THE NATIONAL LEGAL SYSTEM OF UKRAINE AMONG CONTEMPORARY LEGAL FAMILIES

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An investigation of various aspects of the forming, embodiment, and essence of law have led to the recognition in the twentieth century of the need to form a theoretical construction which would encompass all legal phenomena of a certain society and integrally and systematically characterize their internal and external links. The basic methodology of this theory is the application of a systemic approach to an analysis of legal phenomena. With the assistance of a systemic approach, a certain object is regarded as a complex, multi-aspectual phenomenon which consists of diverse elements, or links, between which a relative stable structure is formed and its integrity is ensured.

The value of using the category of legal system for jurisprudence lies in the possibility with the assistance thereof to analyze in an integrated manner the entire legal sphere of the life of society, establish the most essential laws of development which arise between the parts thereof and in relations with other social phenomena.

In Ukrainian legal doctrine the concept of a legal system began to be actively investigated relatively recently.[1] Scholars are formulating various approaches to the definition of the essence and basic features thereof. Zaichuk and Onyshchenko suggest a legal system be understood as the unity of respective components or parts thereof combined by a certain means (according to substantive and formal criteria) which, depending upon the nature and character of the link thereof between them (objective natural or subjective, derivative), represent a relatively stable organization.[2] Skakun suggests that a legal system to considered to be an integral complex of interdependent and coordinated special and general legal means conditioned by

[1] *N. M. Onyshchenko*, Правова система і держава в Україні [Legal System and the State in Ukraine] (Kyiv, 2002); *V. S. Zhuravskyi*, Правові системи сучасності. Глобалізація. Демократизм. Розвиток [Modern Legal Systems. Globalization. Democracy. Development] (Kyiv, 2003); *L. A. Luts*, Сучасні правові системи світу [Contemporary Legal Systems of the World] (Lviv, 2003); *O. F. Skakun*, Правова система України на правовій карті світу [Legal System of Ukraine on the Legal Map of the World] (Kharkov, 2004); O. V. Zaichuk and N. M. Onyshchenko (eds.), Вступ до теорії правових систем [Introduction to the Theory of Legal Systems] (Kyiv, 2006); *M. G. Khaustova*, Національна правова система за умов розбудови правової демократичної державності в Україні [National Legal Systems as a Condition of the Development of Rule-of-Law, Democratic Statehood in Ukraine] (Kharkov, 2008).

[2] Zaichuk and Onyshchenko (eds.), Вступ до теорії правових систем [Introduction to the Theory of Legal Systems] (Kyiv, 2006), p. 8.

objective natural laws of development of society, the said means constantly operating as a consequence of reproduction and use by people and organizations thereof as subjects of this system in order to achieve private and public purposes.[1]

In its most general form, we suggest a legal system be regarded as the aggregate formed under the influence of natural laws of development of a particular society of all legal phenomena thereof in stable links between themselves and with other social phenomena.

In order to determine the place of the legal system of Ukraine among other legal systems, it is necessary to determine what the legal map of the modern world looks like. The approach is simpler when only the aggregate of national legal systems which determine it are considered,[2] that is, the legal systems of all existing States. David noted that every State in the modern world has its own law, and several competing legal systems may operate within a single country. Non-State communities also may have their own law; and international law exists separately.[3] Difficulties arise with regard to a rather simple issue — how many national legal systems exist in the world?

No doubt national legal systems are the most widespread in the world. The United Nations now has 193 members (only the Vatican, of generally-recognized States, has its own legal system), each of which has its own legal system. However, it is necessary to recall the existence of so-called unrecognized or partially recognized States (Taiwan, Northern Cyprus, and others, which number more than ten). These formations actually have all the features of a State, including an own national legal system, although not recognized by the international community. Some territories may be temporarily dependent on other States or international organizations (so-called territories with a transitional legal regime). There are more than twenty non-self-governing territories in the world which are under the external administration of the United Kingdom, United States, France, and New Zealand. An example of a territory with a transitional regime is the Palestine National Authority, which in the future is intended to acquire independence and build its own State. All these territories, not having sovereignty, have own national legal system.[4]

The existence in some countries of several legal systems which coexist within a single national system but have sufficient autonomy to be considered separate legal systems is an interesting phenomenon. A typical example is the legal system of the United States of America, where a single federal system and the legal systems of fifty states are distinguished. In individual instances, they may even be structure on different principles (for example, the legal systems of Quebec in Canada, Scotland in the United Kingdom). In order to delimit these from national legal systems, we suggest these legal sub-systems of the lower level be called «subnational». There are more than 200 national and sub-national legal systems in the world.

