various legal systems, a dialogue of cultures, a combination of traditions and innovations in legal consciousness and legal development. All this gives a powerful impetus for comparative legal research, including in the Russian Federation. In this context, the need to address fundamental issues in the methodology of comparative legal research becomes especially urgent. The need to solve this problem is due to the search for ways to improve the methodology of comparative jurisprudence, which is even more actualized in our time against the background of the gradual scientific institutionalization of this area of legal research. Comparative jurisprudence is the only discipline that can accomplish this task.

Keywords: Comparative jurisprudence, systems of law, legal trends, jurisprudence

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1. Introduction

Comparative studies, as a legal discipline, in our opinion, should see its main function as the consolidation of legal knowledge in various fields, their addition and generalization. Thanks to comparative analysis in legal disciplines, generally accepted definitions of legal terms, principles of regulation of various legal relations are formed. A comparative approach to the study of certain branches of law allows not only developing legal science, but also forming a new approach in legal science; it makes it more universal.

2. Problem Statement

On the issue of the main directions of comparative jurisprudence at the present stage.

3. Research Questions

Analysis of the main directions of comparative jurisprudence at the present stage, the role of comparative jurisprudence as a scientific and academic discipline, value guidelines of comparative jurisprudence.

4. Purpose of the Study

The goal is a comprehensive theoretical study and analysis of the main directions of comparative jurisprudence.

5. Research Methods

The structural and logical approach, systematic presentation of the material, formal legal method, comparative legal research method were used as research methods.

6. Findings

Comparative studies as a separate science are not regarded as such only by some representatives of legal science in the countries of Anglo-Saxon law. However, it should be noted that such an approach and view of this discipline does not prevent them from systematically developing the methodology and theory of comparative jurisprudence. However, in the Russian legal science, despite the recognition of comparative jurisprudence, its methodological and theoretical basis is very weak, not least because of the conservatism of the scientific views of domestic lawyers.

This approach, to our great regret, harms primarily comparative studies itself as an educational and scientific discipline, since there is no sufficient theoretical basis that would allow the development of comparative jurisprudence in full, and not only on the basis of the tasks that are posed within the framework of existing and active developed legal disciplines (Petrychak, 2012). In our opinion, it is high time in theory to form a separate discipline, which would include the theory, methodology and philosophy

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of comparative jurisprudence. At the same time, special attention should be paid not only to the study and comparison of the principles and foundations of legal regulation of individual legal relations, but also to the convergence of legal systems, their mutual influence.

In the formation of individual legal disciplines within the framework of comparative studies, it will become a certain foundation that will allow systematizing the volume of scientific research in certain branches of law, will help to generalize the existing theoretical constructions. And in general, in our opinion, such an approach will provide a positive effect, since the potential allocation of a new specialty "comparative jurisprudence" for the protection of scientific works will systematize knowledge in this area. It will facilitate the existing practice of comparative legal examination of adopted draft laws, regulate it and form it as a legal tradition.

While recognizing the subject of legal comparative studies, it is necessary to pay attention to its relationship with the object of the specified discipline, since the definition of this issue is not only theoretically important, but also practically significant. It is generally known that the subject and object of science are concepts that are not identical. An object is a broader concept in comparison with a subject. The object is usually common to a number of disciplines, while the subject of each of them is different, and cannot coincide with the subject of other sciences. And as elements of legal reality, one should define legal doctrines, concepts and views, national legal systems, legal arrays and complexes that regulate activities at the supranational level in various branches of law.

In the context of constant transformation of the current legislation, which radically changes entire industries, the will allow for the formation of a certain legislative logic, make the appeal of domestic lawyers to foreign experience more systematic, will enable a systematic scientific search, find potentially acceptable and applicable legal models to our legal reality.

At the same time, in no case should one sweep aside the already accumulated experience of an expert assessment of the current legislation and an analysis of its compliance, since there is no way to belittle the achievements of Russian science in this category. In particular, we note that the study of such categories as the application of the legal precedent, the implementation of the jury institution and its impact on the development of the judicial process in the country should become extremely interesting and relevant for comparative jurisprudence.

