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LAW-ABIDING STATE AND THE LEGAL SYSTEM: CORRELATION AND INTERRELATION

The legal system of the Republic of Kazakhstan is in dynamic development. For her, the general characteristic of all systems is very important: the presence of information transfer and management processes in them. Kazakhstan's legislation is undergoing numerous reforms. The legal analysis of the legal system is ambiguous. There is quite a considerable palette of opinions regarding the understanding of this important category. Reproducing them may resemble a routine inventory of different points of view. But each of them represents a special approach to a complex problem, a special cross-section of legal reality, revealing different and collectively diverse sides, signs, properties, functions. The legal system of the Republic of Kazakhstan is constantly in dynamic development. The general characteristic of all existing systems is very important: the presence of information transfer and management processes in them. Scientific research of actual problems of the legal system, its conceptual and categorical apparatus, structural organization, internal and external relationships, its place in society, as well as its role as the most important factor in the existence and development of societies is always extremely relevant.

Key words: the legal system, the system of law, the rule of law, the system of legislation, public law, legal policy, private law, legal mechanisms, legal means, the rule of law.

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Құқықтық мемлекет және құқықтық жүйе: қарым-қатынас және өзара байланыс

Құқықтық жүйе үшін барлық жүйелердің жалпы сипаттамасы өте маңызды: ақпарат беру және басқару процестерінің болуы. Құқықтық жүйе – бұл белгілі бір мақсатқа қол жеткізуге бағынатын жүйенің ең күрделі, мақсатты түрлері. Құқықтық жүйе сонымен қатар оның жұмыс істеу процесінде құрылымды өзгертуге қабілетті өзін-өзі ұйымдастыратын жүйе болып табылады. Біз қазіргі уақытта жеке құқықтың үлес салмағы мен мәнінің ұлғаюын, табиғи-құқықтық қағида-даттардың кеңеюін, гуманитарлық құқық институттарының дамуын және т.б. байқап отырмыз. Құқықтық жүйені құқықтық талдау екі түрлі. Бұл маңызды категорияны түсінуге қатысты пікірлердің айтарлықтай палитрасы бар. Оларды ойнату әртүрлі көзқарастардың күнделікті түгендеуіне ұқсауы мүмкін. Бірақ олардың әрқайсысы күрделі мәселеге ерекше көзқарас, құқықтық шындықтың ерекше бөлімі, әр түрлі және әр түрлі аспектілерді, белгілерді, қасиеттерді, құқықтық жүйенің функцияларын және т. б. анықтайды. Құқықтық жүйе мен құқықтық мемлекеттің арақатынасы туралы мәселе бойынша дамыған құқықтық жүйе құқықтық мемлекеттің басты белгілерінің бірі болып табылатынын атап өткен жөн. Құқықтық мемлекет бірыңғай құқықтық жүйеде жеке және жария құқықтың барынша жақындасуына ықпал етуге тиіс.

Түйін сөздер: қоғам, мемлекет, ата заң, жүйелеу, жаһандану, әмбебап, талдау, құқықтық тетіктер, құқықтық құралдар, құқықтық тәртіп.

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Правовое государство и правовая система: соотношение и взаимосвязь

Правовая система Республики Казакстан постоянно находится в динамическом развитии. Для нее весьма важна общая характеристика всех существующих систем: наличие в них процессов передачи информации и управления. Как известно, казакстанское законодательство

претерпевает многочисленные реформы. Научные исследования актуальных проблем правовой системы, ее понятийно-категориального аппарата, структурной организации, внутренних и внешних взаимосвязей, ее места в обществе, а также роли как важнейшего фактора существования и развития обществ всегда крайне актуальны. Юридический анализ правовой системы неоднозначен. Существует довольно немалая палитра мнений в отношении понимания этой важной юридической категории. Воспроизведение их может напоминать довольно рутинную инвентаризацию разных точек зрения известных ученых-правоведов. Но каждая из них все же представляет особый подход к сложной проблеме, своеобразный срез правовой действительности, выявляющие разные и в совокупности многообразные стороны, признаки, свойства, функции, принципы правовой системы и т.д. Актуальность данной темы постоянно находится в поле зрения правовой общественности – ученых, практиков, рассматривается на теоретических, научно-практических конференциях, многие из которых имеют международный статус.

