

Methods and Factors of Legal Acculturation

Zavalnuk Volodymyr, Sakal Sergiy

National University "Odessa Law Academy", Ukraine, Odessa

Abstract: The result of the long-term coexistence of legal cultures of different societies is a change in the primary culture of the contacting communities. As a rule, in this context, the formation of a single legal space, a general legal culture takes place. The paper analyzes such a phenomenon, discloses the factor and methods of legal acculturation.

Background: Today there are various methods of legal acculturation. These methods on general social methods of persuasion are based (1,2). Such as active influence by ideological and moral means and coercion (violent, ideological, economic influence). Legal acculturation can be voluntary. Such a process is possible on the condition that the societies coming into contact strive for deeper integration. The process of transforming one's legal cultures in this context is the main thing. It depends on which methods prevail in the contact of legal cultures (3)

Conclusion: The work examines factors and methods of legal acculturation as a long process that involves certain stages. The analysis of factors and methods of legal acculturation allows to single out the mechanisms of legal acculturation as a set of mutually dependent, mutually conditioned means, methods and factors that ensure intercultural contact of different societies.

Key Word: law, acculturation, methods, mechanism

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I. Introduction

Today there are various methods of legal acculturation. These methods on general social methods of persuasion are based (1,2). Such as active influence by ideological and moral means and coercion (violent, ideological, economic influence). Legal acculturation can be voluntary. Such a process is possible on the condition that the societies coming into contact strive for deeper integration. The process of transforming one's legal cultures in this context is the main thing. It depends on which methods prevail in the contact of legal cultures (3).

Therefore, the study of methods of legal acculturation will allow streamlining the processes of exchange of elements of legal cultures, to give the process of legal acculturation a scientifically based character.

The paper aims to consider methods of legal acculturation as a long process that involves certain stages. The analysis of methods of legal acculturation allows singling out the mechanisms of legal acculturation as a set of mutually dependent, mutually conditioned means, methods and factors that ensure intercultural contact of different societies.

I. Methodsof legal acculturation

The method of legal acculturation as a system of techniques is understood. Methods and means aimed at the interaction of legal cultures of different societies and the creation of a single consolidated socio-cultural system. The choice of these methods and means depends on the economic, political, socio-cultural goals of the communities in contact, on the specificity of their values and traditions. Voluntary acculturation in stages is carried out: recognition (respect for legal differences), cooperation, adaptation (pluralism) and integration (unified legal space).

The process of interaction begins with awareness of the fact of real differences. The main goals of this stage are overcoming legal differences and cooperation. At the stage of cooperation, various forms of legal communication are generated, unified legal principles, ideas, and values are developed. Cooperation may depend on the subjects that enter into this process. For example, individual, when an individual recognizes the legal patterns of behavior of another community. This has become especially relevant recently due to the mass migration of the population. A person voluntarily adopts the relevant legal norms, patterns of behavior, value orientations and understanding of his "ego", which originates from the positions of cultural and legal characteristics that are accepted in a specific community. A person identifies himself with the cultural and legal

patterns of his society. If there is a mass flow of foreign immigrants in the state, which leads to the formation of ethnic and religious groups, then all the prerequisites for the formation of a multicultural society arise.

There are many examples in history when the state authorities are forced to recognize the cultural and legal diversity and distinction of the peoples living in a certain territory. Thus, it is possible to note the development of the practice of intercultural communication in Canada (the concept of "two languages - two cultures - one nation"), Australia, the USA (legislation on migration issues), Germany, Great Britain (legislation on marriage and family), in France (laws on citizenship).

If societies (groups, clans, peoples, ethnic groups, states, etc.) enter into a voluntary process of interaction, the result is such cooperation that harms the legal cultures of the contacted communities. Forced interaction is characterized by the imposition by the donor society of its legal system or its elements on the recipient society. It should be noted that forced acculturation has several stages: denial, protection (can lead to reverse development), reduction (hypertrophy of traditional legal values, institutions).

Preparation of a model law or a model law by any official or private organization. Moreover, there is simply no legal alternative regarding the application or non-application of these standard rules, otherwise there will be severe sanctions.