Today we can say with confidence that comparative jurisprudence, as a legal discipline, has emerged. The emergence of an individual subject of study is an evidence of the independent status of science, therefore, the question of determining the subject of science is extremely important. The definition of the subject of comparative legal research consists in restoring the range of concepts, categories and institutions that constitute the subject of scientific research. It should be remembered that specialists in the field of the history of law, general theory of law, sociology, philosophy of law, as well as a number of other disciplines, are most often involved in matters of law in the comparative aspect.

Modern social sciences and humanities are in a state of search for new approaches to the study of realities, among which there is not only a renewed interest in the comparative method, but also a tendency towards a different understanding of comparative research and the corresponding sciences, namely, their development into comparative studies – a branch of interdisciplinary comparative research – which requires their philosophical, scientific and theoretical understanding (Danielyan, 2016). Directly for

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comparative jurisprudence as such and comparative legal research carried out within the framework of other legal disciplines, this is also important because their genesis and the current state of understanding indicate pluralism in the positions of scientists in their concept, structure and other characteristics. These differences are due to the peculiarities of the conceptualization of comparative jurisprudence, the choice and design of which largely depends on the understanding of the nature and purpose of science, the initial philosophical approaches, theoretical models of science, as well as the views of a particular researcher, their worldview and other grounds.

Modern theoretical foundations of comparative legal research are characterized by a variety of methodological approaches and theories of understanding law, with varying degrees of philosophical understanding, scientific character and theoretical elaboration. The joint understanding of lawyers can be seen only in the fact that legal science is designed to provide a new explanation of legal reality, but this is carried out in different ways and on different philosophical, theoretical and methodological principles. Another thing that attracts attention is that most of the concepts or theories of law set out in the legal literature, which are proposed by representatives of a predominantly European civilization, reflect various ways of "reanimation" in modern conditions of the idea of universality of law as the most effective regulator of social relations.

The need to study the problems of comparative jurisprudence is multifaceted. It is due to both practical and theoretical reasons. The study of the methodological significance of comparative jurisprudence and its place in the system of legal categories of sciences is of theoretical importance. Of practical interest are the possibilities of determining the patterns of development of the national legal system, their special features and place in the international legal space. That is why, in the process of studying the legal system, one should study its elements not separately from each other, but compare, that is, simultaneously study their interaction in external, internal relations and their interdependence.

However, the problem of using comparison in various legal disciplines requires constant updating and improvement, taking into account the characteristics of specific objects under study. Any comparison is a kind of complex phenomenon, a unity of three components:

1) a logical way of knowing;

2) process, that is, a separate form, cognitive activity;

3) a separate cognitive result, knowledge of a certain content and level.

All the components of comparison, which make it possible to reveal the patterns of development of certain phenomena, internally characteristic connections and relations, have scientific value.

The coexistence of legal systems determines the relevance of their comparison at different levels: from legal norms, institutions, industries related to one national system, to legal arrays that make up certain legal families. A large basis for a comparative analysis is provided by the numerous and diverse peoples, states that existed in the past, as well as those that exist and are developing at the present stage. In the process of codifications, reception of foreign law, legislators could not fail to take into account the experience of other peoples, as well as the history of the development of their own legal system to eliminate possible shortcomings in national legislation and improve it. It was in the process of such activity that a serious need arose for a comparative legal analysis and obtaining relevant scientific results, which also have practical and applied significance.

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Comparative jurisprudence is characterized by value orientations, among them one should separately highlight the preservation of cultural, legal, political and other diversity, the dialogue of the main legal families of the world, the equivalence of the influence of extra-legal factors (religious, moral, traditional) along with legal ones.

Classification occupies an important place in comparative legal knowledge. At the same time, the construction of classification schemes, including classifications of legal systems, is a difficult and voluminous task that requires the use of a wide methodological arsenal, including a semiotic approach. To define a certain class of objects means to establish those essential characteristics that are common to all the constituent elements of one group. All classifications are based on the identification of one or another ordering. An example of such a classification system can be the classification of legal systems by geography (European, Asian, North American, etc. group of legal systems). In general, this type of classification is the most used in scientific research, but it is not entirely acceptable for comparative jurisprudence.

