THE LEGAL SYSTEM — INTEGRATIVE CATEGORY OF LEGAL SCIENCE

N. ONYSHCHENKO
Doctor of Legal Sciences, Professor,
Corresponding Member of the National Academy of Legal Sciences of Ukraine
Chief of the Theory of State and Law Department
(V. M. Koretskyi Institute of State and Law of the National Academy of Sciences of Ukraine)

O. ZAICHUK
Doctor of Legal Sciences, Professor,
Member of the National Academy of Legal Sciences of Ukraine
First Deputy Director for Scientific Work
(Institute of Legislation of Verkhovna Rada of Ukraine)

V. ZHURAVSKYI
Doctor of Legal Sciences,
Doctor of Political Sciences, Professor,
Member of the National Academy of Legal Sciences of Ukraine

The concept of the category «system» is used in various sciences, including jurisprudence.[1] Intensive developments in the domain of a systems approach and general theory of systems commenced in the mid-twentieth century,

[1] *V. I. Chervoniuk*, Теория государства и права [Theory of State and Law] (Moscow, 2006), pp. 596–598.

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although the term «system», from the Greek, is used by Kant (systemicity of cognition), Schelling, and Hegel. From the seventeenth to the nineteenth centuries certain types of systems were investigated by various scientific orientations and special sciences. In our world a multiplicity of systems exists. From the standpoint of science there may be various combinations, processes, and phenomena. The social form of the movement of matter brings social systems to life (socio-economic formation, class, State, morality, party, labor collective, and so on), the principal peculiarity of which is their link with volitional human activity and various associations of people.

The evolution of social systems leads to the complicating thereof, the acquisition of completed forms. The essence of their movement lies in the approximation of integrity, the subordination to them of all elements of society, or in the creation of organs in which this is needed. Thus, by this means a system in the course of historical development is transformed into a «whole».

Numerous various definitions of systems exist today which scholars propose — philosophers, sociologists, jurists. Summarizing them, one may conclude that a system is the ordering of an aggregate of elements interlinked and interacting with one another which have relative autonomy and an organic unity characterized by an inner integrity and autonomy of functioning.[1]

The said indicia are also characteristic of a legal system, although the concept of the last «means much more than a mere phenomenon which formally falls under the indicia of any system». Having regard to this, legal system is understood as the unity of the respective components or parts thereof combined in a certain way (by semantic and formal criteria) and which, depending upon the nature and character of the links between them (objective, natural or subjective, derivative), comprise a relatively stable organization.

The development of social relations, change of economic system, political situation, and spiritual world have brought Ukrainian society into a new qualitative state, a new statehood — the forming and development of a rule-of-law State and civil society.

Under the modern conditions of social, economic, and political development, legal advances in the life of Ukraine are increasingly intensifying. An important role in resolving the tasks of the modern State belongs to the legal system.[2] This exerts a great influence on the character of changes in society and furthers the perfection of the legislative process, enhances the effectiveness of legal regulation, and forms the public and individual consciousness. A legal system may be called a truly universal humanitarian organization in the sense that it has a humanitarian character and is called upon to serve especially all of mankind.

According to Ukrainian jurists, we have come to the stage when it is possible to analyze the available facts of Ukrainian legal life from several various positions: not from formally legal, sociological, and psychological positions, but through the prism of the national-historical and cultural-typological nature of the Ukrainian legal world with a view to the cognition of a specific integrity and systemicity.

The legal system is a concept and multi-tiered concept which incorporates an entire complex of components and exerts a normative-organizational impact on

[1] *V. G. Afanasev*, Системность и общество [Systemicity and Society] (Moscow, 1980), p. 25; *V. N. Kartashov*, Система систем. Очерки общей теории и методологии [System of Systems. Essays on General Theory and Methodology] (Moscow, 1995).
[2] *N. N. Krestovskaia*, Теория государства и права [Theory of State and Law] (Kharkov, 2007), pp. 363–364.

social relations.[1] Elements of the legal system are combined by a general purpose and tasks and fulfill certain general functions that, however, do not testify to their homogeneity and identity.

In order to correctly outline the structure of the legal system, it is essential to determine the criteria for the selection of the elements thereof. The principal requirements are the internal order (organizational criterion) and legal orientation of activity (legal criterion) thereof, which should be normatively reflected in respective legislative acts and provisions; in addition, the purpose of creating the legal system, sphere of activity, nature of the principal tasks and functions thereof, peculiarities of their realization, specific principles for organization and activity, and so on (programmatic criterion) are of importance.

In addition to the general function, each component of a legal system fulfills specific inherent tasks that, however, are logically linked to one another. A legal system in the expression of Carbonnier, the French scholar, represents «a repository and a concentration of various legal phenomena existing in society simultaneously in the same space».[2]

The interlinkage and functioning of the elements of a legal system condition the very existence of the legal system, because in isolation, in fragmented form, it cannot exist. Therefore, when investigating this category it is advisable to apply a systems-structural approach, to study the legal system as a whole and in its individual parts. A systems approach in this instance is one of the instruments for investigating the object — a complex phenomenon containing elements whose interconnection ensures the integrity thereof.

However, it is impossible to understand the whole without studying the individual peculiarities of its parts. In this regard Hegel wrote that the whole by its characteristics is that which is contained in the parts. But if it is divided, it ceases to be a whole.

An investigation of individual components of a legal system needs to be combined with the study of various internal processes enabling the integrity of the legal system to be comprehended and its internal and external links to be identified. However, a legal system does not reduce only to formal qualities of a systemic formation, although it acts as such. It is essential to invest a more profound, social, specific-historical, and political value therein.

The essence or significance of a legal system lies in the fact that it reflects the balance of interests of various social groups or classes of society. These interests receive reflection in law, laws, and other components of a system in the form of State will, which combined the possibility of authoritative compulsion for respective behavior and the punishment of offenders against legal prescriptions. A legal system is an important stabilizing and organizing factor.[3]

This purpose is achieved with the assistance of all of its structural elements, the most essential of which will be considered below.

All elements of a legal system have a particular degree of normativity because many of them have been formed from the essence of law, legal norms, and components thereof. Non-legal phenomena also possess normativity; however, this indicator is all

[1] *M. N. Marchenko*, Проблемы теории государства и права [Problems of the Theory of State and Law] (Moscow, 2006), pp. 346–350.
[2] *J. Carbonnier,* Юридическая социология [Legal Sociology], transl. from French (Moscow, 1986), pp. 199–203.
[3] *O. V. Zaichuk* and *N. M. Onyshchenko* (eds.), Теорія держава і права [Theory of State and Law] (Kyiv, 2006), pp. 567–580.

the same most characteristic of law. Therefore, one may justly believe that law is the normative foundation of the entire legal system.

