

ISSN 1561-8323 (Print)
ISSN 2524-2431 (Online)

СОЦИАЛЬНО-ГУМАНИТАРНЫЕ НАУКИ
SOCIAL SCIENCES AND HUMANITIES

UDC 340(075.80)

<https://doi.org/10.29235/1561-8323-2023-67-2-163-167>

Received 21.09.2022

Поступило в редакцию 21.09.2022

Aleksey V. Egorov*Belarusian State Economic University, Minsk, Republic of Belarus*

**CURRENT TYPOLOGY OF THE BELARUSIAN LEGAL SYSTEM
ON THE LEGAL MAP OF THE WORLD**

(Communicated by Corresponding Member Grigory A. Vasilevich)

Abstract. The article presents the study results of functioning of the Belarusian legal system on the legal map of the world and its interaction with the legal systems of the continental law family. The main national legal reality components most actively communicating with foreign systemic formations – sources and law system, normative component and national type of legal consciousness – are analyzed. Proposals on the reception of foreign legal experience of French and Scandinavian legal models are made. It is proposed to improve the national law system by updating the administrative law branch according to the French model and judicial practice by the reception of the relevant components of the Scandinavian justice model. The Belarusian-type character of legal consciousness is analyzed separately from the viewpoint of its historical integration by different-type elements of legal cultures, which determines the ability of the Belarusian legal system to qualitatively interact with the legal systems of various law families. The “legal diplomacy” concept is introduced. It implies a new approach in the methodology of legal reception instead of implementation of “legal expansion” of foreign norms and institutions of law into other legal cultures. Proposals are made to include the provisions on the principles and mechanism of legal reception, as well as the rules determining a new quality of national legal consciousness by activating legal propaganda forms into the draft Concept of Legal Policy of the Republic of Belarus and in the draft Law of the Republic of Belarus “On Civil Society”.

Keywords: legal system, legal reception, system of law, legal consciousness, comparative law

For citation. Egorov A. V. Current typology of the Belarusian legal system on the legal map of the world. *Doklady National'noi akademii nauk Belarusi = Doklady of the National Academy of Sciences of Belarus*, 2023, vol. 67, no. 2, pp. 163–167. <https://doi.org/10.29235/1561-8323-2023-67-2-163-167>

А. В. Егоров*Белорусский государственный экономический университет, Минск, Республика Беларусь*

**СОВРЕМЕННАЯ ТИПОЛОГИЯ БЕЛОРУССКОЙ ПРАВОВОЙ СИСТЕМЫ
НА ЮРИДИЧЕСКОЙ КАРТЕ МИРА**

(Представлено членом-корреспондентом Г. А. Василевичем)

Аннотация. Представлены результаты исследования функционирования белорусской правовой системы на юридической карте мира и ее взаимодействия с правовыми системами континентальной семьи права. Проанализированы основные компоненты национальной правовой действительности, наиболее активно контактирующие с зарубежными системными образованиями – источники и система права, нормативный компонент и национальный тип правосознания. Вносятся предложения по осуществлению рецепции иностранного правового опыта от французской и скандинавской правовых моделей. Предлагается усовершенствовать национальную систему права путем актуализации отрасли административного права по образцу французской модели, а судебную практику путем рецепции соответствующих компонентов скандинавской модели правосудия. Отдельно анализируется характер белорусского типа правосознания с точки зрения его исторической интегрированности элементами разных типов правовых культур, что определяет способность белорусской правовой системы к качественному взаимодействию с правовыми системами различных семей права. Вводится понятие «правовой дипломатии», предполагающей новый подход в методологии правовой рецепции, вместо осуществления «правовой экспансии» зарубежных норм и институтов права в другие правовые культуры. Вносятся предложения о включении в проект Концепции правовой политики Республики Беларусь и в проект Закона Республики Беларусь «О гражданском обществе» положений относительно принципов и механизма правовой рецепции, а также о разработке норм, определяющих новое качество национального правосознания за счет активизации форм правовой пропаганды.

Ключевые слова: правовая система, правовая рецепция, система права, правосознание, сравнительное правоведение

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Для цитирования. Егоров, А. В. Современная типология белорусской правовой системы на юридической карте мира / А. В. Егоров // Докл. Нац. акад. наук Беларуси. – 2023. – Т. 67, № 2. – С. 163–167. <https://doi.org/10.29235/1561-8323-2023-67-2-163-167>