Legal comparative studies is the main foundation for the development of globalization processes in lawmaking. It acts as a platform for the exchange of knowledge and experience among representatives of different legal cultures (Saidov, 2003). At the same time, we note that this process does not go smoothly. In the process of influence and interpenetration between various legal systems, a certain conflict arises. In particular, this is quite clearly seen in the example of the formation of supranational law, when each state, in order to develop a unified approach to regulating certain relations are forced to give up part of their sovereignty. One of the key goals of comparative studies, in our opinion, is precisely the search for a balance in the regulation of various legal relations. The key goal in this case is not the development of some universal norms, but the search for an approach thanks to which states can implement the world's best practices into their internal legal the system is most effective and painless.

It should be noted that globalization, at this stage, is one of the main features of modern comparative studies. We can observe the manifestations of this trend in the interaction of the scientific community, when in order to solve certain scientific problems by lawyers from all over the world, certain associations and scientific communities are created. The importance of comparative jurisprudence as a scientific discipline is also confirmed by the fact that in recent years special courses on comparative studies have been introduced into the curricula of law students; during scientific seminars and international congresses, a lot of attention is paid to the comparative analysis of the problems under study.

Based on the above, we can say that the main directions in conducting comparative legal research at the present stage is, first of all, the study of issues related to the development, evolution and formation of the most common legal systems.

Trends in the regulatory sphere and the modern existence of the state, caused by the processes of globalization, destroy traditional ideas about law and the state. Modern law, as rightly noted in the scientific literature, loses or with difficulty maintains a stable state of dogmas and doctrines – its main achievement (Zheldybyna, 2013). The legal doctrine is becoming rapidly changing, which not only affects the legal consciousness of the subjects of legal relations, but also undermines the foundations of professional legal consciousness.

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The Russian legal system is currently undergoing significant reform. This process manifests itself in qualitative changes in many legal institutions known to Russian lawyers. The implementation of this process involves the solution of a number of tasks that are associated with the formation of new approaches to understanding legal categories. At the present stage, Russian lawyers need to revise the approach to understanding comparative jurisprudence as a scientific discipline that is able to answer questions related to the existence and development of state and law, taking into account globalization processes.

In the modern world, the existence of law as a single-level, national category is impossible; an array of regional and international law norms is actively developing. The implementation of the mechanisms provided by these institutions is impossible without legal research with a supranational aspect. That is, when studying this or that institution or legal category, modern legal scholars should not only study the problem from the inside, but also study the experience of others, which will enable a broader disclosure of the problem, and look for solutions that may not be in national law. At the same time, it is necessary to take into account and clearly systematize the entire array of information, give an answer to the question of how to create the most comfortable conditions for the implementation of world experience in the national system, taking into account the trends towards integration, and at the same time, preserve the legal and cultural identity of the state (Ostapovych, 2015).

In this context, it is worth mentioning the relationship and significance of comparative studies for international law and the regulation of international relations. Interestingly, this relationship is rather horizontal, since the development of international standards is also carried out by comparison and best experience, generalization of the practice of countries with the most effective and developed legal system. When developing such a generalized law, countries, in whose legislation there are certain gaps, implement world experience, based on the highest standards.

Comparative jurisprudence forms a new legal doctrine through the creation of categories and concepts of general application. It also provides an answer to the question of the appropriateness or inappropriateness of legal transplantation within the legal system. At the present stage, comparative jurisprudence has taken an important place in the system of legal sciences, while having a powerful subject-methodological potential both for its own development and for improving the entire body of legal knowledge. In this regard, the study of the possibility of legal comparative studies in the system of legal sciences, in particular, certain aspects related to the development of certain branches of law, theoretical research and the formation on this basis of an appropriate complex of scientific knowledge, is considered theoretically and practically significant both for its self-development and to determine the prospects for the development of legal science, in particular the theory of state and law.

Based on modern trends in the development of legal science, and in particular comparative jurisprudence – in the context of the formation of legal doctrine – it can be perceived as a form of disciplinary organization of scientific research. Therefore, having significant subject and methodological potential based on a comparative approach, comparative science is able to influence the formation of new directions of scientific knowledge that are objectively necessary for the realities of the implementation of state power and the performance of its functions. The current state of Russia can be called a period of radical reform of its legal system, and in particular the law enforcement system. This is connected both

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with the need to improve the internal security of our state, and adaptation to world standards, which determines the theoretical and practical significance of scientific substantiation and appropriate provision of reform ideas and their practical implementation. In this aspect, the knowledge about the functioning of the law enforcement systems of foreign countries, their comparative legal research and the identification of positive experience with the aim of borrowing it for the qualitative reform of the domestic law enforcement system and scientific support of measures to implement positive experience, determining the appropriate typologies, the formation of theoretical structures (models) etc. are becoming currently topical.