Law acts as a central link of the legal system. Among the leading Ukrainian scholars sharing this view are: V. Babkyn, O. Zaichuk, A. Kopylenko, L. Luts, N. Onyshchenko, A. Petryshyn, and others. However, one cannot fail to mention another view: the subject is the central element of the legal system.[1] It seems to us that the last proposition testifies to a certain confusion of basic categories and concepts. Without denying that Man in a democratic society is at the center of a certain micro-socium combining political, economic, social, and legal relations, we consider law to be the central element, the so-called fulcrum, linking all other elements into broader legal categories (legal systems).[2]

A broad spectrum for the application of the category «legal system» is proposed in modern doctrinal writings. Tikhomirov believes that the concept «legal system» represents a structure — an integrated means of integral legal impact on social relations. He singles out as such elements, first, the boundary and principles of legal regulation; second, the basic varieties of legal acts and combinations thereof; third, systematizing links which ensure the interaction of all elements and integrity of the system.[3]

Alekseev sees this interpretation as being narrow, noting that system-forming links cannot be considered to be an element of a legal system, but rather a property of the last.

Tikhomirov later suggest two legal systems should be considered: «a legal system which was formed historically» and a «system of legislation which represents a product of rational activity and forms of normative material».

This formulation brought objections from Matuzov, who believes that in order to determine the inner structure of law or legislation there is no need to introduce new concepts, as there exist generally-accepted traditional categories for this — «system of law» and «system of legislation», or «legal system», which are fully sufficient in order to reflect the essence of these phenomena, including from the standpoint of a systems approach.

Alekseev incorporated the concept of a legal system in doctrinal writings law, judicial, and other legal practice, legal ideology, law-making, and law-application activity and individual State-power prescriptions (edicts), legal relations, legal sanctions, system of legislation, subjective right, and others. He suggested these elements of a legal system be distinguished:

— objective (or positive) law as the aggregate of generally-binding norms expressed in a law and other forms of positive law;
— legal ideology — the active aspect of legal consciousness;
— judicial (or legal) practice (or legal activity).

The linkage of positive law with the State, agencies thereof, and the entire political structure of a particular society is occurring through the legal system and the elements thereof.

Doctrinal writings thus define a legal system as the aggregate of internally-agreed, interlinked, socially homogeneous means, with whose assistance the State effectuates

[1] *M. M. Rassolov, T. N. Radko*, et al. (eds.), Теория государства и права [Theory of State and Law] (Moscow, 2004), p. 350.
[2] *N. M. Onyshchenko*, Правова система: проблеми теорії [Legal System: Problems of Theory] (Kyiv, 2002), p. 20.
[3] *Iu. A. Tikhomirov,* Публичное право [Public Law] (Moscow, 1995), pp. 210–223.

the necessary normative-organizational impact of on social relations (consolidation, regulation, protection, defense).[1]

In this event there are distinguished among the elements of a legal system: (1) law — the aggregate of norms created and protected by the State; (2) legislation — the form of expression of these norms (normative acts); (3) legal institutions effectuating the legal policy of the State; (4) judicial and other legal practice; (5) mechanism of legal regulation; (6) right-realization process (including acts of application and interpretation); (7) rights, freedoms, and duties of citizens (law in the subjective sense); (8) system of legal relations formed and functioning in society; (9) legality and legal order; (10) legal ideology (legal consciousness, legal doctrine, theory, legal culture, and so on); (11) subjects of law (individual and collective); (12) systemic links which ensure the unity, integrity, and stability of the system; (13) other legal phenomena (legal responsibility, legal personality, legal status, legal interests, and so on) which form the «infrastructure of the legal system».

Without denying the right of all the said points of view to exist with regard to their elementary composition, all the same, it seems to us, this broad approach most fully determines the extent of the concept and characterized the legal system as a complex, integral structural formation in the unity of all the component parts thereof. Alekseev opposed the inclusion in this concept of all legal categories, all legal activity, asserting that it would have been inappropriate to consider as elements of a legal system the social factors directly influencing right-formation and right-realization but not representing the direct content thereof.

Finally, Siniukov, in the context of his orientation of research, defined a legal system as a social organization which includes basic components of national legal culture.[2] He thus suggests yet another vision of the essence and structure of a legal system. Siniukov adds certain new components which in essence encompass the existing broad definition and understanding of this phenomenon.

To these elements Siniukov relegates the regional and local legal infrastructure, systems and sub-systems of supervision, control, prevention of violations, legal informing and legal communications, legal education, training and retraining of personnel, analysis of legal ideology, and so on.[3]

The multiplicity of definitions of a legal system, existence of various approaches to the investigation and study thereof, and the specific nature of the positions of authors confirms the thesis of active creative work on this problem, the quest for a more precise and full characterization of the legal phenomena being studied, which shows no doubt the scholarly developments of Ukrainian legal theoreticians.

One should not, however, that Ukrainian legal scholarship has failed to take into account the studies by Ukrainian scholars devoted to the essence and nature of national legal systems of the near abroad. A whole complex of scholarly studies in recent times has been devoted to the legal system of the Republic Belarus.[4]

Scholars note that elements which are within the legal system of Ukraine include the system of law, legal policy, legal ideology, and juridical or legal practice, especially

[1] *N. I. Matuzov*, Правовая система и личность [Legal System and the Individual] (Saratov, 1987), p. 26.
[2] *V. P. Siniukov*, Российская правовая система [Russian Legal System] (2d ed.; Moscow, 2012).
[3] Ibid.
[4] *K. P. Bovrazhentseva*, «Гендерний аспект економіки в сучасній Україні» [Gender Aspect of the Economy in Modern Ukraine], in N. M. Onyshchenko and N. M. Parkhomenko (eds.), Правові засади формування та розвитку гендерного середовища в Україні [Legal Foundations of Forming and Development of the Gender Environment in Ukraine] (Kyiv, 2010), pp. 213–236.

law-making, law-application, and law enforcement practice. Together with these elements there are related phenomena: norms and principles of international law, social norms sanctioned by the State, and others.[1]