Ключевые слова: правовая система, система права, правовое государство, система законодательства, публичное право, правовая политика, частное право, правовые механизмы, правовые средства, правопорядок.

Introduction

With the acquisition of state independence in our country many centuries ago, during nomadic civilization was actualized. In our opinion, a comprehensive study of the meaning and content of adat law, as well as its forms and sources, is important. In legal science, there are many reasons for careful study of the close relationship between the legal norms in force in developed societies and the norms found in societies of earlier cultures. Legal scholars emphasize that for an objective understanding of the mechanism of law, it is important to focus solely on the study of legal documents containing legal norms reflecting certain relations in historical realities. The analysis legislation most developed countries helps to understand significance legislation, its social control, and makes it possible to see through the prism of visual material of simpler forms of society the deep roots of legal processes occurring in more complexly organized social structures and legal systems.

The legal system and the rule of law consist of unity and diverse, ambiguous and contradictory relationships; interact and function as a single system and subsystems of each other. Their interdependence, manifesting itself, as a general rule, positively as the most important factor of social development, can often generate a number of negative consequences. We should not forget the Latin saying: “Summum jus, summa injuria” (The highest legality is the highest lawlessness). And only the systemic effect of legal phenomena is often able to neutralize the tendencies of alienation without the predominance of political or other foreign interference.

But, basically, civil society and law-abiding state both, of course, are also not quite perfect. Perfection cannot be in constant development; this also applies to the legal system.

Research methods

The main method was the study of scientific and theoretical materials. The analysis method was used in the formulation of the proposed new Kazakh laws, during the independent development, as well as in the formulation of proposals for the development and adoption in the new circumstances. So were used the following methods: logical method; system method; legal method; historical method. The research methodology is based on the dialectical method, freed from materialistic or idealistic monism and based on the pluralistic, multilinear interdependence of all social phenomena. We also used the method of dialectical interdependence and interaction of methods: theoretical and empirical, induction and deduction, analytical, comparative methods.

Discussion

Justification of the novelty and significance of the topic of the article. National legislation ensuring the guarantee of human and civil rights and freedoms; the binding of the state by law. Law is a diverse and effective factor of social development, and its consistency acts as an additional and significant factor of social, economic, state-political and spiritual-cultural transformations (Markin 1999: 52).

Since the differences between spiritual and material culture are relative, legal culture also includes, in addition to spiritual phenomena, the culture of real legal relations, legal activities, legal organizations and institutions. But it does not include much that is no less essential, which cannot always be fixed objectively, materially, these are: the legal climate, the legal atmosphere of society, legal psychology, public opinion about legal processes, legal mood, legal faith and ideals.

The definition of legal culture is a measure of the legal awareness of a person and society of their legal status, a measure of establishing their legal guidelines, the level of implementation of their essential forces in the legal sphere; and all this together forms a certain qualitative state of legal relations in society (Baimakhanov 2001: 36).

Legal culture in the legal system is its “humanized” content, represents a “legal person” by analogy with the commonly used concepts of “economic person”, “psychological person”, etc. The categories “legal person”, “legal anthropology” should include all the legal characteristics of a person; their development and analysis may even go beyond concepts of the famous scholars (David 1988: 11).

Legal culture, being a voluminous and significant structural subdivision of the legal system, itself represents a considerable system or subsystem in the entire legal system, which is manifested in a variety of components of its content. This is also its existence in a diffuse form, like a diffuse state, in all social phenomena and relations regulated by legal norms. This is a set of values of the spiritual and material order, having legal content; and creative legal activity; and a set of legal techniques, procedures, skills, knowledge, ideas; and common principles, principles, institutions, norms of humanistic content and orientation (David 1998: 29).

The concept of “the world of law” and the judgment “man by nature is a legal being” are now used, which highlight special aspects of law, legal culture and legal system (Reshetnikov 1993: 50).

