

## ROMAN LAW AND MODERN NATIONAL SYSTEMS OF CIVIL PROCEEDINGS: METAMORPHOSES OF HARMONIZATION OF THE CIVIL PROCESS WITHIN THE FRAMEWORK OF EUROPEAN AND EURASIAN INTEGRATION

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The subject. This article is devoted to the discussion of transformation of civil justice within the framework of European and Eurasian integration in the context of globalization. Globalization has been often mistakenly treated as a sociocultural process of establishing unity of humanity. But in the author's opinion globalization is an information – economic megatrend. We can find a precise characterization of modern globalization process in definition “glocalization” by British sociologist R. Robertson which is understood as connection between global and local processes.

The article means “glocalization” as globalization of economic and localization of cultures. The author also tries to synthesize some trends in the development and convergence of civil procedural law in Europe and in post-Soviet space making attempts to find some unity in the diversity of transformations.

Methodological bases of research are General scientific methods (dialectics, analysis, synthesis, comparison); private and scientific methods (interpretation, formal-logical, comparative-legal, based on the actual approach).

The aims of the article are: to analyze the reasons and factors that influence the convergence of the civil process in the framework of European and Eurasian integration; to identify gaps in legal regulation, difficulties encountered in the activities of courts in the implementation of justice; to identify trends in the further development of the civil process within the framework of European and Eurasian integration.

The main scientific results. The basis of social integration and mutual understanding has its roots at least in the countries of continental Europe in common source, in the Roman-canonical models that formed the “procedural order of communication” for many European countries before the codification period.

The civil procedure systems of modern states are facing unprecedented challenges today. In accordance with contemporary and historical comparative analysis fundamental reforms are condition for surviving of civil courts as protectors of human rights lied in the base of modern jurisdictions. Moreover, the reforms indicate common tendency of nations to communication on the base of unity in diversity of changes. The landscape of civil justice in Europe and Eurasia shows unity and diversity of processes in legal sphere.

Conclusions. The reasons and factors that influence the convergence of the civil process in the framework of European and Eurasian integration were identified. The main trend of development is to solve the unprecedented problems that the civil procedural systems of modern states face today.

### **1. Return to the historical origins of civil procedure law.**

For the first time, the Romans encountered such a precedent phenomenon of culture as a sample of a certain order—a procedure for resolving conflicts and regulating disputes. This and much more (the idea of justice and justice as just justice, the idea of the court as a body charged with the role of developing law, adapting it to the needs of the society in which it operates) characterize the world of Roman law, which can be presented to humanity. The development of the civil process of modern times, as we know, took place over the centuries within the framework of different legal cultures.

Integration, the desire for harmonization and unification in Europe—these processes began initially in specific areas of substantive law, but gradually also moved into procedural law, and at first were limited to establishing mutual trust and cooperation between European judicial systems while preserving their specific features. The result was not only the creation of a single economic space, but also the emergence of the phenomenon of European law and the phenomenon of European civil procedure. The trend towards legal integration is also typical in the Commonwealth of Independent States (CIS). In this regard, it is appropriate to recall the end of the XX—beginning of the XXI century, when the territory of the former USSR underwent a transition from a unified legal system to cooperation of States on rapprochement within the CIS, which subsequently influenced the process of rapprochement within the framework of Eurasian integration. Speaking of similarities, just as in the EU, it is currently proposed to name not only the common historical roots of the civil process in the CIS countries, but also trust [1, p. 400, 406]; as well as General socio-economic and political conditions for the development of civil justice, at least from the second half of the XVIII century until the collapse of the USSR in the 90s of the XX century [4, p. 5-10]. The basis for cooperation and mutual understanding in the field of civil procedure can be found, at least in the countries of

continental Europe, in the common origins of civil procedure law, in the Romano-canonical models that formed the "procedural order of communication" for many European territories, before the codification period.

In the light of comparative legal research, it became clear that in modern times, the foundations of a single European community are being consistently created, marked by a return to "jus commune". A number of commentators who speak on this issue in connection with the development of a Model code of civil procedure under the CIS Interparliamentary Assembly describe this phenomenon by means of a social metaphor – "the General procedural basis", which has long been hidden behind territorial features. (According to the authors of the Model law, the Code is comparable to the civil procedure Statute of 1864. or with the GPU of Germany in 1877 [3]). As a clarification, we should add that this return is not only because there are principles of universal value that relate primarily to human rights; however, today the procedural doctrine recognizes that civil proceedings must meet the interests of society in the twenty-first century. The idea that everything shared by humanity is formed at the level of all humanity seems to me erroneous. In any case, all cultural universals have not only their own history, but also their own geography. In this regard, it is appropriate to recall the judicial reform of 1864 in Russia, which later outstripped even some Western European States in the field of procedural law. After all, the judicial statutes did not improve or improve the previous procedural system, but created a completely new one, breaking all connection with the past. The French code of procedure, published in 1806, served as one of the models for drafting the Statute of civil procedure in 1864. At the same time, the beginnings of rational judicial procedure and procedural economy, which were the basis of the Russian judicial statutes, were widely applied in the German States in the field of civil procedure more than a decade and a half later (in 1877 – 1879); in Austria, a radical reform of the process was made only in 1895. In 1911, when the draft statutes on the