With regard to the characteristics of the national legal system, one would wish to first cite the definition of Rabynovych: «A legal (or juridical) system is a system of all legal phenomena existing within a certain State or group of States. Within such a system are, as a rule, the following legal elements: (1) various legal acts (legal norms with their external sources, objectified acts of interpretation, and acts of the application of norms), and also activity of respective subjects with regard to the creation, change or termination of such acts; (2) various types of legal consciousness, and forms and means of the existence thereof; (3) the state of legality (social regime of the conformity of the physical activity of subjects to the prescriptions of laws)».[2]

Skakun defined the legal system distinctively, noting that a legal system is a complex of interconnected and coordinated legal means intended to regulate social relations, and also legal phenomena arising as a consequence of such regulation (legal norms, legal principles, legal consciousness, legislation, legal relations, legal institutions, legal technique, legal culture, state of legality and deformation thereof, legal order, and others).[3]

Zaichuk defines a legal system as the aggregate of elements incorporating legal activity, legal consciousness, and the aggregate of normative legal acts.[4]

Onyshchenko defined a legal system as the objective historically natural phenomenon including law, legislation, subjective rights and duties, legal activity, legal institutions, legal consciousness, and legal culture.[5] The authors of a textbook on the theory of State and law have a rather interesting interpretation of a legal system. By legal system they understand the unity of respective components or parts combined by a certain means (by content and formal criteria) which, depending upon their nature and the character of the link between them (objective, natural, or subjective, arbitrary) comprise a relatively stable organization.[6] A legal encyclopedia defines the legal system as the aggregate of interconnected system of law and means of the realization thereof.[7] Ukrainian scholars suggest an integrated definition of legal system in the Great Encyclopedic Legal Dictionary.[8]

For all the diversity of the characteristics of a legal system, the «narrow» interpretation seems to us to be the least convincing. A legal system is a complex legal phenomenon containing the basic constructive elements and approaches with whose assistance the ultimate aim is achieved of legal regulation. Therefore, the «broad» approach should be considered to be the most correct, which fully reflects the legal organization of society in the unity and interaction of all the components comprising it.

However, a broad understanding of the legal system does not mean that those elements should be included therein which are not solely legal, such as, for example,

[1] *V. Pohorilko*, «Правова система, система законодавства суверенної України» [Legal System, System of Legislation of Sovereign Ukraine], Право України [Law of Ukraine], no. 9–10 (1993), p. 10.
[2] *P. Rabynovych*, Основы общей теории права и государства [Fundamental Principles of the General Theory of Law and State] (7th ed.; Kharkov, 20065), p. 194.
[3] *O. Skakun*, Теорія держави і права [Theory of State and Law] (Kharkov, 2001), p. 237.
[4] *O. V. Zaichuk*, Правова система США [Legal System of the United States] (Kyiv, 1992), pp. 6–17.
[5] *N. M. Onyshchenko*, Правова система: проблеми теорії [Legal System: Problems of Theory] (Kyiv, 2002), pp. 16–18.
[6] *O. V. Zaichuk* and *N. M. Onyshchenko*, Теорія держави і права [Theory of State and Law] (Kyiv, 2006), pp. 568–570.
[7] Iu. S. Shemshuchenko, et al. (eds.), Юридична енциклопедія [Legal Encyclopedia] (Kyiv, 2003), V, p. 39.
[8] *Великий* енциклопедичичний юридичний словник [Great Encyclopedic Legal Dictionary] (Kyiv, 2007), p. 690.

State, political, and social agencies, structures, and institutions. In other words, a broad approach to the legal system also must have its limits and boundaries.

In our view, one may not include in the legal system as a phenomenon of social reality the law enforcement and State agencies because although they operate on the basis of law, they are non-legal phenomena. Consequently, one should include in the legal system genuinely legal institutions, for example, scientific research institutes having a legal profile.

The view exists that legality and legal order should be considered to be elements of a legal system. However, the aforesaid phenomena might rather be called the results of the functioning of the legal system, an indicator of the effectiveness thereof, or, on the contrary, of the imperfection thereof (depending upon what level of legality and legal order is achieved in a country). Legality and legal order are the natural result of the activity of a legal system which indicates the degree of order and stability of social relations and shows the effectiveness of the operation of legal institutes. To be sure, all elements of a legal system are closely linked with one another, depend upon one another, but have relative autonomy. They all fulfill general and specific functions in a legal system and are characterized by unity and difference facilitating the effectiveness of the operation of the entire system here considered.

The concept of legal system has certain significance for characterizing law in a particular country. A deep and comprehensive study of law no doubt assumes the use of a differentiated approach to the matter being researched. This signifies a need to consider this as an historical phenomenon which existed and exists, an analysis of the manifestation of general special and generic features, and also a study of law in a more specific and real stratum.[1]

Important features and peculiarities of the historical process of the development of law, just as any other social phenomenon, including society itself, are objectivity, universality, continuation, and concomitant individual stages or phases of development precisely determining their interconnection and succession.

A recording of the characteristics, peculiarities, and features is a basic prerequisite for the cognition of the entire historical process and the typology of legal systems.[2]

It is entirely logical to assume the existence of various stages or historical periods in the development of law and, simultaneously, to indicate that stadiality, discreteness, does not indicate an acknowledgement of a certain rupture in the history of mankind but, on the contrary, is an affirmation, a statement, of the fact that the development of human society, and of law with it, is an uninterrupted, objectively conditioned natural historical process.[3]

An investigation and analysis of the mechanism of the approximation or interaction of national legal systems is a considerable problem of legal development under conditions of globalized and integrated changes.[4]

It should be noted that the modern understanding of the abstract category of the «mechanism of approximation» of national legal systems divorced from realities is rather problematic. It is evident that not all legal systems can and should be regarded as some «mechanical magnitude» that can and should be approximated at the wish

[1] *O. Zaichuk*, «Середовище права та формування правових систем сучасності» [Environment of Law and Forming of Modern Legal Systems], Право України [Law of Ukraine], no. 12 (2003), pp. 37–40.
[2] A. S. Vasilev (ed.), Теория права и государства [Theory of Law and State] (Kharkov, 2006), pp. 227–230.
[3] *Египетская* мифология: энциклопедия [Egyptian Mythology: Encyclopedia] (Moscow, 2006), pp. 13–43.
[4] *N. M. Onyshchenko*, «Національні правові системи і міжнародне право в умовах глобалізації» [National Legal Systems and International Law under Conditions of Globalization], Держава і право [State and Law] (Kyiv, 2004), XXVI, pp. 3–9.

of political circles, ruling structures, or individuals in power. In some temporal and spatial characteristics such approximation is real, whereas in others, they are merely good intentions destined to remain forever on paper.