There is a tendency to assign legal values not only evaluative, moral, humanistic functions, but also, in a certain sense, scientific and cognitive tasks. It is noted that the subject area of legal axiology includes the problems of understanding and interpreting law as a value and the corresponding assessments of the legal meaning (i.e. judgments about the value sense existing legal forms of existence of law and related public institutions (Sinyukov 1994: 7).

The antipode of legal culture is legal nihilism, from the “escalation” of which we are not yet immune. One of the ways or means of minimizing it is to increase the prestige of law and legal phenomena and, above all, their cultural and value prestige. The subsystems of legal culture and legal system is a condition and at the same time a consequence of the construction of the rule of law and the formation of civil society, representative democracy and political pluralism (Lukianova 2006: 64).

The acquisition of state independence thirty years ago has put forward diverse problems of revival and renewal of all aspects of public life, including the legal sphere, especially attentive attitude to the traditional legal culture (Baimakhanov 2001: 15).

The desire of all the CIS republics for a planetary culture, for values of a universal nature in general, came into obvious contradiction with the fact that only the Western type of world attitude turned out to be the benchmark of social transformations in these republics, while the eastern one was limited to formal piety and application to the non-official sphere and private life (Maracha 1999: 10).

Prof. M.I. Baitin has no doubt that “the essence of the question concerning the impact of the globalization process on law and its theory seems to be not only and not even so much in how global law and its theory will be formed and how they will develop, but rather in what kind of social nature and purpose this law and its theory will be, what goals they will pursue and the interests of which strata of the world community they will primarily serve. It is these vital, real ones. And not purely formal aspects of law and its theory should come to the fore in the process of cognition of these phenomena, as well as the main directions of the impact of the processes of globalization and regionalization on them” (Baitin 1999: 98).

Results

Famous Russian and Kazakh lawyers, such as V.S. Nersesiantz, A.Kh. Saidov, A.A. Vasiliev, R.A. Mullerson, S.S. Sartaev, M.T. Baimakhanov, G.S. Sapargaliev made a big contribution into research of this problem. By its content, the legal system of the republic and the problems of its reform can be attributed to the number of complex phenomena that require an ambiguous approach to its improvement (Saidov 2010: 58).

Therefore, the reasons for the not so successful implementation of legal reform and its considerable failures should not be sought in the inconsistency of its implementation, expressed in insufficient adherence to Western legal postulates and standards, as marginalized human rights activists assure us. On the contrary, we believe that these reasons lie in the insufficient use of traditional legal heritage, moreover, in the actual disregard of the values of legal culture, organically interconnected with the legal system of traditional Kazakh society with the priorities of natural and private law as the main legal

factors of civil society and the rule of law (Ermakov 2003: 64).

The legal reform is aimed at the deep layers of transformations, since it clarifies many of their basic, fundamental foundations, which will require some constitutional changes, and at the same time expands the scope of its impact, since it is aimed at improving the very mechanism of law enforcement (Sukharev 2015: 27).

Legal theories that study legal processes, by the very subject of research, are guided by universal, humanistic, fair positions, originally naturally inherent in legal phenomena as generic principles. Therefore, legal theories should be above class, group, clan interests. By class, party choice, legal science and legal scholars themselves become participants in social conflicts, having their own subjective preferences and one-sided interest.

The formation of the legal system requires an optimal balance of the processes of revival of traditional legal culture and national legislation, taking into account modern legal imperatives. But so far, as stated by A.A. Matyukhin and V.G. Maracha, Kazakhstan is striving to join the Western European legal culture, which is associated with legal culture in general. This one-sided and partly unnatural orientation for us is, in our opinion, the reason for many difficulties in forming our own legal system (Maracha 1999: 11).

The existence of humanity will depend on the optimal organization of the modern world; it is noted in the modern literature on globalization. Society needs a higher quality of management of social processes both at the national and global level (Saidov 2010: 60).

Globalization has an active impact on all sides (parts) of the legal system, on its static and dynamic elements. This is most clearly manifested in the analysis of the regulatory framework of the Republic of Kazakhstan, in which, under the influence of globalization processes, entire branches and institutions of law and legislation have been formed, such as space, nuclear, information and environmental law, criminal law institutions to combat hacking, human trafficking, illegal migration, etc.