Supra-national legal systems exist which extend to social systems of several States. The inter-State legal systems are one of the types of these which are formed by individual States according to international agreements concluded, for example,

[1] *Skakun,* Правова система України на правовій карті світу [Legal System of Ukraine on the Legal Map of the World] (Kharkov, 2004), p. 7.
[2] *M. N. Marchenko,* Правовые системы современного мира [Legal Systems of the Modern World] (Moscow, 2008), p. 6.
[3] *R. David,* Основные правовые системы современности [Basic Contemporary Legal Systems], transl. from French by V. A. Tumanov (Moscow, 1988), pp. 37–38.
[4] *V. V. Oksamytnyi,* Правовые системы современного мира: проблемы идентификации [Legal Systems of the Modern World: Problems of Identification] (Kyiv, 2008), p. 30.

the legal system of the European Union, whose legislation is being actively adapted by Ukraine.[1] The problem of the existence of inter-State legal systems and the peculiarities of mutual relations of the Ukrainian legal system with them has rather recently begun to be the separate object of research.[2]

Another legal phenomenon is the existence of religious legal systems which also have a supra-national character and specific nature that has been little investigated in modern legal doctrine.[3] Almost the only work in Ukraine devoted to a study of a religious system of law concerns the Islamic legal tradition.[4] It is thus necessary to distinguish on the legal map of the modern world the national, sub-national, and supra-national (international and religious) legal systems which coexist and compete with one another.

The investigation and comparison of such a multi-tiered phenomenon as a legal system on the scale of the entire world is a complex task. A classification is applied so that diverse legal systems become more accessible for scientific analysis and to determine their place among other legal systems. The system of distributing subject-matter, phenomena, or concepts into classes, groups, and so on according to common indicia and properties is called a classification. Logic clarifies this definition; a classification according to the laws of logic is a distribution of subject-matter into certain classes which is so conducted that each class occupies a precisely determined place with regard to other classes.[5] A classification allows individual objects to be investigated more well-foundedly, the place of each element within the system to be ascertained, their links and internal laws of development and interaction with other systems to be investigated, and their common features and distinctions to be analyzed.

Some comparatists (O. F. Skakun, L. A. Luts) suggest, together with classification, to use the methodological potential of typologization. Typologization in comparative law is a process of grouping legal systems on the basis of a theoretical model or type, the result of which is a typology. A typology provides integral information about an object, reveals the system-forming links thereof and the material indicia and features of the entire system.[6] Luts noted that classification is used when there is a need to obtain knowledge only of a relatively determined aspect of an object, and not integral knowledge about the object, and therefore cannot be used to obtain integral knowledge concerning a group of legal systems or the legal map of the world as a whole.[7] Skakun emphasized that classification does not enable the natural laws of the correlation of various classification strata to be manifest because each of them is fully autonomous.[8] Nonetheless, the majority of researchers do not distinguish methodologically between classification and typologization as individual means of scientific research.

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[1] See the Law of Ukraine of 18 March 2004, No. 1629-IV. Урядовий кур'єр, 20 April 2004.
[2] *L. A. Luts*, Європейські міждержавні правові системи та проблеми інтеграції з ними правової системи України: Теоретичні аспекти [European Inter-State Legal Systems and Problems of Integration of the Legal System of Ukraine with Them: Theoretical Aspects] (Kyiv, 2003).
[3] *V. D. Tkachenko*, Релігійні правові системи: Порівняльне правознавство [Religious Legal Systems: Comparative Law] (Kharkov, 2003), pp. 178–234.
[4] *B. Hashmatulla*, Ісламські традиції права [Islamic Tradition of Law] (Odessa, 2006).
[5] *V. E. Zherebkin*, Логика [Logic] (Kharkov, 1968), p. 58.
[6] *O. F. Skakun*, «О термино-понятиях "типология", "типологизация", "тип" в сравнительном правоведении» [On the Termino-Concepts «Typology», «Typologization», and «Type» in Comparative Law], in Порівняльно–правові дослідження [Comparative Law Research], no. 1–2 (2007), p. 31.
[7] *L. A. Luts*, «Typologies of Modern Legal Systems of the World», in W. E. Butler, O. V. Kresin, and Iu. S. Shemshuchenko (eds.), *Foundations of Comparative Law: Methods and Typologies* (2011), pp. 36–52.
[8] *Skakun*, «О термино-понятиях "типология", "типологизация", "тип" в сравнительном правоведении» [On the Termino-Concepts «Typology», «Typologization», and «Type» in Comparative Law], in Порівняльно-правові дослідження [Comparative Law Research], no. 1–2 (2007), p. 31.