The early investigators of State law systems drew attention to the great numbers thereof in history, to their variety, and to the fact that «there is more different than in common in various legal systems».

As for the relatively practical measure of this problem, several comments should be made or orientations should be singled out which, in our view, require the greatest discussion and are the most controversial.

It is easy to be convinced of this. The generally-known distinction between the Anglo-Saxon (common law system) and Romano-Germanic (continental law system) of legal systems is axiomatic even to students. In the first case one is referring to a system of law, and specifically, to the principal source of law.

Whereas for the Romano-Germanic legal system the principle source of law is a normative legal act, in the Anglo-Saxon system it is undoubtedly legal precedent. Without exaggerating the growth of statutory law in the Anglo-Saxon legal system and judicial practice in the Roman-Germanic legal system, the distinctions if the basic source base cannot fail to affect the complicated of the processes of adapting legislation nor fail to influence the mechanism for their approximation. If we consider the variety of legal systems within the Romano-Germanic legal family, it is readily understood that even the «technical approximation» of the legal system of Japan and any European representative of this group is rather complex, even if one does not take into account the stable stereotypes of legal regulation with the assistance of norms of social regulation — the hiri (Japan).

Many similar illustrations can be found in traditional, religious, and hybrid legal systems, that is, it is understandable that it is not always correct from a scholarly standpoint to propagandize the possibility of the mechanism of approximation for all national legal systems.

The lack in modern legal doctrine of some precise definite conceptual foundations on the basis of which it would be possible for substantiated integration acts here, as before, as the basic argument, and not the unsubstantiated eclectic combining of different measurable planes. It would thus be more realistic and correspond to the practical state of affairs if the question were put not with regard to the mechanism for the approximation of national legal systems, but the mechanism for their interaction.

The problems of adapting legislation and taking into account international experience in the development of national legal systems recently have become the leitmotif of monographs.[1] It must be acknowledged, however, that legal scholars, philosophers, and sociologists have been attracted, if one may say so, by the instrumental element of this process, namely, by an analysis of model legal acts, the indicia thereof, varieties, means of unification, criteria which would be applied to definitions, and the like. Without denying the importance of such studies, it should be noted that a very important or more important element is the essential one. For example, the defense of the rights, freedoms, and legal interests of man and citizen,[2] and the realization thereof within different legal systems.

[1] *Международные* отношения: теории, конфликты, движения, организации [International Relations: Theories, Conflicts, Movements, Organizations] (Moscow, 2007), p. 237ff.
[2] *Проблеми* реалізації прав і свобод людини та громадянина в Україні [Problems of the Realization of the Rights and Freedoms of Man and Citizen in Ukraine] (Kyiv, 2007).

The question of human rights is the major problem of domestic and external legal development. The ensuring thereof is that criterion by which the achieved level of democracy in a State is assessed.

Beginning with the doctrines of ancient thinkers (Plato, Aristotle, Polybius, and others) down to the present day, philosophers, sociologists, politicians, and jurists have attempted to understand the essence of the problem of human rights and freedoms and define the historical and modern parameters thereof.

The place of man in the socium and his social role depend significantly upon the extent of the rights and freedoms which determine his social possibilities, the character of life activity, and the system of human links in society. Human rights is the social capacity to freely act, autonomously choose the type and measure of his social behavior with a view to satisfying various own material and spiritual interests, and also the interests of other people, individual sociums, and society as a whole.

Rights and freedoms are normatively ensured on condition of the operation in a country of a developed system of legal regulation supporting principles of personal freedom. This system in and of itself is a normative guarantee unless it is contradictory and acts as a coordinated and accessible system.

Our expectations from the operation of modern law and the expectation of protection for everyone (from the quality of medical servicing to proper labor conditions), guaranteed and provided, in accordance with the standard of civilized States, and the list of rights — all these and many other components are invested, in our view, in the concept of an effectively developing legal system.

Various legal systems differ materially in the proclamation or declaration of rights and provision for this institute. Therefore, within the context of the mechanism for the interaction of national legal systems, ensuring the institute of the rights and freedoms of man and citizen is an important indicator, a marker, to which one should aspire — the institute of State responsibility to the individual.

Indeed, a common terminology on this type of legal responsibility still has not been developed in the national legal system. Variants exist such as «State-legal responsibility», «constitutional responsibility», «responsibility of State agencies and their officials», «public-law responsibility».

In studies devoted to these types of responsibility reference is made to the legal responsibility of State agencies and officials which, in our view, is not an identical concept to legal responsibility of the State. That is, these types of responsibility have been replaced by intra-organizational relations which do not extend to relations between the State and the individual. It is no accident that in doctrinal writings the purpose of such responsibility is called «support for the regime of legality within the State».[1]

The question arises in this connection — can one place legal responsibility of the State to a natural subject of legal responsibility on a specific bureaucrat or State agencies for illegal actions or decisions? Are these types of responsibility the same? Such an assertion is hardly admissible. First, there is the different content of these types of responsibility. Second, the State is becoming a subject to responsibility only in specific legal relations with the participation of a private person whose rights have been violated, and in other instances the State acts as the instance to which the offi-

[1] *M. A. Krasnov,* «Публично-правовая ответственность представительных органов за нарушение закона» [Public-Law Responsibility of Representative Agencies for a Violation of a Law], Советское государство и право [Soviet State and Law], no. 6 (1993), p. 53.

cial or State agency bears responsibility. Third, the State as a subject of responsibility, as a public subject, bears responsibility not for own actions, but for decisions of its agencies or officials, just as State agencies and officials by their nature are a public subject, but in legal relations of responsibility with respect to a person lost their publicness and act as persons who have not fulfilled who have not fulfilled their employment duties. This view is a common one expressed by scholars of Russia and Ukraine.

The institute of State responsibility to the individual is one of the principal guarantees of human rights and freedoms consolidated in legislation. The State establishes the mechanism for own public-law responsibility and assumes the duty to ensure the possibility for the realization thereof, but in order to make them accessible to citizens. This is achieved by a weakening of the pressure of the State on society and the possibility simultaneously is raised of the control thereof over the actions of the State.