administration of justice, civil procedure, and execution of judgments drawn up by Franz Klein were approved; and in Hungary, in 1911, on the model of the Austrian one. In addition, the civil procedure Statute of 1864 incorporated rules from various sources (pre-reform Russian law, Polish and Lithuanian acts, Swedish norms, rules of Central Asia and Transcaucasia). The Russian Empire received a completely new system not only of legal proceedings, but also of the judicial system [9]. According to contemporaries, the Charter was considered one of the best European civil procedure codes of that time, so it should not be surprising that some Russian authors suggest that the General procedural regulation (the Charter of civil procedure of 1864), along with the pre-revolutionary and Soviet procedural doctrine, should be considered as a prototype of the Eurasian legal (civil procedure) space [1, p.400]. Among the prototypes of the modern European legal space with a certain degree of conditionality, foreign researchers call such a legal phenomenon as *Ius Commune* [25, p. 576].

In any case, the struggle and combination of universal and national principles, global and local in culture does not all this indicate the cyclical nature of history since the time of Roman law. This combination has led to different results in different countries, but the overall end result is the same: even in spite of economic and political integration processes, the response of national judicial systems to changes is not only slow and indecisive, but also develops in different directions. Experts in the field of comparative procedural law generally agree that although civil justice is undergoing changes, in General, it does not radically change its features – plus change, plus better choice. With the fall of the "iron curtain", economic globalization and integration processes expanded both in Europe and in other countries. The world has entered a new dimension, but it has, above all, been a transformation of life outside of national courtrooms. Although public dissatisfaction with the work of modern judicial bodies has increased, the rapid and adequate adaptation of judicial systems to the requirements of new social realities in most countries has occurred rather modestly or

not at all, and where changes have occurred, they often occurred with a significant delay, lagging behind more than 55 years of changes in the social environment, adherence to inherited forms of civil procedure and traditional procedural doctrine also persists [24, p.4]. It is well known that national civil justice systems have a close relationship with specific or even local characteristics that are characteristic of national legal systems and cultures [15], and consequently, many of the reforms were local and national.

Partly for the reasons described above, as well as for several other reasons in the field of civil procedure in recent decades, a fairly well-known idea of best practice has appeared in Europe, thanks to which the basis for comparative procedural law has undergone significant changes [20; 24, p. 9]. Currently, European civil procedure systems converge around a basic model that is supported and explored by comparing and comparing civil procedures from different countries (based on a methodology based on an actual approach).

The status of the idea indicates its close relationship with the past, present and future of different orders of civil procedure in different societies within the whole (social universe).

Over the past decade, the so-called basic model of civil procedure has influenced the development of the structure of civil procedure in Europe and internationally. The model grew out of Franz Klein's ideas about civil procedure reforms in Austria in the late 1800s, as well as recent procedural reforms in Germany, England, and Wales. In addition, the Ali / UNCITRAL principles of transnational civil procedure reflect to some extent the basic model of civil procedure. This model is also expressed in the project on European civil procedure under the auspices of the European law Institute (ELI) .

The history of law mainly testifies to the relentless tendency of peoples to communicate with each other on the basis of the same unity and diversity of transformations; but even more the history of its philosophy confirms that the common interest expressed in the desire for social integration and, in a broad perspective, for social creativity is not explained in society itself. The researcher is

forced to look for explanations beyond the empirical, asserting the existence of a higher ideal sphere of social existence, in which the value systems and ideals related to the "spiritualized reality" of culture have their basis (Kulturwirklichkeit.) – primas'. cultural reality) [8; p. 178] (for law, the absolute value is justice; another essential aspect of law is its expediency, as well as legal stability). In this context, claims to universalism and universal humanity in understanding the changing reality of national civil justice systems can only have one option: universalism, not only as a cognitive, but also as a moral concept that seeks the best from all peoples, races and people; whereas legal universalism is very far from being implemented. From a cultural point of view, we can only speak of globalization as the source of the unity of the world with reservations, explaining that this unity was formed during the formation of world history. First of all, it is an information and economic megatrend ("globalisation is nothing", as the American sociologist J. p. put it). Ritzer [16]), and in this article is understood as the globalization of the economy and the localization of cultures. Its exact characteristic is given by the term of the English sociologist R. Robertson "glocalization", which characterizes the continuity of the global and local, emphasizing the irreducibility of the coexistence of the universal and the particular [17].

