

SOME PHILOSOPHICAL-LEGAL ASPECTS OF THE EFFECT OF GLOBALIZATION PROCESSES IMPACT ON THE DEVELOPMENT OF LAW IN THE CONTEXT OF MODERN STATE CREATION



Uliana Oliinyk

PhD in Law,

Associate professor of Theory and History

of State and Law Department

of Khmelnytsky University of Management and Law

Named after Leonid Yuzkov, Khmelnytsky, Ukraine

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Abstract. The article analyzes all the positive and negative aspects of the impact of globalization processes on the development of law after proclaiming Ukraine's independence. The main directions of the legal reform aimed at improving the quality of the current legislation are highlighted. Attention is drawn to positive impact of globalization, which is traced in the gradual disappearance of legal differences in the unification and universalization of law, its regionalization, humanization and harmonization acceleration and updating processes of legal development. The negative side of the impact of globalization on the law is reflected in a sharp increase of the number of regulatory legal acts, the destruction of cultural identity, uniqueness, uniqueness of a particular society, its legal values and traditions. It has been concluded that the value of the law today in the conditions of globalization lies precisely in meeting the individual and group needs of humanity.

Keywords: *globalization, value of law, civilization, transformation, positive law, legal reform, legislation, individual and group interests, modern society.*

Introduction

The essence of the globalization process always tends to be discussed within the economic disciplines. Undoubtedly, this process is multifaceted, versatile, ambiguous and covers all spheres of society, and law is a factor that leads this process in a certain direction. That is why it is necessary to make a philosophical and legal analysis of these issues. Characteristic of the philosophical and legal understanding of the impact of the process of globalization on the development of law is that the basis lies in the relationship "person-state-law" in their essential relationship, taking into account the nature of relations between them, causality and contradictions between them. A fundamental feature of studying the philosophical and legal dimension of the impact of globalization processes on the development of law in the modern state is their interconnectedness, interdependence with human perception and attitude to them. Nowadays, the value of globalization in Ukrainian society consists in the fact is that it serves as a unifying factor that shapes social integrity and consciousness, which in turn is reflected in compulsory prescriptions - the rules of law.

Analysis of research. Studies of the development of globalization and its impact on modern society can be found in the works of B. Balashshi, E. K. Rose, F. Ruth, P. D. Suther Land, J. Soros, J. T. Stewart. Ways of making a globalization impact on economic processes are covered in the writings of O. Belorus, A. Galchinsky, G. Klimko, D. Lukyanenko, Z. Lutsyshyn, Y. Makogon, V. Novitsky, O. Plotnikov, O. Rogach, V. Rokochy, A. Rumyantsev, A. Semenov, A. Filipenko and others .

The purpose of the scientific article is to make a philosophical and legal analysis of positive and negative factors of globalization

impact on the Ukrainian legal system after its independence had been adopted.

Outline of the main material. The name of the process of globalization derives from the English words "globe" – "the earth", "global" – "world", and "to globalize", "globalization" – "to spread across the planet, to acquire a worldwide character". In the mid-1960s, W. Moore introduced the concept of "global sociology" and M. McLuhan introduced the term "global village." It was not until the mid-1980s, when Ronald Robertson, one of the most famous experts on globalization, introduced and began to promote the concept of "globalization". In fact, the theory of globalization emerged. According to Ronald Robertson 'Globalization is a historical process of intensifying contacts between different parts of the world, leading to the growing similarity and uniformity in the lives of the peoples of the planet' [1] .

Today, in the context of globalization , the role of the principles of law in regulating the dynamism of social relations is significantly increasing, human rights and freedoms, and the task of securing them at the level of modern positive law are becoming more relevant . The philosophical and legal analysis is subject to some changes, transformations, improvements that occur in law under the influence of globalization; how globalization processes affect the changing nature of law, which is gradually recognized as a regulator of public relations not only at national, but also at global and international levels [2] .

Globalization is attributed to as a process that encompasses all the states in the direction of approaching different legal systems, their interaction and interpenetration. On this background, the category of 'legal life' concerns not only an individual society, taken within a particular state, but the totality of the legal systems of the world [3, p. 115] .

Regarding the very essence of the concept of 'globalization', we note that in the philosophical and legal dimension D. Goldman defined it as a progressive network of relations between the things of the objective world [4 , p. 359]. Globalization caused changes that led to a comprehensive variety of international public relations, including legal spheres. Under the influence of globalization processes development, transformation, modernization of existing positive law take place, and therefore there is a need for a philosophical and legal study of its

changes and warnings. As V. Strelchuk notes, this multifaceted, all-encompassing, and ambiguous phenomenon has penetrated all spheres of human life. Globalization is one of the main features of civilization development of the end of the XX - the beginning of the XXI century [4, p. 354].