The problem of State responsibility to the individual is a problem of respective legal relations in which the State, however, should act not as a subject of special significance, but as a subject who is a responsible party. These are legal relations of equal parties which characterizes one of the features of the rule-of-law State and a dynamically developing legal system.

In addition, it should be noted that contradictions may and do exist objectively between the State and a citizen. The task of the State, however, in using the potential of the legal system, is to avert the growth and strengthening of these contradictions and not bring them to a sharp conflict.[1] In this instance one should refer to State responsibility for the failure of its agencies and officials to act and for flagrant violations of constitutional rights of citizens. Regrettably, in practice this does not happen, and if it does happen, very rarely. This situation generates an expectation of no punishment, of everything being permitted by individual State bureaucrats and the State as a whole.

In Ukrainian society, according to the 1996 Constitution of Ukraine, all citizens have been granted and guaranteed an equal amount of rights and freedoms. Their use is connected with the confirmation of identical standards for all persons without exception. Thus, every citizen de jure may enjoy on equal conditions with other citizens the entire range of rights and freedoms without impingement on the part of the State or discrimination on the part of State agencies, individual officials, or other persons.

One reason for the lack of State responsibility is the lack of effective mechanisms for the realization of legal responsibility of the State to the individual. The task of Ukrainian society is to create them because the State is not interested in the effectuation or, moreover, the improvement of the mechanism of own responsibility. In a rule-of-law State there should not be such an inconsistency in «State — citizen» relations.[2]

To be sure, the degree or level of State responsibility to a citizen is determined by the level of maturity of the civil society and respective legal system, activeness of the impact on State-legal mechanisms, interlinkage of society, State, citizen, and legal system. One also should take into account that ignorance of the law does not «relieve» a citizen, but always «releases» the State from responsibility. It is evident that responsibility may ensue especially where there is a possibility for citizens to

[1] *N. I. Matuzov*, Теория государства и права [Theory of State and Law] (Moscow, 2006), pp. 96–100.
[2] V. V. Lutovskiy (ed.), Судова практика Європейського суду з прав людини. Рішення щодо України [Judicial Practice of the European Court for Human Rights. Decisions Relating to Ukraine] (Kyiv, 2005), pp. 10–112.

control the actions of the authorities. Therefore, the States, especially those in which there is no democratic regime and another one dominates (authoritarian, totalitarian, administrative-command), the possibility is minimized of control on the part of society and individual actions over actions of agencies of power and officials, and they evade responsibility for them.[1]

Under modern conditions of the development of Ukraine as a democratic, rule-of-law State, the evolution of the conception of human rights, and Euro-integration processes, the problem of the protection of human rights, freedoms, and legal interests is acquiring important practical and theoretical significance. Ensuring the proper protection of the rights of man and citizen in Ukraine is an important task of the State and topical orientation of the development of the legal system. In order to realize the system of changes «for the better» in the sphere of human rights, the authorities should place them in the center of State policy.

Among the basic orientations of the improvement of the legal system is the introduction and development of the differentiation of rights and legal interests of the individual, combatting discrimination in rights, and ensuring the specification of rights (special rights).

There should be singled out within the context of the problems of the differentiation of rights and legal interests of man and citizen: increasing the effectiveness of legislation and strengthening the regulatory impact of law on improvement of the system of privileges for individual categories of citizens. Under contemporary unstable socio-economic conditions there is a need for a radical change of the system of privileges in order to overcome the growth of negative trends in this sphere and support those who need social defense.

Legal privileges are an exception from the general rules and act as a means of legal differentiation. The contemporary law of «civilized peoples» is a differentiation, and consequently specific issues of social life are regulated differentially, namely, rules regulation admission to institutions of higher education, call-up for military service, assignment of pensions, and so on have been established for different categories of citizens. In the absence of legal regulation in a particular sphere, agencies of administration are forced, taking into account the specific circumstances, to establish at their discretion exception for individual persons that may lead to subjectivism and even abuse of right. It should be taken into account that privileges are an element of the special legal status of persons and a mechanism for augmenting the fundamental rights and freedoms of a subject with specific possibilities of a legal character.

Strengthening the struggle against discriminatory manifestations in the sphere of the rights, freedoms, and interests of man and citizen is a separate orientation for improvement of the qualitative state of the legal system: ensuring the stability of constitutional guarantees of human rights and fundamental freedoms; conducting the reformation of the judicial system and criminal justice; separate attention should be devoted to confirming draft laws on access to public information and public radio broadcasting, overcoming abuses in the media sphere (ensuring democracy in the freedom of speech — in this connection an improvement of the functions and more precise determination of the competence of the Humanitarian Council); special attention should be devoted to preparing draft laws on free legal assistance and pro-

[1] *V. Ia. Liubashits*, Теория государства и права [Theory of State and Law] (Rostov-on-Don, 2002), p. 444ff.

tection of personal data; the introduction of the posts of ombudsmen with special competence should be an urgent measure, and the like.

Yet another orientation of the development of the modern legal system is linked with the improvement of legal regulation of relations connected with so-called «specification» of rights (concretized rights for an individual social group, stratum, subjects of a respective age, and so on). It is necessary, for example, to:

(1) improve the system of guarantees of the rights of pupils and students in the educational sphere (improvement of the system of higher scientific education and enrollment in higher educational institutions of Ukraine; legal regulation of the process of study without interruption of production (external form of study) which ensures equal access for all who wish to have a higher education; expansion of the network and improvement of the quality of vocational education; elaboration of norms of legislation relating to reducing risks of corruption during entry and graduation; ensuring the independence of higher education from political and corporate interests);

(2) improve the system of guarantees for ensuring the rights of a child in Ukraine:

(a) strengthen responsibility for any violent actions with respect to a child and the exploitation thereof;

(b) devote special attention to improving the conditions for the maintenance and upbringing of orphan children and children deprived of parental concern;

(3) effectuate the improvement of legislation to regulate gender relations in Ukraine; conduct the systematization and unification of gender legislation; strengthen the role of scientific interests, institutions, ministries, and departments for implementing proper gender expert examination of normative-legal acts; adopt a new State program for the introduction of gender relations in various domains of human activity.

As is evident from the text above, the slow progress in resolving the problems of State responsibility to the individual and forming a balanced legal mechanism for the interaction thereof may be explained, inter alia, by the lack of necessary theoretical works in doctrinal writings.[1] Tatsyi recalled this in his paper on legal science in Ukraine, where the scholarly need was indicated for the «creation of a methodological and theoretical base of the State and forming of the system of national law».[2]

Having determined in general features the nature and essential characteristics of a modern legal system, we turn attention to their specific and typological distinctions.