In this connection, the possibility of scientific understanding of such a phenomenon as the law enforcement system in its complexity and interaction with other social systems, taking into account the national characteristics of the Russian Federation, so that the ongoing reforms lead to the expected qualitative result, is of particular importance.

Despite the presence of a fairly large number of theoretical, special and applied scientific studies of the problems of the organization and functioning of the law enforcement system, in jurisprudence and legal practice their fragmentation, even a certain disunity is noted, which gives rise, on the one hand, to gaps in the scientific support of law enforcement, and on the other hand, to the lack of the necessary coordination of existing scientific research. Conducting such scientific research is more expedient within the framework of comparative jurisprudence, which allows significantly expanding the boundaries of theoretical research, ensuring their complexity, and also giving them a new quality, both in the form of a study of the determinism of law enforcement systems from the peculiarities of national state and legal systems, and the study of the general concept, which is characteristic of them outside of national conditioning and reflects the global trends in their development. For a modern lawyer, a systematic study of the implementation of public power at all its levels and manifestations, and especially the law enforcement system, is a must. Therefore, we believe that the subject-methodological capabilities of comparative jurisprudence can be extremely useful for the formation of the theory of the law enforcement system as a complex of scientific knowledge, has as its goal the knowledge and scientific support of its organization and functioning. To this end, at the present stage, it is extremely important to study the mutual influence and interaction of various legal systems.

The use of synergetics in the field of comparative law allows you to make the right decision and predict the likely consequences of certain actions. The successful combination of the constituent elements of the legal system, their joint functioning brings the society better results than their autonomous work. A complexly organized legal structure, having reached the highest degree of development, deviates from the state of equilibrium – chaos ensues in the legal environment.

The instability of complex legal organizations leads to a phase transition. Phase transitions are carried out by any legal system at a certain stage of development with a conditioned change in the corresponding indicators, causing the emergence of self-organization processes.

Comparative law specialists, observing a synergistic approach, act in an orderly manner: study objects of law; take into account the spatio-temporal relationship between world-class legal developments; take into account every legal decision; fix the moment at which a complex legal system goes out of balance; choose the best possible course of events.

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In comparative jurisprudence, the synergistic effect is associated with the fact that the combined use of several mutually agreed, mutually complementary legal strategies is more useful than the isolated implementation of any one of them. The synergistic approach in comparative jurisprudence makes it possible to treat the legal world differently: to clearly understand the principles of the evolution of complex legal systems; identify the causes of crisis, imbalance and chaos; master the methods of managing complex legal systems that are in an unstable state without maintaining a certain sequence; confidently with hope to perceive the presence of complete disorder. The content of synergetic analysis in comparative jurisprudence consists in comparing the future self-organizing consequences obtained from the combination of various elements, taking into account the influence of external factors.

7. Conclusion

Thus, our scientific analysis demonstrates that at the present stage of its development, legal comparative studies are primarily aimed at studying the practice of regulating certain legal relations in different countries. The peculiarity of the current stage is that globalization has a significant impact on the research data, in connection with which the issue of separating comparative studies into a separate science is becoming increasingly important, which will be aimed at studying the impact and practical implementation of the positive experience of legal regulation of public relations in different countries. We would like to emphasize that such a study, unfortunately, at the moment is not of a systemic nature, in connection with which there are difficulties in law enforcement.

References

Danielyan, A. S. (2016). The phenomenon of mixed legal systems as an example of the convergence of legal cultures. *Bulletin of the Tula State University, 1–2*, 157–164.

Ostapovych, I. Yu. (2015). *Judicial constitutional review and rule-making: correlation problems*. IC RIOR; SRC INFRA-M.

Petrychak, L. A. (2012). *Legal culture as a determinant of modern Russian society*. *Monograph*. Jurisprudence.

Saidov, A. K. (2003). *Comparative jurisprudence (main legal systems of our time). Textbook.* Yurist.

Zheldybyna, T. A. (2013). *Formation and development of comparative legal studies in the civil law of Russia (XIX – early XX centuries). Monograph*. NITS INFRA-M.