The history of the classification of legal systems dates back more than a century. This problem was defined as one of the priorities for comparative studies at the I International Congress of Comparative Law held at Paris in 1900. The participants of the conference had no precise notion of the methods of classifying legal systems and, acting intuitively, singled out the French, German, Anglo-American, Slavonic, and Muslim legal families. In 1913 Sauser-Hall proposed a nationality criterion for distinguishing the following families: Indo-European, Semitic, Mongolian, and the law of uncivilized nations.[1] During the celebration of the fiftieth anniversary of the French Society of Comparative Legislation in 1919, the participants limited the classification to three families: French, Anglo-American, and Muslim.[2]

During the second half of the twentieth century, two main orientations of the classification of legal systems acquired extensive dissemination. The first orientation was contained in the classification of Rene David, which proposed the idea of a trichotomy: three principal legal families — Anglo-American, Romano-Germanic, and socialist on the basis of two criteria, legal technique and similar philosophical, political, and economic principles. All other legal systems he combined as «other types of social structure and law», among which were the Muslim, Hindu, and Jewish law, as well as the legal systems of the countries of Africa and the Far East.[3]

Representatives of the second orientation, Zweigert and Kötz, supplemented a classification elaborated by Arminjon, Nolde, and Wolff and proposed using as the criterion of classification the concept of «legal style», which consisted of five factors (in essence criteria of classification): the origin and evolution of legal systems, the mode of legal thought, specific legal institutions, the nature of sources of law and means of interpreting them, and ideology. On this basis they identified eight legal families: Romanistic, Germanic, Anglo-American, socialist, Nordic, Far Eastern, Islamic, and Hindu.[4]

Modern Russian and Ukrainian authors in some measure also use these basic classifications. Tikhomirov distinguished the continental (Romano-Germanic) legal family, common law family, socialist legal family, family of a religious-moral orientation, and also Northern European, Latin American, and nomadic legal families.[5] Saidov singled out the following legal families: common law, Romano-Germanic, Scandinavian, Latin American, socialist, Muslim, Hindu, customary (African), and Far Eastern.[6] Marchenko investigates the two most widespread and «influential» legal families — Anglo-Saxon and Romano-Germanic, and also the socialist and post-socialist, Judaic, and Muslim.[7]

Skakun singled out the following types or families of legal systems: Romano-Germanic, Anglo-American, mixed, religious, traditional, and socialist.[8] Zaichuk and Onyshchenko investigate the Romano-Germanic, Anglo-Saxon, socialist, and traditional law families.[9] Luts distinguished the following types of modern legal sys-

[1] *K. Zweigert* and *H. Kötz*, An Introduction to Comparative Law, transl. T. Weir (2d ed.; 1992), p. 64.
[2] *A. Kh. Saidov*, Comparative Law, transl. W. E. Butler (2003), p. 112.
[3] *R. David* and *C. Jauffret-Spinosi*, Основные правовые системы современности [Basic Principles of Modern Legal Systems], transl. from French (Moscow, 1996), p. 25.
[4] *Zweigert* and *Kötz*, An Introduction to Comparative Law, transl. T. Weir (2d ed.; 1992), p. 75.
[5] *Iu. A. Tikhomirov*, Курс сравнительного правоведения [Course of Comparative Law] (Moscow, 1996), pp. 112–140.
[6] *Saidov*, Comparative Law, transl. W. E. Butler (2003), p. 116.
[7] *Marchenko*, Правовые системы современного мира [Legal Systems of the Modern World] (Moscow, 2008).
[8] *O. F. Skakun*, Теорія держави і права (Енциклопедичний курс) [Theory of State and Law (Encyclopedic Course)] (Kharkov, 2006), pp. 310–312.
[9] O. V. Zaichuk and N. M. Onyshchenko (eds.), Теорія держави і права: Академічний курс [Theory of State and Law: Academic Course] (Kyiv, 2006), pp. 567–609.

tems of the world: Romano-Germanic, Anglo-American, mixed (by subtypes: dualist, Scandinavian, Latin American; religious-community: Muslim, Hindu; traditional philosophical: Japanese, Chinese; customary law).[1] Hashmatulla considered there to be Romano-Germanic, Anglo-American, Far Eastern, and customary law families, as well as individual legal systems: Islamic, Hindu, and post-Soviet.[2]

The central issue of any classification is the determination of the criteria thereof. At all stages of the development of comparative law many different criteria have been suggested for classifying legal systems: the role of legal sources of law (Levy-Ullmann); nationality (Sauser-Hall); content of law (Arminjon, Nolde, and Wolff), specific nature of production relations (Eörsi), ideological and technical legal criteria (David), and legal style (Zweigert), among others.

Until then, comparatists had not come to a consensus with regard to many questions of the classification of legal systems; for example, the need to apply only legal criteria or possibly also others; whether there should be one criterion or several; whether the criteria should have only an objective character or whether a subjective approach of the researcher should be allowed?