The legal system of a specific society reflecting its socio-economic, political, and cultural singularity is a national legal system. To classify legal systems is possible on the basis of various criteria: legal, economic, geographical, ethnic, and ideological. The correlation of these criteria is different in various States.

Wherein lies the social meaning and designation of the process of a typology of a State and legal systems? In the general theoretical and political-practical strata the significance of this process is as follows:

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[1] *V. A. Kislukhin*, «Проблемы эффективности реализации юридической ответственности (теоретико-правовой анализ)» [Problems of the Effectiveness of the Realization of Legal Responsibility (Theoretical-Legal Analysis)], Научные труды Российской Академии юридических наук [Scientific Works of the Russian Academy of Legal Sciences] (Moscow, 2005), I(5), pp. 108–115.

[2] *V. Ia. Tatsyi*, «Правова наука в Україні: стан та перспективи розвитку» [Legal Science in Ukraine: Origin and Prospects for Development], Вісник Академії правових наук України [Herald of Academy of Legal Sciences of Ukraine], no. 2–3 (2003), pp. 5–7; *Tatsyi*, «Методологічні проблеми науки на сучасному етапі державотворення» [Methodological Problems of Science at the Contemporary Stage of State-Creation], Правова держава [Rule-of-Law State] (Kyiv, 2005), XVI, pp. 10–18.

(1) this lies in the fact that ideas are advanced concerning types of State and law, making it possible to properly understand the process of natural-historical development of phenomena and consistent transition thereof from one qualitative state to another, from one type to another. A change of the historical types of State and law is one of the key, most important historical moments, without regard to which it is impossible to properly understand either the development thereof in essence or the socio-political meaning and designation, nor the change of their forms, functions, place, and role in the structure of the political system of society;

(2) the fact that the typology arms the researcher with an understand of the inner logic and natural process of the historical development of State and law and acts as the foundation of scientific prediction for the future State and law of Ukraine and other countries as a whole;

(3) the process of typology of States and legal systems enables the organic combination of research on general laws of the development of State-law phenomena peculiar to all types of State and law with the peculiarities thereof inherent only to individual types of State and law and the entire process to be studies of the natural-historical development of the State and law as a whole and simultaneously the process of development of the components thereof and specific historical periods;[1]

(4) the fact that all necessary prerequisites and possibilities are created in the process of the typology of States and legal systems for extensive generalization, systematization, and analysis of all the factual and scientific material which concerns virtually all aspects of the process of the origin and development of society, State, and law and their consecutive transition from one stage to the next.

In addition, the process of the typology of States and legal systems creates an objective foundation for scientific penetration into the depths of the process of natural-historical development of State and law, enables a precise demarcation between scientific and pseudo-scientific State-law theories to be drawn, and makes it possible to effectuate the State-law construction of various countries on a precisely determined scientific basis.

The typology of States and legal systems should be conducted on the basis of criteria conditioned by socio-political practice. What criteria are there for the classification of States and legal systems? What features and peculiarities should they have? These questions occupy legal researchers working in the field of the theory of State and law who are interested in questions of the typology of the State and legal systems and specialists in the sphere of comparative law.[2]

These are key, important, questions of principle, upon the resolution of which depends not only what should be the process for the typology and classification of States and legal systems, but also what will be these State-law types in the present and future.[3]

In resolving the issue of typology, many authors rightly say that the criteria for the typology of States and legal systems should have an objective character and reflect comprehensively and adequately State-legal matter while investigating, selecting, the most «important and simultaneously typical features and indicia for a certain

[1] *M. N. Marchenko*, Проблемы теории государства и права [Problems of Theory of State and Law] (Moscow, 2006), p. 348.
[2] *V. S. Zhuravskyi, O. V. Zaichuk, O. L. Kopylenko,* and *N. M. Onyshchenko,* Правові системи сучасності. Глобалізація. Демократизм. Розвиток [Contemporary Legal Systems. Globalization. Democracy. Development] (Kyiv, 2003), pp. 63–90.
[3] *Liubashits*, Теория государства и права [Theory of State and Law] (Rostov-on-Don, 2002), p. 466.

stage of the development of State and law and maximally reflect economic, political, social, and other conditions in which State and law function».[1]

As the enormous experience of investigating States and legal systems shows, geographical and climatic factors, degree of complexity of the organization of States and legal systems, character of their link with religion, degree of freedom and independence of man with respect to the State, means of vital activities of humans, level of general culture and world outlook of people, means of the production of material and spiritual values, character of their distribution, level of legal consciousness and gender transformations are widely used as criteria for the classification thereof.

The French philosopher, Jean Bodin, for example divided all peoples living on this planet and, consequently, all States of the world, into three categories on the principle of geography (criterion) — southern, northern, and middle.

Some western writers today suggest that the regional principle be used as the distinctive criterion for grouping and classifying States. The content thereof, in the interpretation of the German scholar, Carl Schmitt (conception of «great space») lies in determining the geographical regions within whose framework States and legal systems exist and harmoniously function near to one another.[2]

The German legal scholar, Georg Jellinek, occupied a distinctive position on State-law phenomena. Sharing the so-called dualist theory of State and law combining the legal conception of the State and law with the sociological orientation in State law and jurisprudence, Jellinek did not recognize the objective character of State and law or the objectivity of the criteria for their typization.

Together with ideal and empirical types of State and law, Jellinek separated out types of development and types of existence of State-law phenomena, or dynamic and static types of State and law. The principal criterion for such separation is the degree of «dynamism» in the development of the State, law, legal systems, and combining of dynamic and static elements in the functioning of legal systems.

Jellinek, however, understood that neither of the types named by him could exist in pure form. Therefore, he introduced yet another type — the so-called middle type. In his view, this should remove possible contradictions in the process of a typology of State-law phenomena and restrain researchers from excessive attraction to one type in juxtaposition to the other.

In our times the typology of States and legal systems suggested by Jellinek and the criteria derived on the basis thereof do not enjoy broad support and attention, which has been repeatedly emphasized by many scholars, for example, Marchenko.[3]

Other criteria often are used in modern Ukrainian doctrinal writings, especially the principle or «idea of political freedom» suggested by Kelsen.