According to O. Sidorenko, one of the main tasks of law is to manage globalization, harmonize its processes and counteract its negative consequences. Law must be an instrument of globalization and, at the same time, a means of managing its processes. At the same time, the process of globalization in the legal sphere is developing in two directions, which form a single process of law transformation. On the one hand, the impact of globalization processes on law is obvious, resulting in the approximation and convergence of law. On the other hand , by means of the right of law, attempts are made to direct globalization in a certain direction, for example, the introduction of adapted norms of other states, into national legal mentality and other cultural characteristics [5 , p. 7].

According to R. Biryukov 'Globalization significantly influences the transformation, change and modernization of legal institutions, norms and relations at the global, regional and national levels, stimulates, accelerates and updates the processes of universalization in the field of law' [6 , p. 37]. T.S. Glazatova, on her behalf, identified the following main trends in the development of law in the context of globalization:

- 1) the universalization of law, which means the process of consolidation in national law of generally recognized norms and principles of international law as an integral part of the national legal system;
- 2) regionalization of law - the process of legal regulation of international relations, the subjects of which are territorial (regional) associations, as well as individual regions of states;
- 3) the mutual influence of the current legal systems by leveling their specific features, convergence, mutual penetration of legal systems, etc.;
- 4) humanization of law - the objective conditionality of the impact of globalization on law is that the rules of law embody the principles of humanism, the rule of universal values, human rights and freedoms, law and order, etc.;

- 5) the harmonization of law implies the process of its approximation with the law of other states, which is manifested in bringing the law in compliance with the principles and norms of international law;
- 6) the liberalization of law is the process of introducing the principles of liberal ideology (the rule of law, democracy, human rights. into the domestic law).

Thus, the development and functioning of law as a dynamic phenomenon are influenced by various external and internal factors manifested in the globalized world, such as the universalization of rights, regionalization of law, domestic law changes under the influence of international law, mutual legal system, humanization and harmonization of law, liberalization of rights having their basis at the very beginning of the legislative process.

Today, people are aware of the authenticity and value of law in its natural component, which is a characteristic of the upward movement of law, its internal change, and the achievement of higher human values is the main goal of legal progress of society. According to O. Kostenko, this idea is of particular relevance today, as modern society needs a new jurisprudence that would provide modernization of our legal thinking for the sake of building a progressive social order [8 , p. 85]. According to V.S. Nersesyantsa, 'Formation and development of law (from its primitive to modern advanced forms)', in all its peculiarities of national systems of law, in its content is "the history of its increasing universalization and unification, the history of the movement to the increasing global law" historically progressive properties and characteristics of developing law are expressed, enshrined and enforced both in individual national-state systems of law and in international law "[9, p. 40]. Human rights are of natural origin. They are inextricably linked to the existence of man as a living being: the right to life, to freedom in all its manifestations, the right to respect for human dignity, to resist oppression, and so on. These rights are inalienable and do not have a dual interpretation, as any encroachment on them is forbidden.

It is in the field of human rights , namely their regulation and development, that the process of globalization is the most important, the most constructive, since, as S. Alekseev argues, it is the right (human rights)

that implementation of other processes of globalization in their positive meaning depends on." [10 , p. 257]. At the end of the twentieth century globalization has encompassed the legal, political, ideological, social and other spheres of public life, acquired humanitarian, philosophical, philosophical, moral and ethical aspects of its dimension. By directly affecting the consciousness of both an individual and society as a whole, globalization has become comprehensive and irreversible. Its essence is the integration of different spheres of social life of states on the basis of civilization standards, which are determined by the Western system of values.

The process of fixing human rights in the positive law of states in the twentieth century is explained by the events of World War II. According to S.S. Alexeev, historical events of the twentieth century, which put humanity on the brink of death, showed that there is no other institution than human rights, which would reflect its freedom, sovereignty, independence, resisting the arbitrariness and tyranny of state power. Human rights are understood as such 'intended to assert, regardless of the state of society, the high dignity and freedom of man , high spiritual and moral principles, and in this respect, first of all, to protect a man as a highly spiritual creature being from the will of the most powerful force in society - the state power, his desire to rule over a person'[11 , p. 621].

Therefore, human rights in democratic states do not only lag behind positive laws, but also have priority over them. Modern globalization processes, as well as the human rights protection system, have their origin in the formation of the United Nations (UN). Since the attempt to prevent the start of the Second World War by means of international legal mechanisms proved to be unsuccessful, the countries of anti-fascist coalition developed legal rules and mechanisms for their implementation in accordance with new ideas and orders in the world [12 , p. 87].

In this context, it is worth mentioning the legal reform, which is an indispensable attribute of the development of law in our country. Bearing in mind the legal reform, it should be emphasized that the content of the rule of law is determined by the quality of the current legislation. It is necessary to abolish those laws that do not meet the needs of

social life, develop and adopt new standards adjusted to objective needs of a today's life and meet the best practices of law with a democratic tradition and a classic market economy.