In Marchenko's view, the criteria for the classification of legal systems should meet these requirements:

(a) have as their basis permanent, fundamental, and not temporary and incidental, factors;

(b) whenever possible, be more or less definite indicia-criteria;

(c) have an objective permanent character;

(d) single out basic, dominant criteria in instances when not one but several indicia-criteria underlie the classification of legal systems;

(e) in investigating general indicia of legal systems, it is essential to have in view not only objective, but also subjective, factors which expressly influence the process of their formation.[3]

Nonetheless, taking into account that legal systems are subject to classification, the legal criteria of classification, in our view, should be basic. A legal system is a complex formation consisting of many elements which need to be analyzed in order to determine which of them may be criteria of classification.

The principal element of any legal system is law, around which all other elements of the system are formed. Tikhomirov determined that law exists, is formed, and functions in the form of a legal system. Simultaneously, law is far from being the sole structural component. As noted above, all legal phenomena of a certain society relate to the structure thereof: legislation, legal institutions, legal practice, right-realization and law-application, rights, freedoms, and duties of citizens, legal relations, legal culture, legality and legal order, and so on.

For the convenience of analysis, all elements of a legal system are grouped into several sub-systems. The institutional component is the aggregate of all subjects of law (individual and collective, State and non-State). The normative component is the aggregate of principles and norms of law which regulate relations between subjects of law, rules of law-making, and system of recognized sources of law. The

[1] *Luts*, «Typologies of Modern Legal Systems of the World», in W. E. Butler, O. V. Kresin, and Iu. S. Shemshuchenko (eds.), Foundations of Comparative Law: Methods and Typologies (2011), pp. 49–50.
[2] *B. Hashmatulla,* Вступ до порівняльного правознавства [Introduction to Comparative Law] (Odessa, 2002).
[3] *M. N. Marchenko,* Сравнительное правоведение. Общая часть [Comparative Law. General Part] (Moscow, 2001), p. 254.

ideological component is the aggregate of views on law and other legal phenomena which are divided into legal psychology, legal ideology, and legal culture. The system of training jurists is relegated to this group. The functional component is the process of the realization of law and law-application and judicial and other legal practice.

Are these elements of a legal system of equal importance? Can any of them be the criterion for the classification of legal systems? In our view, a simple classification can be structured on any of the elements of a legal system. Having regard to the fact that classification is a logical and relative process, the criteria thereof may change, depending upon the purpose of the researcher. Saidov wrote on this question that geographic spheres may underlie classification: it may be historical (diachronic) or logical (synchronic); one may carry this out at the level of the entire legal system or individual branches of law. The possibility in principle arises of a multiplicity of classifications structured on various criteria and for different purposes.[1] Various classifications are, thus, not excluded, but reinforce one another, assist in a more well-founded study of the similarities and differences of legal systems. This is especially important under conditions of the convergence of legal systems, acquisition by them of similar features, which is actively underway at present in the world.[2]

Can any group of legal systems be considered to be a legal family? We suggest that the division into legal families is a special process of distributing legal systems that cannot be made according to any criteria, but only the most material and significant. We refer to the typologization of legal systems and determination of the basic and most widely-distributed types of legal systems.

The assessment of their influence on the development of an entire system and investigation of their mutual links from a «cause-effect» standpoint may be by the methodology of the choice of elements of a legal system as criteria for division. In our view, the ideological component — the legal consciousness and legal culture of a society — must be the basic criteria for the typization of legal systems into legal families. The primacy of legal consciousness over all other elements of the legal system has been emphasized by many philosophers of law. Maksimov described legal consciousness as a major element of legal reality.[3] In the view of Il'in, legal consciousness is an essential element of the genesis, functioning, and development of law that is present in the processes of law-making and the application of and compliance with law. It is a direct source of the legal order and all legal phenomena.[4]

Law as a social phenomenon is a consequence of the forming of a certain legal consciousness in society. Both legal ideology and legal psychology play an identically important role in this process. The form of all other phenomena of a legal system is legal norms and the system thereof, sources of law, and the peculiarities of law-application are a consequence of a certain legal consciousness of society. However, the application of this complex and multi-faceted phenomenon as a criterion for division may generate a certain complexity during the research. Therefore, in some instances the singling out of other additional criteria is possible that, on one hand, should more

[1] *Saidov*, Comparative Law, transl. W. E. Butler (2003), pp. 39–40.
[2] *M. N. Marchenko*, «Convergence of Romano-Germanic and Anglo-Saxon Law», in W. E. Butler, O. V. Kresin, and Iu. S. Shemshuchenko (eds.), Foundations of Comparative Law: Methods and Typologies (2011), pp. 276–303.
[3] *S. I. Maksimov*, Правовая реальность: опыт философского осмысления [Legal Reality: Experience of Philosophical Thought] (Kharkov, 2002), p. 253.
[4] *I. A. Il'in*, «Путь к очевидности» [Path to the Obvious] (Moscow, 1993), p. 247; also see *Il'in*, «О сущности правосознания» [On the Essence of Legal Consciousness], in *Il'in*, Общее учение о праве и государстве [General Doctrine on Law and the State] (Moscow, 2006),pp. 180–508.