Together with these variants and attempts to typisize States and legal systems in foreign and Ukrainian doctrinal writings, other analogous variants exist. Widely used are efforts to classify states and legal systems not only in and of themselves, but within a context or in a linkage with the classification of other socio-political phenomena, institutions, and institutions such as, for example, political systems within the framework of which they exist and function. The process of the classification

[1] O. V. Zaichuk and N. M. Onyshchenko (eds.), Вступ до теорії правових систем [Introduction to the Theory of Legal Systems] (Kyiv, 2006), p. 37.
[2] *A. G. Dugin,* «Карл Шмидт: 5 уроков для России» [Carl Schmitt: 5 Lessons for Russia], Философия права [Philosophy of Law], no. 2 (2000), pp. 76–81.
[3] M. N. Marchenko (ed.), Теория государства и права [Theory of State and Law] (4th ed.; Moscow, 2009), pp. 560–573.

of political systems simultaneously extends to the process of classification of their structural elements, to the category of which State and law are relegated.[1]

The classification of political systems, States, and legal systems depending on the level of general development and «rational orientation» — primitive, traditional, and modern; on the level of the development of structure, «structural differentiation» — centralized, decentralized, with single-order and multi-order elements; on the capacity to effectuate the social and political mobilization of citizens — mobilization, pre-mobilization, and others are widespread in western politology and sociology.[2] Mobilization political and legal systems, in turn, are divided by many western authors into democratic and authoritarian. To the first are relegated political systems with a high level of autonomy of component elements and with an average or limited level or low level of autonomy. To the second are relegated systems authoritarian in their nature, traditionally categorized in western legal and political literature as so-called «modernizing authoritarian political systems» (political system of Brazil), «conservative authoritarian political systems», and «conservative totalitarian political systems».[3]

So-called «premobilization authoritarianism» is relegated in western doctrine to «premobilization» modern political and legal systems.

A socio-economic formation was considered to be the most general criterion for a typology of States and legal systems, widely used within the framework of the theory of State and law and other sciences until recently. It continues to be actively used as a singular criterion because more stable and persuasive criteria have not been developed by doctrine.[4] However, with the change of certain political and ideological orientators in Ukraine, the self-sufficiency of this criterion has come to be doubted by some legal theoreticians and especially by representatives of comparative law. This is linked, on one hand, with the «claim» of this criterion to universality and, on the other, with ideological «oversaturation», and by yet another, with a certain sketchiness.

The civilization approach has been rather widely used in doctrinal writings in recent years. The essence thereof lies in the fact that in place of a «socio-economic formation» as a criterion for the typology of State and law and other criteria, efforts are being made to use «civilization» as such (Marchenko, Babkyn, and others).

Attempts to combine a civilization with a formation approach are, in the view of Russian colleagues, not very fruitful.

The choice of criteria for the classification of national legal systems is important for theoretical and practical reasons. Considerable attention has been devoted to this in doctrinal writings. In addition, scholars suggest distinguishing simple and complex criteria of the classification category.

To simple criteria should be relegated legal tradition or traditions common to all legal systems which are grouped into a single family. By legal traditions should be understood the aggregate of deeply lucid, historically-formed concepts of people concerning the nature of law in society, the essence thereof, the type of law-compre-

[1] *S. D. Helei* and *S. M. Rutar,* Політико-правові системи світу [Political-Legal Systems of the World] (Kyiv, 2006), pp. 40–55.
[2] *H. Yaquaribe,* Political Development. The General Theory and a Latin American Case Study (1993), p. 138.
[3] *A. N. Timonin,* «О значении понятия "классическая форма" возникновения государства в теории происхождения государства» [On the Significance of the Concept of «Classical Form» of the Origin of the State in the Theory of the Origin of the State], Российский юридический журнал [Russian Legal Journal], no. 2 (1995).
[4] *V. M. Syrykh,* Теория государства и права [Theory of State and Law] (Moscow, 2004), p. 628.

hension dominating in a particular society, and also the mechanism of the functioning of legal systems. In Ukrainian reference sources legal traditions are understood to be elements of social and cultural legacy to be transferred from generation to generation which are preserved in certain societies, classes, and social groups over an extended period. Certain social institutions, norms of behavior, values, customs, rites, and so on may act as traditions.[1]

One may relegated to complex criteria for the classification of legal systems the «style» of these systems. Such components as the «historical nature of legal systems», peculiarities of the paths of their development, peculiarities of the development of certain States, link of moral and legal principles, basic characteristics of legal institutes, norms, and the hierarchy and singularity of sources of law, and others are included in the concept of «style» or «image» of a legal system. Intensive discussions arise in comparative legal studies and the general theory of law relating to the peculiarities of factors influencing the forming of general features of various legal systems, and consequently, the selection of criteria for their classification.[2] The question is discussed: should only objective factors be taken into account, or subjective factors too. Some researchers suggest the first, and others, the second. Neither the first nor the second, however, can be accepted as the basis. The best argued position consists of combining the objective and subjective factors.[3]

Taking into account the said criteria for the typology and classification of legal systems, one should recall that Rene David singled out three basic groups of legal families: (1) Romano-Germanic; (2) common law; and (3) socialist family of law. Together with those legal systems, David described in detail the legal singularity of India, the Far East, the United States, and the Muslim world.[4]

Alekseev named four principal families of national legal systems: (1) Romano-Germanic (national legal systems of France, Germany, Italy, Spain, and others); (2) Anglo-Saxon (national legal systems of England, the United States, and a number of other countries); (3) religious-communal legal systems (legal systems of a number of States of Asia and Africa); and (4) ideologized legal systems of authoritarian political regimes.[5]

The position of Siniukov is a singular one, who suggests the following classification: (1) common law family (historically created in England during the tenth to thirteenth centuries); (2) Romano-Germanic legal family (whose historical roots come from Roman law of the second century b.c. to the sixth century a.d.); (3) traditional families (Japan, a number of States of Africa, and others) and religious legal families (Muslim law, Hindu law); and (4) the Slavonic legal family. Within the Slavonic legal family he includes the group of Russian law (Ukraine, Belarus, Bulgaria, the new Yugoslavia). The Russian legal family is singled out as the leading element of the Slavonic legal family on the basis of its originality, conditioned not only by technical-legal and formal indicia, but also by profound socio-cultural and State undertakings of the life of the Slavonic peoples. However, singling out the

[1] See V. T. Busel (ed.), Великий тлумачний словник сучасної української мови [Great Interpretative Dictionary of the Contemporary Ukrainian Language] (Kyiv, 2005), p. 1467.
[2] *A. D. Tykhomyrov,* Юридическая компаративистика. Философские, теоретические и методологические проблемы [Legal Comparativistics. Philosophical, Theoretical, and Methodological Problems] (Kyiv, 2005).
[3] *O. Zaichuk,* «Теоретична й практична значущість класифікації правових систем» [Theoretical and Practical Significance of the Classification of Legal Systems], Правова держава [Rule-of-Law State] (Kyiv, 2005), XVI, pp. 68–77.
[4] *R. David,* Основные правовые системы современности [Principal Legal Systems of the Modern Time] (Moscow, 1988).
[5] *S. S. Alekseev,* Теория права [Theory of Law] (Moscow, 1996), pp. 200–205.