Conclusion

The legal system is a complex, extremely broad concept that includes numerous legal elements: the legal system, legal consciousness, legal relations, acts of law enforcement, legality, law and order, etc. These constituent elements of the legal system are organically interconnected with each other, and so much so that they predetermine and, as it were, “flow” from each other. A new legislation is emerging, radically different from the one that was in effect earlier. The rapid pace of legislative activity is typical for each of these countries. The process of formation of a new law will take quite a long historical period, at the end of which it will be possible to draw conclusions about the features and peculiarities of the new legal systems of the states of socio-democratic orientation.

The social nature of the Kazakh state significantly determines the consolidating content and role of the entire legal system and its individual structures. In this aspect, a close relationship is revealed between all the characteristics of the state – “democratic, secular, legal and social”. That is, already in Article 1 of the Constitution of the Republic of Kazakhstan, the consolidating system of the state is fixed.

By a simple interpretation is conditioned by the consolidated system of social, secular society. The interaction of society and the state has, of course, feedback. The main instrument of this mutual influence is the legal system, the independent significance of which does not decrease from this. It is precisely this substantive aspect of the Constitution that should be kept in mind when talking about it as a consolidating factor. Consolidation as a term mainly used in the political sense, in the legal sphere implies a significant aspect of system and structural functionality.

The systemic and complex nature Supreme Law, which has an appropriately developed legal system, is nowhere more clearly and acutely manifested than in the realization in practice. All liberties are also a special system, in a peculiar way internally organized and externally active, entering as a subsystem into the general legal system. And the reality of these universal legal values depends on the effectiveness of the latter.

Литература

- Маркин С., Галиев Е., Темирбаева А. Современные правовые системы и тенденции развития национального законодательства в Республике Казахстан // Право и государство. – 1999. – № 3. – С. 52-53.
- Баймаханов М.Т. Верховенство права как системообразующий признак понятия правового государства // Научные труды Әділет. – 2001. – № 1 (9). – С. 36-46.
- Давид Р. Основные правовые системы современности: Пер. с франц. – М.: Прогресс, 1988. – 495 с.
- Давид Р., Жоффре-Спинози К. Основные правовые системы современности: Пер. с франц. – М.: Межд.отнош., 1998. – 400 с.
- Решетников Ф.М. Правовые системы стран мира. Справочник. – М.: Юрид.лит, 1993. – 256 с.
- Синюков В.Н. Российская правовая система. – Саратов, 1994. – 124 с.
- Правовая система России в условиях глобализации // Сб. материалов «круглого стола». – М.: Ось-89, 2005. – 160 с.
- Лукьянова Е.Г. Глобализация и правовая система России. Основные направления. – М.: Норма, 2006. – 112 с.
- Правовая система России в условиях глобализации и региональной интеграции: теория и практика. – М.: Формула права, 2006. – 558 с.
- Баймаханов М.Т. Становление правового государства и конституционный процесс в Республике Казахстан / Кол. авторов Аюпова З.К., Ибраева А.С. и др. – Алматы: КазГЮА, 2001. – 287 с.
- Марача В.Г., Матюхин А.А. Социокультурный анализ политико-правового пространства // Научные труды Әділет. – 1999. – № 1 (5). – С. 10-36.
- Байтин М.И. О современном нормативном понимании права // Журнал российского права. – 1999. – № 1. – С. 98-107.
- Саидов А.Х. Сравнительное правоведение. Основные правовые системы современности. – М.: Юрист, 2010. – 448 с.
- Мальцев Г.В. Понимание права. Подходы и проблемы. – М.: Прометей, 1999. – С. 7.
- Правовые системы стран мира. Энциклопедический справочник / Отв. ред. проф. Сухарев А.Я. – М.: Норма, 2015. – 840 с.