clearly reflect the specific nature of the legal consciousness of a certain society and, on the other, be simple, instrumental, and convenient for application. One of the most convenient on this level of criteria is sources of law. Marchenko emphasized that the specific nature of law-understanding in various legal systems is reflected in the sources of law to a significant degree.[1]

Another issue on which there is no unanimity of views amongst comparatists: can extra-legal factors be criteria for singling out legal families? David was one of the first who substantiated the need to do so using the example of the socialist family. He wrote that Soviet law undoubtedly bears a certain resemblance to the Romanic system using the legal indicia of terminology, structure, conception of norms of law, and so on. But to cross the boundary of a socialist State means to be in a new world where such issues as democracy, elections, parliament, trade unions, ownership, contract, and arbitrazh acquire a different content. The reason for this he well-foundedly considered to be the entirely different philosophical, political, and economic principles underlying a socialist society. The legal system is a sub-system of a social system, together with other sub-systems — political, economic, religious, and others which effectuate a material external influence on the development thereof. Therefore, non-legal phenomena may be important additional criteria to effectuate a typologization of legal systems into families.

We stress that each of the aforesaid classification or typologies is not perfected, including on matters of the classification of such under-researched legal systems as religious and traditional ones. First, the said classifications are incomplete because they do not encompass all legal systems. David himself noted that his trichotomy encompassed only one-fifth of the planet. Only two systems of religious law were investigated: Islamic and Judaic, and this is far from a complete list of legal systems of the religious type. Second, sometimes legal systems are combined which have nothing in common, and sometimes even have juxtaposed features. Third, logic is disturbed in the said classifications because one cannot regard individual religious systems, for example, Islamic, as legal families — they do not combine different legal systems within them.

Together with the generally-recognized in comparative legal studies of the families of Romano-Germanic and Anglo-American law, two separate families or types need to be singled out — religious and traditional law. The principle criteria for separating out each type are the various material distinctions in law-comprehension, but differences in instrumental criteria — sources of law — also can be precisely traced.

These features are characteristic for Romano-Germanic law:

(1) a uniform understanding of the meaning of law formed thanks to the research and teaching of legal doctrine in European universities and the significance influence thereof on the development of the legal system;

(2) forming on the basis of the reception of Roman Law and under the significance influence of canon law;

(3) uniform understanding a norm of law which is regarded as an abstract, general, and unpersonified rule of behavior that may repeatedly be applied to an indeterminate group of persons and instances;

(4) the division of law into public and private is recognized;

[1] *M. N. Marchenko*, Источники права [Sources of Law] (Moscow, 2005), p. 13.

(5) the principal sources of law are deemed to be normative-legal acts which are adopted by plenipotentiary agencies of legislative and executive power;

(6) the law-making powers of a judge are not recognized, and judicial precedents are either rejected in general or applied in a very limited manner;

(7) significant codification of legislation;

(8) dominance of material law over procedural.

The following features distinguish Anglo-American law:

(1) the greatest influence on the development of this system has been made not by legal theoreticians, but by legal practitioners, especially judges;

(2) the legal system developed under the influence only of internal factors and virtually did not experience influence on the part of Roman and canon law;

(3) the casuistic nature of norms of law which are relied upon to resolve a specific concrete case;

(4) the system of law is divided into common law, equity, and statutory law. The division of law into public and private is not used;

(5) procedural law dominates over material;

(6) judicial precedent is the most widely used source of law;

(7) the law-making powers of the judge are recognized;

(8) legislation is virtually uncodified.

Whereas the Romano-Germanic and Anglo-American families have been thoroughly researched in modern comparative legal studies, the religious and traditional legal systems are understudied in Ukrainian and European legal doctrine.

A religious legal family combines four legal systems of Muslim, Hindu, Judaic, and canon law. The legal systems of the religious type are combined within the confines of a single legal family on the basis of these inherent features:

(1) law is regarded as the result of divine patronage, and not as a consequence of rational activity of the person and the State. Law was given once and forever, and therefore the task of man in this system is merely to be properly aware of and to construe divine norms. If we assess reality and not church dogmas, it must be acknowledged that the content of norms of religious law have changed throughout history. This occurred by means of a new interpretation by religious clergy of the holy texts;

(2) an inextricable link with religion. Each legal system which is within this legal family is a part of a certain religion: Islam, Hinduism, Judaism, or Christianity. Norms of law are based on religious concepts and beliefs, as a consequence of which legal and religious norms are closely intertwined and often coincide. A precise separation of norms of law from other social norms, especially religious, does not occur in these systems;

(3) recognition of the social value of law. In all religious the idea of the divine character of law is present, and this is deemed to be an essential element of a just social system. David noted that two types of principles exist which guided non-western countries. Some acknowledge the great value of law, but they understand law itself differently from in the West, and the others reject the idea of law itself and believe that social relations should be regulated by other means. The first include countries of the Islamic, Hindu, and Judaic law, and the second, the countries of the Far East, Africa, and Madagascar;[1]

[1] *David* and *Jauffret-Spinosi*, Основные правовые системы современности [Basic Principles of Modern Legal Systems], transl. from French (Moscow, 1996), p. 25.