Procedure for coordination of national programs of legislative activities. In order to implement successful legal acculturation at the legislative level, state law-making bodies need to take a number of consistent actions. Namely. AND). Collect and analyze information on the state and development of foreign legislation and law enforcement practice. B). To assess the objectivity of reflecting the needs of society on the need to borrow the legal experience of developed countries. IN). to reconcile the principles of foreign law with domestic law and the practice of its application. D). Study and compare foreign experience in the application of legal techniques with national experience. IS). Analyze and evaluate comparative legal data on the development of legislation and the practice of its application. Zh.) Make a forecast and recommendations regarding the implementation of a foreign model of law.

Another means of legal acculturation is joint legal activity, which leads to the formation of similar law enforcement practice. For example, judicial practice provides for equal legal protection of subjects, distribution of the same sanctions for similar crimes.

As a rule, at the level of legal sciences and legal education, legal acculturation is carried out by legal scholars and teachers. The doctrinal means of legal acculturation include the harmonization of scientific and legal concepts, the compilation of a single glossary of legal terms, the recognition of legal documents (diplomas on education).

Legal acculturation can be carried out in such ways as modernization, internationalization, informatization, harmonization and unification.

Within the framework of modernization, the following processes can be distinguished: the development of a small group of modernized (preemptive) states; catch-up development, during which laggards catch up; attempts of modernized states to respond to new challenges along the path of innovation. The process of modernization is a direct consequence of stratification of the international and state-legal society, competition in it.

Internationalization strengthens the influence of an external factor on the development of national legal culture, manifests itself in the expansion and strengthening of the influence of international law on the domestic law of the country. It is accompanied by the implementation of the norms of international law as a norm of domestic law, ratification, intensive development of the national mechanism of legal regulation of relations with a foreign element, unification of norms, convergence of not only the content of norms, but also systems of sources of law, increasing the total number of norms of international law.

Internationalization as a method of legal acculturation largely allows modern states to preserve their original legal culture, as it most fully contributes to the mutual penetration of legal cultures, deepening their interaction and influence.

It should be noted that the result of internationalization can be convergence, the achievement of consensus at the international level on the development of joint decisions, or divergence arising from the peculiarities of each national legal system and based on non-interference in the internal affairs of the state. The use of foreign experience in solving national problems must be thought out and carried out taking into account one's own national traditions. Borrowing context-free legal principles and norms without taking into account the realities of one's country and international circumstances can lead to negative consequences and discrimination in the process of internationalization.

Legal harmonization, as one of the universal methods of legal acculturation, is aimed at eliminating contradictions between interacting societies with the help of legal norms. In modern conditions, it is better to achieve harmonization through coordinated actions of the entities in contact. Legal unification is the process of creating and introducing uniform legal orders into legal systems. During unification, the process of creating the same norms of legal regulation of certain social relations is observed, which involves the elimination of

differences in the regulation of similar or related phenomena and creates universal normative acts of different levels.

The theoretical foundations of the unification of legislation are quite well developed in jurisprudence, although they affect, for the most part, the sphere of international cooperation. They can be applied at the domestic level as well.

II. Factors of the legal acculturation

Legal acculturation by various factors is influenced. Among them, they are traditionally called economic, political, ideological, social, class, less often they indicate such circumstances as the identity of the country, its natural conditions, climate, the natural side of demographic processes, legal and religious traditions, etc.

The study of the determining factors of legal acculturation will allow to streamline the processes of exchange of elements of legal cultures, to give the process of legal acculturation a scientifically based character.

We will analyze the determining factors of legal acculturation. The analysis of the determining factors of legal acculturation allows us to single out the mechanisms of legal acculturation as a set of mutually dependent, mutually conditioned means, methods and factors that ensure intercultural contact of different societies.

The mechanism of legal acculturation is influenced by many determining factors. Among them, they are traditionally called economic, political, ideological, social, class, less often they indicate such circumstances as the identity of the country, its natural conditions, climate, the natural side of demographic processes, legal and religious traditions, etc.

Therefore, we will focus on those factors that, in our opinion, directly affect the process of legal acculturation.

The economic factor involves unification taking into account economic unity. The influence of the economic factor on legal acculturation occurs spontaneously and is mediated through other social phenomena and processes.

The ideological factor ensures the unification of legal cultures of different societies on the basis of any political and legal ideas. The ruling elite always has exclusively its goals, within the framework of which this or that institution of law is borrowed. The prescribed institutes retain their Western structure, but the content here is completely different, domestic. It is in this that the ideological aspect of reception as a legal phenomenon is manifested.