References

- Markin S., Galiev E., Temirbaeva A. (1999) *Sovremennye pravovye sistemy i tendencii razvitiya nacional'nogo zakonodatel'stva v Respublike Kazahstan* [Modern legal systems and trends in the development of national legislation in the Republic of Kazakhstan] // *Pravo i gosudarstvo* // Law and the State. – 1999. – No. 3. – pp.52-53.
- Bajmahanov M.T. (2001) *Verhovenstvo prava kak sistemoobrazuyushchij priznak ponyatiya pravovogo gosudarstva* [The rule of law as a system-forming feature of the concept of the rule of law] // *Nauchnye trudy Adilet* // Scientific works of Adilet. – 2001. – № 1 (9). – Pp.36-46.
- David R. (1988) *Osnovnye pravovye sistemy sovremennosti* [David R. Basic legal systems of modernity] / Translated from French. – М.: Progress, 1988. – 495 p. / Per. s franc. – М.: Progress, 1988. – 495 s.
- David R., Zhoffre-Spinozi K. (1998) *Osnovnye pravovye sistemy sovremennosti* [David R., Joffre-Spinozi K. Basic legal systems of modernity] / Trans. from French – М.: Interd.relation., 1998. – 400 p. / Per. s franc. – М.: Mezhd.отнош., 1998. – 400 s.
- Reshetnikov F.M. (1993) *Pravovye sistemy stran mira. Spravochnik* [Legal systems of the countries of the world. Directory]. – М.: Yurid.lit, 1993. – 256 s.
- Sinyukov V.N. (1994) *Rossijskaya pravovaya sistema* [The Russian legal system]. – Saratov. – 1994. – 124 s.
- Pravovaya sistema Rossii v usloviyah globalizacii* (2005) [The legal system of Russia in the conditions of globalization] // Collection of materials of the “round table”. – М.: Os-89, 2005. – 160 p. // Sb. materialov «kruglogo stola». – М.: Os'-89, 2005. – 160 s.
- Luk'yanova E.G. *Globalizaciya i pravovaya sistema Rossii. Osnovnye napravleniya* (2006) [Globalization and the legal system of Russia. The main directions]. – М.: Norma, 2006. – 112 p.. – М.: Norma, 2006. –112 s.
- Pravovaya sistema Rossii v usloviyah globalizacii i regional'noj integracii: teoriya i praktika* (2006) [The legal system of Russia in the context of globalization and regional integration: theory and practice]. – М.: Formula of Law, 2006. – 558 p. – М.: Formula prava, 2006. – 558 s.
- Bajmahanov M.T. *Stanovlenie pravovogo gosudarstva i konstitucionnyj process v Respublike Kazahstan* (2001) [The formation of the rule of law and the constitutional process in the Republic of Kazakhstan / Number of authors Ayupova Z.K., Ibraeva A.S. – Алматы: KazGUA, 2001. – 287 p. / Kol. avtorov Ayupova Z.K., Ibraeva A.S. i dr. – Алматы: KazGYUA, 2001. – 287 s.
- Maracha V.G., Matyuhin A.A. *Sociokul'turnyj analiz politiko-pravovogo prostranstva* (1999) [Socio-cultural analysis of the political and legal space] // *Scientific works of Adilet*. – 1999. – № 1 (5). – Pp.10-36 // *Nauchnye trudy Adilet*. – 1999. – № 1 (5). – S.10-36.
- Bajtin M.I. *O sovremenom normativnom ponimanii prava* (1999) [On the modern normative understanding of law] // *Journal of Russian Law*. – 1999. – No. 1. – pp.98-107 // *ZHurnal rossijskogo prava*. – 1999. – № 1. – S.98-107.
- Saidov A.H. *Sravnitel'noe pravovedenie. Osnovnye pravovye sistemy sovremennosti* (2010) [Comparative jurisprudence. The main legal systems of modernity]. – М.: Lawyer, 2010. – 448 p. – М.: YUrist, 2010. – 448 s.
- Pravovye sistemy stran mira. Enciklopedicheskij spravochnik* (2015) [Legal systems of the countries of the world. Encyclopedic reference book] / Ed. prof. Suharev A.Ya. – М.: Norm, 2015. – 840 p. / Отв. ред. проф. Сухарев А.Я. – М.: Norma, 2015. – 840 s.