Introduction. The Belarusian legal system is considered within the framework of the Romano-Germanic legal family [1, p. 276]. The sources and the system of Belarusian law are recognized as traditional markers for assessing the continental nature of the legal traditions of Belarus. It is noted that the main source of the Belarusian law is the legislation; the system of law is represented by traditional for the Romano-Germanic legal family branches of constitutional, administrative, civil, criminal law, etc. The norm of Belarusian law is abstract, designed for application in typical social situations. In fact, the formal attributes of the Belarusian legal system are being evaluated, while the content of this systemic macro-element implies the presence of not only external attributes in the form of structural organization of law norms in a branch, forms of expression of state will, but also ideological components that together represent the national legal system. The latter include: national type of legal consciousness, as well as traditions of formation and functioning of the rules of conduct in a given social environment. Together with the formal characteristics of Belarusian law (its structure and sources), the ideological components form an integral legal system of the Republic of Belarus. Such approach is especially important for determining the place of the legal system of Belarus on the legal map of the world, the nature of interaction of the national systemic component with other legal systems, as well as for the practice of legal reception.

The issues of legal typology have received much attention in the legal literature. However, mainly the research works in this field concerned the typology of law, and in particular the analysis of historical types of state and law [2]. This approach was due to factors of ideological nature. Even comparative jurisprudence was seen as a contrasting study of different types of state and law – bourgeois and socialist. In this research chain, the possibility of any reception of foreign norms and even more so of legal institutions was excluded. The maximum permissible limit of the comparative study of foreign legal systems consisted in a descriptive comparison of foreign legal institutions, which was the focus of the main research works of comparative nature [3; 4]. The situation changed after the collapse of the Soviet legal system. The newly formed states began to determine their place on the political map of the world, to build an algorithm of interaction with other subjects of the international system. Accordingly, the national legal systems of the newly formed states were the first components, requiring determining their place on the legal map of the world. The Republic of Belarus has not become an exception to this rule. After the adoption of the Declaration “On the State Sovereignty of the Belarusian Soviet Socialist Republic” by the Supreme Soviet of the BSSR in 1990, a new stage of formation of the national legal system began. On August 25, 1991, it was decided to give the Declaration on State Sovereignty the status of a constitutional statute [5].

Main part. The typological characterization of the Belarusian legal system implies the determination of the place and the functional role of this national formation on the legal map of the world. It is not enough simply to state the fact of adherence, in particular, of Belarusian law, to the traditions of a particular legal family – Romano-Germanic, Anglo-American or religious-communal. It is necessary to establish the nature of connections of the legal system of Belarus with other components of the legal world. This makes it possible to form a model of relations of the national legal organism with systemic formations of other nature in order to improve the quality of functioning of the legal system of the Republic of Belarus and its structural components: the law as a set of norms, lawmaking, law enforcement and legal consciousness, developed in the Belarusian society. It is necessary to note that this approach is peculiar to any national-legal organism. Let us dwell on the peculiarities of the domestic model of relations with legal formations of other countries and nations.

The formal-legal community in the form of a legal family, which unites a particular related group of legal systems, is internally heterogeneous. For example, the French and German legal systems fundamentally differ from each other both in terms of formal features, in particular regarding the legal force of the sources of law, the structure of branches of law, and in the nature of the essential features of law enforcement and law-making properties. Thus, in France, the role of sources of law issued by the government (ordiances) is rather high; Germany rejects the practice of issuing decrees-laws by the executive power; the structure of private law in France and Germany is not homogeneous, due to the presence of the “General part” in the German system of law. An even greater divergence is present in the field of judicial practice: in France, judicial practice is more important than in Germany, where German pro-

fessors have “the most honorable positions” before “eminent judges” in France [6, p. 62]. As a result, we can conclude that the functioning of the Romano-Germanic legal community is carried out in two directions – according to the French and German variants.

The analysis of the Belarusian legal system shows its “French” orientation in the legal development, as evidenced by the following facts.

Firstly, the so-called “regulatory” forms, i. e. acts issued by executive-administrative bodies, have found their place in the system of sources of Belarusian law. Until recently, the President of the Republic of Belarus was vested wide rule-making powers. He had the right to issue normative decrees and edicts, the legal force of which under certain conditions exceeded that of statutes. And though the new version of the Belarusian Constitution significantly narrowed the practice of the edition of these acts, the decrees and orders of the President have a compulsory force on the whole territory of the Republic of Belarus (part 2 of article 85) [7].

In terms of typology of the system of sources of Belarusian law and possible reception of the French practice of application of law sources, it is necessary to pay attention to the hierarchy of sources of French law, their internal system organization, which may be useful especially for the so-called “bylaw rule-making” of Belarusian governmental bodies. It is no secret that the main problem of national law enforcement is the ratio of “executive and administrative” acts in terms of legal force and the volume of regulated relations. The regulatory defect of Belarusian law enforcement practice consists in the presence of a mass of contradictions between “by-laws” of different levels, and often in the absence of the necessary legal norm, when it is required to apply the analogy of law or analogy of law, which is not always successfully handled by law enforcement bodies.