(4) Non-recognition of the principle of the formal equality of human rights. Unlike, for example, the Romano-Germanic legal family, where this principle is a general humanitarian principle,[1] they endow man with various legal statuses — rights and duties depend upon affiliation to a certain group separated out according to various criteria — sex, nationality, religious, or social. A classic example is the caste division in India, which is recognized and defended by Hindu law;

(5) the personal character of the operation of law. This means that law based on religion extends its operation not to a certain territory, but individually, to a specific religious community. This is one of the distinctions of principle between religious and national systems of law, for national systems operate on the territorial principle — extend to all persons within the boundaries of the State — and extraterritorial principle — to all its citizens outside the State. Religious legal systems extend their operation only to persons who profess a certain religion irrespective of where they are located territorially. If a person renounces his religion, he leaves the sphere of operation of this legal system, that is, law does not extend to persons of another faith and atheists;

(6) the principal sources of law are religious texts and decisions of leading religious figures.

A traditional legal family combines two sub-types of legal systems — the States of the Far East and countries of Africa. The legal systems of China and Japan belong to the Far Eastern sub-system, as well as certain other countries which developed under their influence — Mongolia, Korea, Malaysia, Indonesia, Myanmar (until 1989, Burma). To the second sub-system belong more than forty States located in the African continent and Madagascar.

Traditional legal systems are combined into a single legal family because they have certain legal distinctive features as follows:

(1) unlike the legal systems of the countries of the West which have recognized the leading role of the State in consolidating norms of law (by way of legislative or judicial activity), in traditional legal systems priority in forming norms of law belongs to society itself. Over many centuries the foundation of legal regulation of these countries was norms of customary law which have been based on traditions and moral-ethical notions of the people. Custom, being a rule of behavior which became habitual as a consequence of frequent application over an extended period of time, regulated virtually all aspects of the life of society;

(2) the notion is confirmed in legal consciousness that a source of law such as legislation is an unnatural phenomenon for society. A negative attitude of the population towards legislative law formed over many centuries subsequently had tangible consequences. During the twentieth century, after the extensive reception of Western law and a significant boost in the development of legislation and codification, the situation developed when a significant part of the population began constantly to ignore these norms of law, and real social relations, as before, were regulated by traditional norms;

(3) recognition of customary law and ignoring of legislation generated peculiarities in the process of the realization of norms of law, especially in the consideration of legal disputes. Over many centuries these norms were ensured for the most part

[1] M. V. Tsvik and O. V. Petryshyn (eds.), Загальна теорія держави і права [Fundamental Principles of the Theory of State and Law] (Kharkov, 2009), p. 200.

not by State structures, including courts, but by self-governing social structures and social pressure on offenders. People avoided recourse to courts in order to defend their rights. The great majority of disputes were resolved in the process or reconciliation procedures with the mediation of respected members of society on the basis of norms of customary law;

(4) the weak development of the entire legal infrastructure. For centuries these countries had no knowledge of the legal professions habitual for us — judges, procurators, advokats, notaries, and so on. Neither educational institutions to train professional jurists nor legal science or outstanding scholars — bearers of legal knowledge — existed. People who performed individual legal functions lacked the social status and respect which jurists have in the Western world.

Thus, the four legal families we have singled out — Romano-Germanic, Anglo-American, religious, and traditional — represent four universal types of law which encompass the entire legal map of the modern world. All legal systems of individual States, State-similar formations, or other social subjects have been formed under the influence of one of these basic types of law or combination thereof.

The affiliation of Ukraine to one of the basic types or families of law is rather controversial in Ukrainian and foreign comparative legal studies.

The Ukrainian national legal system was formed under complex conditions. This is connected with the lack of State independence through significant periods of history and with the geopolitical situation of Ukraine and respective ideological influence on Ukrainian society of for the most part opposite in meaning European and eastern conceptions. The development of the national legal system may be conditionally divided into two periods: before the acquisition of independence and after the acquisition thereof. The forming of the Ukrainian legal system commenced with the customary law of Kievan Rus, with the further development thereof during the period of the Hetmanate, and the existence of the Ukrainian People's Republic and Ukrainian Soviet Socialist Republic.[1] During the existence of the Soviet Union, Ukraine was relegated to the socialist legal family.

After the acquisition of independence in 1991, the forming began of an autonomous legal system which became one of the manifestations of people's and State sovereignty directed towards the satisfaction of the interests of Ukrainian society. The Act of Proclamation of Independence of Ukraine of 24 August 1991 substantiated the formation of an autonomous Ukrainian State, especially the continuation of the thousand-year tradition of State-making in Ukraine.