## **2. Transformation processes in the civil process caused by challenges to national justice systems.**

In connection with the reform of Franz Klein in the 1890s at the beginning of the XX century in the science of civil procedure (especially in Germany), there was a tendency to rethink the fundamental postulates, principles of legal proceedings and some of the main categories of procedural law. This was the time when the old scientific disciplines, such as civil procedure and criminal law, found recognition of their independence. In 1920, the Russian jurist V. A. Riazanovsky, the author of the book "Unity of the process", based on a deep understanding of the special goals of legal proceedings as a social

institution, said that in the future, the goals and basic principles of civil procedure should be revised. Based on the consonance of procedural disciplines in the comparative legal aspect, he pointed to the increasing degree of separation of many conceptual forms from the idea that the correct results can be achieved only on the basis of material and legal representations [6]. In 1975 Mauro Cappelletti, the father of comparative procedural law, published 30 texts on the metamorphoses of civil procedure. With regard to the protection of group and collective interests, he predicted a "profound transformation" or "credible revolution" in the field of civil justice. In his opinion, the complexity of modern societies requires new and better methods of dispute resolution, since traditional means of individual compensation are increasingly insufficient to solve social (and even civilizational) problems [12, p. 571]. In any case, since the beginning of the 21st century, there has been a sense of crisis in many national systems, which was accompanied by General attempts to lead a new approach to the civil process [26]. The new social context, the changing ways of communication between people today brings this need for "deep transformation" to a completely new level. At the same time, we speak of "regularity as a trend" (M. Weber, G. D. Gurvich). This is a consequence of the extremely high degree of uncertainty that characterizes the reality of civil justice (related to both individual principles and collective symbols and values, at the same time). Finally, as we have said above, with the collapse of the Communist system, integration processes both in Europe and in Eurasia expanded. To what extent did this transformation affect civil proceedings, which, both at the beginning and in the last decades of the last century, were already in need of profound changes.

General regular rule changes, which, according to experts, reflect the global penetration of law can be summarized as follows: convergence after the globalization phenomenon is today not only a specific geographical space and political-institutional entities (Europe, South America), but the global trend in the development of law in General (not even as part of an integration Association, the state de facto included in this global

process) [1, p. 397]; civil procedure law is traditionally the focus of modern development in both the EU countries [14; 19] and States in the post-Soviet space within the EEU [1; 4]; processes are internationalized, and various types of legal proceedings are mixed [1; 24]. The problem is complicated by the fact that each such entity and each system of law corresponding to it is a microcosm of legal regulation systems, so that there may be contradictions within the same type of society. Known research, in particular, A. Toynbee, S. Huntington, P. Sorokin on the universal significance of local cultures [10; 7, p. 21-37], as well as on their collision (which was written not only by S. Huntington [21, p. 48-55; p. 183-300], but by A. Toynbee [11]).

As for the convergence of civil procedure law in the European space, as a General rule, it was carried out by intensifying integration and legal processes [19]. At a time when the dynamics in the post-Soviet space were not so obvious, one of the driving forces for the harmonization of national judicial systems of modern States was the globalization of the economy and the desire to increase economic and social welfare through international trade. In this context, the high activity of States was observed only at the very beginning, namely in the times of the CIS. At this stage, the scientific community in the field of civil procedure law had common tasks to change the ideas about the model of civil procedure, its principles, goals, etc. [5, p. 90]. And the inter-Republican scientific exchange that developed within the USSR continued to exist as an interstate scientific exchange between independent States. The subsequent economic integration within the framework of the EurAsEC, and after it the EEU, did not affect the processes of convergence in the field of civil procedure at all. In this regard, it is appropriate to recall that it was at the level of the CIS Charter documents that ideas were voiced about the need to bring the law closer and eliminate differences in the legal regulation of individual member States; convergence was included in the political agenda. The CIS has now been replaced by new organizational and legal forms of integration of those CIS member States

that have decided to continue converging in economic and legal areas [1].