Religious factors mean the penetration of religious teaching into the cultural life of a nation or a large social group, the imbuing of religious content with modern cultural and legal forms. An example can be legal acculturation as a result of the Christianization of the Slavs, when the institutions of Byzantine law were assimilated together with religion.

Historical factors are the commonality of historical progress, the unity of cultural traditions of societies. However, such achievements of legal culture must be adapted to socio-economic, political and other circumstances that have changed. Geographical factors also affect the outcome of legal acculturation. Let us recall the formation of the continental system of law, the law of the European Union. Demographic factors affect legal acculturation during mass population migration. Today, migration processes are so significant that issues of the interaction of legal cultures become particularly relevant. With mass migration, there is a problem of conscious acceptance by individuals of relevant legal and behavior patterns, value-legal orientations from those cultural indicators that are in their new society. The necessity and importance of accounting for the demographic factor in the process of legal acculturation will lead us to an understanding of supra-ethnic, supra-national problems.

Military and political factors are formed as a result of territorial conquests and accessions, the growing role of international law and its active influence on national legal systems and national legal cultures. Today, international law occupies an important place in the process of legal acculturation. It has become, as it were, the "common language" of states in the international community, without which today it is practically impossible to protect national interests. Moreover, international law has an important role in ensuring compliance of national legal systems with generally accepted standards developed in the process of historical progress of several states. The principle of conscientious fulfillment of international obligations orders states, when exercising their sovereign rights, to "establish their laws and administrative rules" in accordance with the requirements and standards of international law. This implies the need for internationalization of the norms of domestic law.

Depending on the position of the society entering into intercultural contact and the mechanism of legal acculturation, the following historical forms of legal acculturation are distinguished: reception, which is understood as a one-way voluntary process of transferring elements of the legal culture of the donor society with mandatory assimilation by the recipient society. The

initiator of the reception is the receiving party, in the person of the ruling elite, who wants to partially or fully implement the legal system of the donor. The result of the reception is the partial assimilation by the recipient society of the cultural and legal traditions, ideas, and values of the donor society while preserving its national characteristics; expansion, which involves the violent unilateral imposition of certain elements of the legal system of another society on society or its part; assimilation, which is the process and result of the interaction of legal cultures, in which there is a complete or almost complete loss of the original culture by the recipient society and complete assimilation of the culture of the donor society;

integration - a voluntary two-way process of interaction of legal cultures, resulting in a new integrity that has qualitatively new properties;

convergence, which involves a voluntary bilateral (multilateral) process of convergence of equal partner societies, resulting in the formation of a single cultural space and common legal culture. These forms of legal acculturation, depending on specific cultural and historical conditions, can be combined, complementary or, on the contrary, mutually exclusive.

II. CONCLUSION

The work examines the methods of legal acculturation as a long process that involves certain stages. The analysis of methods of legal acculturation allows to single out the mechanisms of legal acculturation as a set of mutually dependent, mutually conditioned means, methods and factors that ensure intercultural contact of different societies.

REFERENCES

- [1]. Zagorodnii V.E., Sakal S.V. Legal acculturation: aspects of interaction and the influence of convergence processes // Modern scientific research: achievements, innovations and development prospects. Proceedings of the 16th International scientific and practical conference. MDPC Publishing. Berlin, Germany. 2022. Pp. 305-312. URL: <https://sci-conf.com.ua/xvi-mizhnarodna-naukovo-praktichna-konferentsiya-modern-scientific-research-achievements-innovations-and-development-prospects-11-13-09-2022-berlin-nimechchina-arhiv/>
- [2]. Legal sociology: textbook / Yu.F. Pachkovsky, N.V. Kovalisco, I.V. Horodnyak and others; under the editorship Dr. Sociologist. Sciences, Prof. Y.F. Pachkovsky. – Lviv: LNU named after Ivan Franko, 2011. – 418 p.
- [3]. Zagorodnii V.E., Sakal S.V. Zagorodniy I.V., Maksymyuk I.I. Categorical forms of scientific knowledge (some aspects): Monograph (scientific edition) Odesa: NU OYUA, 2020. – 249 p.

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