Secondly, in the system of the Belarusian law along with the traditional branches of public law there is such an important element as administrative law, which occupies an authoritative position in the French system of law as well. Many Romano-Germanic legal systems and even some Anglo-Saxon systems follow the French model of administrative law. The Belarusian practice of creating and implementing administrative norms is rich too. Suffice it to mention the fact that at the initiative of the President of the Republic of Belarus in 2021 two “administrative” codes were revised and improved – the Code of Administrative Offences and the Procedural-Executive Code of Administrative Offences. It is also necessary to note the fact that administrative norms of procedural nature are not contained in many national systems of continental law.

In this regard, it seems appropriate to return to the issue of functioning and an independent link of administrative justice in Belarus. For this purpose, it is necessary to implement a number of legal borrowings of normative and doctrinal order from the French legal model of administrative justice. Of particular interest for a preliminary comparative study will be the practice of the French Council of State as the highest judicial instance in administrative cases. According to authoritative experts, everything that has been created by this body is “admirable” [8, p. 62].

The typological features are also characteristic of the Belarusian norm of law, which by its nature is Romano-Germanic, but has a number of characteristic features that make it similar not only to French law, but also to the normative traditions of another group of legal systems, namely the Scandinavian one. This group includes the legal systems of Sweden, Norway, Denmark, Iceland and Finland. The specific features of the “Scandinavian nature” of the Belarusian legal norm consist in the degree of specification of the rules of regulation of social relations, which goes beyond the limits of continental traditions. Belarusian legal norms are more causal than the Romano-Germanic regulatory rules. This circumstance brings the judicial systems of our countries closer. Thus, Swedish courts are called to follow the decisions of higher judicial bodies strictly. First of all, it is the decisions of the Supreme Court of Sweden. The Belarusian court system follows the same practice. Moreover, the Law of the Republic of Belarus “On normative legal acts” provides an independent source of law in the form of normative legal acts of the Supreme Court (Article 17) [9]. Such practice is not characteristic of continental countries, which remain on the position of the so-called parliamentary rulemaking.

The Scandinavian legal rules have never been characterized as rules with a high level of generalization. On the contrary, the courts have tried to contain the processes of generalization of typical life situations requiring legal solutions. In this respect, the Scandinavian legal systems have become increasingly close to the common law system. Neither the Napoleonic Code, modeled on the French Civil Code drafted in 1826, nor the German pandering tradition of law, originally taught to virtually all Swedish professors, took root in the Nordic countries at the time.

Belarusian traditions of the casualization of legal norms are similar to Scandinavian tendencies. The adopted Belarusian codes are immediately concretized by a whole mass of normative acts adopted by government bodies and the President of the Republic of Belarus. Doctrinally, there is also no rigid distinction between the public and private branches of law. Quite a lot of public norms are present in the sphere of private law regulation. In addition, the point here is not in the nature of the political regime, as some apologists claim, but in the traditions established by Scandinavian traditions due to a number of historical reasons and geographical proximity of our countries and peoples.

A fundamental element in the typological characteristics of the Belarusian legal system is the type of national legal consciousness. It is necessary to note that this phenomenon is not given a significant place on the pages of the Belarusian legal literature. At the same time, legal consciousness that is differentiated into legal ideology and legal psychology has a determining meaning for interaction of the national legal system of Belarus with other systemic units of the legal community. The peculiarity of the Belarusian national legal consciousness is its “legal cosmopolitanism”. Raised in the spirit of integration interaction of different types of legal cultures, the national legal consciousness is able to perceive elements of different legal systems – from continental to religious and communal ones. The legal ideology of the Belarusian state is aimed at forming its own normative components at the expense of legal reception. This is confirmed by the development of the Concept of Legal Policy of the Republic of Belarus, where the questions of legal borrowing of the world’s progressive experience in the regulation of relations have found their worthy place. The legal system of Belarus has never rejected the positive legal experience of neighboring countries. We are talking not only about the Russian Federation, but also about European countries and their legal systems, with which Belarus has built historical ties. Unfortunately, modern expansion, including legal traditions, does not contribute to the evolutionary development of our legal systems. A more acceptable practice would be the intellectual implementation of elements of the legal cultures of Western countries, rather than the imposed rhetoric of imitation of the legal institutions of the West. Moreover, the stronger the legal expansion will affect the component of legal ideology, the greater the rejection is expected at the level of legal psychology. In this situation, we need to talk about “legal diplomacy”, which implies primarily the unification of views on legal institutions and legal traditions, rather than the unification of legal institutions themselves, about which the bearers of national legal culture often have a rather poor understanding.