The problem of relegating legal systems of post-socialist countries to a certain legal family is the subject-matter of scholarly controversy. Tikhomirov systematized the various conceptions which assess the status of post-Soviet legal systems (including Ukraine) and separated them into several main orientations:[2]

(1) the return of all countries to the Romano-Germanic legal family. Adherents of this conception proceed from the fact that historically the Ukrainian legal system, commencing from prerevolutionary times, belongs to the Romano-Germanic legal family. The principal features thereof were formed under the influence of European legal doctrine, the system of law developed on the basis of the reception of Roman law, the principal source of law is the normative-legal act, and legislation has been

[1] *O. F. Skakun*, Правова система України на правовій карті світу [Legal System of Ukraine on the Legal Map of the World] (Kharkov, 2004).
[2] *Tikhomirov*, Курс сравнительного правоведения [Course of Comparative Law] (Moscow, 1996), pp. 129–129.

codified. The Soviet period of history was regarded as a temporary departure from the Romano-Germanic family, and the modern period as deliverance from the socialist features and return to the bosom of European law;

(2) the forming of a separate Slavonic or Eurasian legal family. Some scholars substantiate the need for recognition of the forming of an autonomous Slavonic legal family after the dissolution of the socialist family on the base thereof to which are relegated the legal systems of Ukraine, Belarus, Russia, and certain other Eastern European States. A Slavonic legal family was first proposed at the beginning of the twentieth century by Adhémar Esmein (1848–1913). But because of the lack of scientifically-substantiated criteria, this was not recognized among comparatists. In modern Russian legal doctrine an active proponent of this approach is V. N. Siniukov.[1] The legal system of Russia is the focal point in this family, being, in the view of some authors, a self-sufficient character independent from other legal families. A specific legal consciousness is inherent to it, the basis of which is the priority protection of primarily public interests, but not individual, a positivist perception of law, and an undeveloped legal culture; special law-application — the extensive use of other social norms to regulate social relations, a lack of confidence in and ignoring of State legal structures, and so on. The Ukrainian legal theorist, Iu. N. Oborotov, adheres to this theory in its entirely, but he suggests a different name — Eurasian legal family;[2]

(3) the forming on the basis of the socialist legal family of three separate groups of countries which are moving towards different legal families. Especially, the Baltic countries (Estonia, Latvia, Lithuania) most decisively delivered from the consequences of the Soviet period and orientated in legal development not towards the other post-Soviet States, but towards the northern European countries which are combined into a separate Scandinavian sub-type of European law. The Russian legal system aspires to develop according to its separate autonomous path which foresees the integration of individual elements of Romano-Germanic law, the Soviet system, and modern legal institutes. However, a certain isolationism and limited use of foreign legal experience is inherent in this system. All this leads to the conclusion of the possible gradual forming on the basis of the legal systems of Russia and certain other countries (Belarus, Kazakhstan, and others) of a separate Eurasian sub-type. Ukraine is not orientated towards the experience of these countries in its legal development; rather the Ukrainian legal system is increasingly approximating classical Romano-Germanic law. However, the features which the national legal system of Ukraine has acquired, just as the systems of other post-socialist Eastern European States, makes it possible to single them out at the present moment into a separate sub-type developing within the framework of Romano-Germanic law.

An analysis of the modern national legal system of Ukraine shows that now there are no material distinctions from continental law either by means of the creation of legal norms, nor the means of the systematization thereof, or means of interpretation, nor means of their use in law-application practice. Law-comprehension is undergoing material changes: the conception of the supremacy of law is official recognized, the natural origin of human rights and their priority relative to the State, a rule-of-law

[1] *V. N. Siniukov,* Российская правовая система: Введение в общую теорию [Russian Legal System: Introduction to General Theory] (2d ed.; Moscow, 2010).
[2] *Iu. M. Oborotov,* Традиції та оновлення у правовій сфері: питання теорії (від пізнання до розуміння права) [Traditions and Renewal in the Legal Sphere: Questions of Theory (From Knowledge to Understanding of Law)] (Odessa, 2002), pp. 179–192.

social, democratic State, the division of law into public and private, the immutability of private ownership which is characteristic of the European legal tradition.[1]

Thus, the best substantiated today is the scientific position that the legal system of Ukraine, together with the other post-socialist, Eastern European States, is returning to the Romano-Germanic legal family. However, the need to take into account the historically acquired peculiarities enables one all the same to single out the Eastern European countries into a separate sub-type within the limits of the Romano-Germanic legal family. This conclusion is affirmed not only by general comparative legal studies, but also by comparisons in individual domains of law. Kharytonov and Kharytonova, analyzing the European systems of private law, convincingly prove that Ukrainian civil law belongs to the central and Eastern European private law.[2]