Slavonic type of legal family causes material objections from many legal theoreticians who believe the characteristic features supposedly distinguishing the Slavonic legal family from the classical Romano-Germanic family to be insufficiently argued and not without dispute. Thus, research into this type and the respective evidentiary base is a future scholarly exercise.

Another interesting domain of research is the fact that a legal system as a whole may be regarded as some normative foundation for all social systems — political, economic, cultural, and so on because many of its elements (but not, of course, all of them) have a normative character and serve as general orientators for respective types of activity. To be sure, the degree of normativity of various legal phenomena differs.

A legal system is part of the social system and closely linked with phenomena and processes emanating in spheres of the economy, politics, culture, and ideology. Consequently, it may not fail to interact with such phenomena of social life as the economic, political, moral, and other systems.[1]

Wherein is the essence of this interaction? All social relations created in the spheres of politics, the economy, science, culture, education, and so on are an object of regulation and protection of the legal system. But here a reverse link is perceptible — the legal system itself is formed, developed, and functions under the influence of these relations.

The political system is the aggregate of various agencies, institutes, and institutions by means of which power and the direction of State and social affairs is effectuated. It combines the State itself, political parties and social associations, social groups, trade unions, and labor collectives. The purpose of the legal system is to ensure the fulfillment by the State and its agencies of tasks confronting society and to implement State policy. The legal regulation of social relations is effectuated with the assistance of legal norms, principally constitutional, regulating the activity of subjects of the political system (individual and collective) as participants of the said relations (consolidates the political rights of citizens, guarantees their realization, and so on). Thus, the effectiveness of the operation of the political system is ensured by means of coordinating the actions of all elements of this system, which in turn is achieved with the assistance of legal means.

The legal system is mutually linked and interacts with the economic system. Such elements thereof as legislation and the practice of its implementation exert a direct influence on economic relations. «Economic relations are a rather sensitive organism reacting at once to any changes of its legal form». The legal system is called upon to stabilize economic relations, discipline the participants of economic activity, facilitate the search within the labyrinth of economic mechanisms for those which might assist the economy to overcome crisis phenomena and elevate it to a qualitatively new level. Achievement of the tasks set and transformation of the economic mechanism into an effective and flexible system of management depends upon the quality of normative acts regulating relations in the sphere of the economy, their contemporaneity, and advisability.

The legal system is closely linked with culture. Legal culture is the result of their interaction, being a system of established views and concepts which determine behavior and activity of people in the legal and other spheres.

[1] *N. M. Onyshchenko*, «Гармонізація правової системи України: основні напрями та тенденції» [Harmonization of the Legal System of Ukraine: Basic Directions and Trends], Юридична газета [Legal Newspaper], 28 September 2006, p. 18.

The role of the cultural factor in the life of Ukrainian society is growing. Against this background, the need is clearly outlined for expanding the range of operation of legal culture, enhancing the requirements for the activity of law-making, legal, and law enforcement agencies, improvement of the quality of legislative acts, and the need for constant informing of the population about the innovations in law (improvement of the mechanism for access to information).

Legal culture is the general state of «legal matters» in society, that is, the state of legislation and the work of the court, all law enforcement agencies, the legal consciousness of the entire population of the country expressing the level of the development of law and legal consciousness, their place in the life of society, the mastery of legal values, their realization in practice, the effectuation of the requirements of the supremacy of jus and supremacy of lex, their mutual reinforcement, interaction, and mutual exclusion.

One of the indicators of legal culture is the legal upbringing of every person, a proper and high level of legal consciousness manifested not only in compliance with laws, but in legal activeness, in the full and effective use of legal means in practical activity, in an attempt to affirm the legal foundations of activity in life as the highest values of civilization.

Legal culture is a phenomenon more profound that simply the proper level of legal consciousness. The main thing in legal culture is the high development of the entire legal system and a worthy place of law in the life of society.

The legal system is mutually linked with the system of morality. This is reflected most clearly in the correlation of moral and legal norms. These are inalienably linked and reflect the dependence of man on society. Law has a moral substantiation proceeding from moral experience and finds its expression in the consciousness of people.

Each of the said social systems in turn influences the effectiveness of the functioning, development, and improvement of the national legal system and the development thereof by taking into account national legal traditions and positive globalization and integration experience.

Onyshchenko N., Zaichuk O., Zhuravskyi V. The Legal System — Integrative Category of Legal Science

Abstract. The subject of the article is examination of legal system as integrative category of legal science. The separate components of the legal system in combination with a variety of internal processes are investigated, allowing to understand the integrity of the legal system, to reveal its internal and external relations.

Key words: legal system, integrative category, elements, classification.

Оніщенко Н. М., Зайчук О. В., Журавський В. С. Правова система — інтегративна категорія правової науки

Анотація. Предметом статті є розгляд правової системи як інтегративної категорії правової науки. Досліджено окремі компоненти правової системи в поєднанні з різними внутрішніми процесами, які дозволяють осягнути цілісність правової системи, виявити її внутрішні та зовнішні зв'язки.

Ключові слова: правова система, інтегративна категорія, елементи, класифікація.

Онищенко Н. Н., Зайчук О. В., Журавский В. С. Правовая система — интегративная категория правовой науки

Аннотация. Предметом статьи является рассмотрение правовой системы как интегративной категории правовой науки. Исследованы отдельные компоненты правовой системы в сочетании с различными внутренними процессами, позволяющими постичь целостность правовой системы, выявить ее внутренние и внешние связи.

Ключевые слова: правовая система, интегративная категория, элементы, классификация.