Changes in national procedural systems also occur due to various factors and different local circumstances. Recently, many foreign authors on comparative civil procedure law consider the metamorphoses caused by modern challenges to national procedural systems in the context of new paradigms: unity and diversity [24]. It should be agreed that judicial transformations are often not easy to recognize, identify and formulate, evaluate and label. Indeed, changes are sometimes subtle, sometimes sudden, and very often interrelated. But in any case, comparative studies show that other regular rules in the field of civil procedure show transformations by borrowing from national and transnational sources (including norms, ideas, principles, concepts, etc.) - a tool used by all countries without exception; technological modernization: from "justice" to "electronic justice" [2]; justice reorganization: rethinking the role and functions of courts, as well as the judicial system as a whole; creating a multidimensional procedure for resolving civil cases; search for alternative approaches to dispute resolution; introduction of a system of collective protection of rights; transformation by dejudicialization of "dejudicialization" (outsourcing) of judicial tasks [24, p. 8]. In real life, however, these processes can be distinguished and, to some extent, they are characteristic of many procedural systems, regardless of their geographical or cultural location. The biggest stumbling block is the proper functioning of the justice system and the provision of effective and timely legal protection [23].

For example, recent research on European procedural systems suggests the "Europeanization" of civil procedure, and the introduction of common minimum standards. They point out that the creation of bodies to evaluate national justice systems, such as the CEPEJ (European Commission on the effectiveness of justice of the Council of Europe), as well as the idea of mutual trust, encourages States to compare their laws and regulations with the national sources of other States, which are perceived as best practices that succeed in the effectiveness and fairness of justice. But there are also mutual

influences. In addition to membership in international organizations, procedural transplantation is becoming an indispensable technique. International studies show that judicial reforms in various civil procedure orders are examples of mutual enrichment, when reforms in each country are clearly inspired and based on reforms or reform plans in other countries [13; 24]. In this regard, it is necessary to pay attention to the similar directions of gradual reforms of procedural legislation in all countries of the former Soviet Union, since the reform was carried out not only on the basis of borrowing the experience of neighboring countries, but also on the basis of a desire to perceive global trends [4]. The challenge of keeping up with technological advances is also fundamentally reforming civil justice.

There are at least several aspects involved in this reorganization process. The new approach to justice systems as a public service offered to users on favorable terms and at an affordable price encourages a review of the very organization of the judiciary, concerns specialization, including the role of courts in the judicial hierarchy. Reforms of the Supreme courts, both in European procedural systems and in the jurisdictional systems of post-Soviet countries, demonstrate a trend that focuses the role of these courts on solving specific systemic problems that are fundamental to ensuring the rule of law. However, according to most researchers, it should be recognized that the results of ADR promotion in modern jurisdictions are ambiguous: the announced transformation has occurred mainly at the regulatory and doctrinal level, but the real impact on reducing contentious cases and the costs of dispute resolution is still quite limited. Regarding the global trend of "collectivization" in the field of civil justice, which Mauro Cappeleti optimistically stated [12], it is now, according to the same authors, just like the ADR movement in the past, is still more likely to be present in speeches, policy documents and scientific papers than in everyday life.

In the perception of many researchers (and the author of this article), the judicial system of modern States, in fact, appears as a polycentric model, which is characterized by differentiated

strategies that largely depend on the ideas about the goals of the judicial process. The key words of many reforms in different parts of the world since the beginning of the 21st century are proportionality, access to justice, and case management. While the traditional procedural doctrine almost exclusively focused on the civil (material) model of justice (that is, on the accuracy of decision-making, the fairness of judicial processes and the consistency of judicial decisions), and as follows from the text of this article, this is not a completely new approach. The "new theory of justice" of Lord Woolf in England and Wales [18; p. 161-199] is now called the most authoritative and striking example in this sense. At the same time, in the same sense, the idea of creating a General procedural doctrine in the context of the concept of "judicial law" took place in the Russian legal discourse [6]. In this regard, the global landscape of civil justice, including in the CIS and Baltic countries, undoubtedly demonstrates significant unity, and at the same time extreme diversity. However, this convergence should not be exaggerated, because there are significant differences in perceptions, for example, about the role of evidence (other European civil procedure systems, post-Soviet jurisdictions compared to the English system), and, among other things, about the role of the judge (English judges, for example, compared to Germany and Finland, and most Euro-Asian countries are more passive and clearly do not have the authority to actively promote settlement). Many former socialist countries have tried to change the basic structure of their civil proceedings in order to fully or partially implement the principles and ideas of the basic model of civil procedure, but despite judicial reforms, with rare exceptions, the traditional civil procedure doctrine, the conservatism of official jurisprudence, is taken for granted. So, modes of thought and action cannot be changed overnight.

### **3. Conclusion.**

The reasons why many countries are currently reforming judicial and non-judicial procedures are related to the current social changes in society and technology. In the same sense, we should agree that the civil procedure systems of

modern States are facing unprecedented problems today and they are trying to solve them in appropriate cases. At the same time, trust in civil courts and their ability to protect rights and ensure the performance of duties is being lost. Thus, the need to discuss this issue through a broad international scientific discussion is becoming more and more obvious.

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