The answer to the question: to what legal family does Ukraine belong depends upon what legal path Ukrainian society pursues, the legal policies effectuated in the State as reflected in the political and legal decisions adopted, legislation, declared legal values, directions of the professional training of jurists, and so on. Maksymov, in assessing the impact on legal consciousness of previous and present factors, noted that there should dominate in legal consciousness not the determinants of the past (objectified activity and relations), but the determinants of the future desired situation and purpose.[3]

The legal policy of Ukraine enables one to talk about the European choice of Ukraine. Ukraine acquired full membership in the Council of Europe in 1995, having adopted the Law «On the Accession to the Statute of the Council of Europe». Ukraine assumed obligations to sign and ratify a number of international legal agreements and conventions, and also to reform respectively the national legal system on European principles. Over the decades Ukraine has fulfilled the obligations assumed, especially having ratified the European Charter of Local Self-Government and the 1995 Framework Convention on the Protection of National Minorities and the 1959 European Convention on Mutual Assistance in Criminal Matters.

Dozens of new legislative acts have been adopted, including the 1996 Constitution of Ukraine, civil and criminal codes, Law of Ukraine «On Political Parties», and others. In accordance with the principles of the Council of Europe, the death penalty was abolished. The judicial and law enforcement systems have been reformed significantly.

The activity of the European Court for Human Rights, whose jurisdiction extends to Ukraine, has great importance for reforming the national legal system. In accordance with the Law of Ukraine «On the Fulfillment of Decisions of Application of Practice of the European Court for Human Rights» of 23 February 2006, national courts are obliged to apply the practice of the European Court when considering cases as a source of law, that is, the precedential character of its decisions is officially recognized.

One of the strategic aims of Ukraine is accession to the European Union. On 14 June 1994 an Agreement on partnership and cooperation was concluded between

[1] *V. D. Tkachenko, S. P. Pohrebniak,* and *D. V. Lukianov,* Порівняльне правознавство [Comparative Law] (Kharkov, 2003), pp. 45–46.
[2] *E. O. Kharitonov* and *O. I. Kharitonova,* «Classification of European Systems of Private Law», in W. E. Butler, O. V. Kresin, and Iu. S. Shemshuchenko (eds.), Foundations of Comparative Law: Methods and Typologies (2011), pp. 255–275.
[3] *Maksymov*, Правовая реальность: опыт философского осмысления [Legal Reality: Experience of Philosophical Thought] (Kharkov, 2002), p. 255.

Ukraine and the European Union that lay down the general political and general legal grounds for approximating their legal systems. The Edict of the President of Ukraine of 11 June 1998 adopted the Strategy for the Integration of Ukraine into the European Union, the basic provisions of which are elaborated in the Program for the Integration of Ukraine into the European Union, confirmed by Edict of the President of Ukraine of 14 September 2000.

In March 2004 the Supreme Rada of Ukraine adopted the Law «On the General State Program for the Adaptation of Legislation of Ukraine to the Legislation of the European Union». In accordance with this Law, the general-State program is a complex of inter-connected mechanisms for the adaptation of legislation directed towards the realization of State policy regarding the creation of a modern legal system of Ukraine by means of improving the law-making and law-application activity of agencies of State power, and introduction of a unified system of planning, coordination and monitoring of work relating the adaptation of legislation. One of the principal tasks of the Ministry of Justice of Ukraine is to ensure the realization of State policy in the sphere of the adaptation of the legislation of Ukraine to the legislation of the European Union.

Among the recent enactments in this category is the Edict of the President of Ukraine of 12 January 2011, which confirmed the Plan of Measures Directed Towards Ensuring the Proper Fulfillment of Duties and Obligations of Ukraine, arising from membership in the Council of Europe and achievement of the conformity of the political element of the Copenhagen criteria for the acquisition of membership in the European Union.

Lukianov D. The National Legal System of Ukraine among Contemporary Legal Families

Abstract. The article considers the legal system, formed under the influence of the laws of development of a given society set of all its legal effects that are in persistent connections with each other and with other social phenomena.

Key words: legal system, comparative studies, law, typology.

Лук'янов Д. В. Національна правова система України серед правових сімей сучасності

Анотація. У статті розглянуто правову систему, сформовану під впливом закономірностей розвитку певного суспільства сукупність усіх його правових явищ, що знаходяться в стійких зв'язках між собою і з іншими соціальними явищами.

Ключові слова: правова система, компаративістика, право, типологізація.

Лукьянов Д. В. Национальная правовая система Украины среди правовых семей современности

Аннотация. В статье рассмотрена правовая система, сформированная под влиянием закономерностей развития определенного общества совокупность всех его правовых явлений, находящихся в стойких связях между собой и с другими социальными явлениями.

Ключевые слова: правовая система, компаративистика, право, типологизация.