The methodological basis of the system interaction of national legal cultures can be the “General theory of law” as a component of doctrinal formation of views on the legal matter of different countries. Belarusian subjects of legal consciousness are used to limited perception of the nature of legal reality, namely from the position of their own practice. For example, the theory of law sources is perceived, as a hierarchy of only normative forms of expression of the state will; the understanding of law is limited mainly by normative regulations without taking into account traditions, etc. At the same time, the legal reality is much richer and it needs to be perceived with a broad outlook, which is formed by studying the legal systems of other countries. “The General Theory of Law” just aims at learning the manifestation of various forms of normative expression in different social conditions. Introduction of the course “General Law Theory” will allow the formation of the Belarusian legal elite, affecting the main component of the national legal consciousness – legal ideology.

As for the formation of the everyday level of legal consciousness, here it is also necessary to build an algorithm of actions that meets the requirements of “legal propaganda”. The difference of this form of influence on public consciousness is that legal propaganda presupposes the use of active forms of influence on the formation of legal psychology and legal ideology. In this sense, it is quite acceptable to include in the Draft of the Law of the Republic of Belarus “On civil society” the forms and methods of active legal information of Belarusian society, including about foreign and international law. Legal propaganda is not perceived negatively, but is just an active form of educating the population about the legal culture. The main condition for the implementation of this form is the absence of limited perception of the legal palette of life of other countries and peoples. In this respect, our foreign partners should also show themselves, who perceive the legal system of the Republic of Belarus not as a hostile component of the legal reality, but as an evolving organism of the legal life of society, capable of understanding and perceiving the legal experience of life of neighboring countries and peoples.

Conclusion. Thus, the Belarusian legal system, while remaining in the position of the continental legal family, includes components and traditions of different groups of the Romano-Germanic legal

community, namely French and Scandinavian models, functioning within the same family of law. At that, the national legal system borrows formal features from French practice, such as sources and the system of law, and from the Scandinavian legal group – receives doctrinal components in the form of normative originality of national law and the features of judicial law enforcement. The legal consciousness of the Belarusian society is formed quite autonomously, experiencing the experience of legal interaction with many legal systems, including those belonging to different legal families.

Typological characteristics of the Belarusian legal system reveal the following integration peculiarities of interaction of the national legal organism with other legal systems.

1. As for the sources of Belarusian law, it is necessary to conduct a conceptual revision to improve the quality of the systemic interaction between the acts of different legal force issued by the legislative and executive powers. It is necessary to expand the doctrinal basis for the use of analogy of law and analogy of law. The relevant legal experience should be studied and, if necessary, borrowed from the French legal model.

2. The system of branches of Belarusian law needs doctrinal reform, whereby the branch of administrative law must find its proper place, based on the prevailing conditions and traditions of national legal regulation. It is necessary to eliminate the excessive presence of administrative norms in the branches of private law, and strengthen the law-enforcement status of administrative relations by recreating the system of administrative justice. French legal experience will also play a positive role in this regard.

3. The typological peculiarities of the Belarusian legal norm show its causal nature as compared to the general continental traditions. This circumstance must be taken into account in the implementation of the so-called “by-law rulemaking”, which should not violate the systemic balance of the application of existing codified acts of greater legal force. The practice of “current legislation” is developed in the Scandinavian group of legal systems, which is also subject to study and possible adoption.

4. In the formation of national type of legal consciousness, building new methodological approaches of influence, especially on the legal psychology of its bearers, it is necessary to expand the scope of legal propaganda as an active form of influence of legal elites, as a rule, the carriers of legal ideology, on the subjects of legal psychology. For this purpose, it is necessary to expand the content of the draft Law of the Republic of Belarus “On civil society” with components of education of the legal culture of the Belarusian society.

5. In order to train specialists in the field of interaction of the legal system of the Republic of Belarus with the legal systems of other countries it is necessary to strengthen the comparative training of legal personnel through the expansion of teaching disciplines that familiarize with the content of foreign law. The above conclusions are conceptual, but not exhaustive, about the functioning of the Belarusian legal system on the legal map of the world. The real practice of systemic integration is much richer than doctrinal proposals, which should generalize, supplement, but not hinder the development of models of integration interaction of countries and peoples.

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Information about the author

Egorov Aleksey V. – D. Sc. (Law), Associate Professor. Belarusian State Economic University (126, Partizansky Ave., 220070, Minsk, Republic of Belarus). E-mail: egorof@yandex.ru.

Информация об авторе

Егоров Алексей Владимирович – д-р юрид. наук, доцент. Белорусский государственный экономический университет (Партизанский пр., 126, 220070, Минск, Республика Беларусь). E-mail: egorof@yandex.ru.