In this sense, the real content of the rule of law is determined by the quality of the current legislation. Inefficient laws create the basis for formalism, hypocrisy, corruption, destroying the very idea of legitimacy. As a well-known Russian lawyer V. Yakovlev pointed out, 'we need not only laws, not only the power that would obey the laws, not only the rights and freedoms of citizens proclaimed by the laws - we need such a regime of social life which would demand the law to be abiding for an average citizen, and for the chief executive officer of our country, any government, administration, etc. there must be a mechanism ensuring that the law is obeyed by all people' [13, p. 25].

The rule of law in the legal system must become a real state of social life. It is necessary to substantially limit the departmental rulemaking, as by-laws which often destroy, distort the positive potential of laws are passed against the law and paralyze its effect.

An important component of legal reform must be reform of the judiciary. The main areas of word-law reform include:

- 1) creation of an effective mechanism to prevent the influence of the legislative and executive power on the content of judicial decisions;
- 2) protection of the courts from any influence of political parties and public about associations;
- 3) recognition of the rights of citizens to be heard by a competent, independent and impartial court in the terms established by the law of time;
- 4) appealing misconduct in any court;
- 5) determination of the fundamental principles of the legal status of the judges (independence, inviolability etc.);
- 6) exercise of judicial power only by a court;
- 7) introduction of the jury into the process of court proceedings.

When reforming the judicial system, it is very important to prevent the independence of the court and judges from not turning into 'independence' from everything, transformation of the judiciary into an uncontrolled 'state in the state' [14, p. 350].

Today, society is increasingly recognizing itself as a holistic phenomenon, coming to the realization that overcoming crisis in a state depends on the common efforts of all peoples. The progressive expression of the process of globalization has become the formation of the fourth generation of human rights, established by different international treaties. These rights include rights to peace and security, a healthy environment, access to the economic, scientific and cultural potential of humanity, etc. [15, p. 633–634]. Among the conditions that in the future may help to optimize the protection of human rights and freedoms at the national and international levels are the following measures: accelerating the process of formation and development of all branches of law and the legal system in general; preparation and formal approval by the state of a comprehensive concept or set of concepts in the field of human rights and freedoms; preparation and formal approval of a nationwide declaration of human rights and freedoms or a declaration on certain types of rights (political, economic, social, cultural, etc.); drafting by the state a Human Rights and Freedoms Code and an International or European Human Rights Code; preparation and approval of a program or set of programs for ensuring human rights and freedoms, etc. [16, p. 7].

In the conditions of globalization, interaction, mutual influence and mutual enrichment of law, legal cultures, legal systems of society have become traditional. Therefore, along with categories such as harmonization, unification, universalization, implementation of law, etc., legal convergence (convergence in law), facilitating the identification and comprehension of similarities between different legal cultures, legal traditions, law and order has gained great importance [17, c. 8].

Modern society, being developed in the conditions of globalization, is a combination of different cultures in a single world space. In the process of shaping the rights of a multicultural society, various changes have occurred in its philosophical concept. In line with social changes, approaches to understanding the legal reality are also transformed. One of the new philosophical concepts of a globalized society is the idea of multiculturalism, that is the integration of different legal cultures with the simultaneous preservation of these cultures and ways to

ensure their interaction and enrichment in terms of equality [18, p. 3].

Nowadays, one of the effective ways to respond to the circumstances of globalization, is a comprehensive understanding of this phenomenon at both philosophical and legal level, so that minimize the negative impact of globalization on human life and society, as well as to promote the positive aspects of globalization, in particular, through the implementation of generally recognized European and world legal standards, principles and values [19, p. 361].

Any right arises and functions in close connection with the public values, which,

being entrenched in law, become legal. Transformations in society lead to a change in its values, and therefore the impact of globalization processes on the social life of people give rise to the development and change of legal values. All legal values are derived from the main social value - a person. Legal values are understood not only as values embodied in law, but values expressing the 'spirit' of law and are reflections of the principles of justice and freedom.

Conclusions

Thus, the value of law is its ability to be a means of meeting new, necessary, progressive needs of society and its individuals. The positive impact of globalization can be seen in a gradual disappearance of cultural differences, unification and universalization of law, its regionalization, humanization and harmonization, acceleration and updating of the processes of legal development, borrowing of international experience and application of international principles of law, etc. In addition, the most important institutions of law, such as human rights and freedoms, have been recognized, guaranteed and protected. The negative side of the impact of globalization on law is a sharp increase in the number of regulations, destruction of cultural identity, uniqueness, uniqueness of a particular society, its legal values and traditions.

In its essence, globalization is a complex process. It penetrates into all spheres of public life, changing them radically. This phenomenon is rather contradictory, since it has different transformations in every state. The impact of globalization processes has been also experienced by Ukraine since its independence, as it has become open to cooperation with all countries in the world. Our state is a relatively young, so it has a poorly developed regulatory framework. The legal system needs to be thoroughly reformed, and therefore get ready for the changes. Our country is not always ready to resist negative effects of globalization. To avoid such an exposure to a negative impact it is necessary to adapt Ukrainian national legal system to norms and standards of the European legal system.

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