

РОЗДІЛ І. ЗАГАЛЬНОТЕОРЕТИЧНІ ПРОБЛЕМИ ДЕРЖАВИ І ПРАВА

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THE THEORETICAL AND METHODOLOGICAL ANALYSIS OF LEGAL SYSTEMS AND THEIR CLASSIFICATION

The article presents a comprehensive theoretical and methodological analysis of legal systems and their classification. The legal system is examined as a complex structural entity encompassing legal norms, institutions, regulatory mechanisms, and legal culture. It is determined that the strategic direction for the development of Ukraine's legal system is the improvement of the conceptual framework of legal science, which will contribute to strengthening the rule of law, ensuring legality, and maintaining legal order. The study explores the main approaches to the classification of legal systems, including the historical-genetic, civilizational, comparative-legal, and legal style concepts. General criteria for the typology of legal systems are analyzed, taking into account sources of law, methods of law enforcement, ideological, and socio-cultural factors. Three main groups of legal systems are distinguished: those of economically developed countries, developing states, and post-socialist nations. Special attention is given to mixed legal systems that combine elements of multiple legal traditions. The existence of subnational and supranational legal systems is also considered. The article analyzes the specifics of the legal systems of the European Union and the Council of Europe, which operate based on international legal agreements. Additionally, religious legal systems founded on normative prescriptions of religious doctrines are examined. It is established that the classification of legal systems is a dynamic process influenced by historical, political, and social transformations. The study concludes that further scholarly research is needed to enhance the methodological foundations of legal system typology and its adaptation to globalization processes.

Key words: legal system, classification of legal systems, legal families, civilizational approach, supranational legal systems, globalization of law.

Problem statement. Modern legal science continuously seeks optimal methods for systematizing and analyzing legal phenomena. The concept of a legal system plays a crucial role in jurisprudence, as it enables the study of the interrelation between legal norms, legal institutions, enforcement mechanisms, and legal culture. However, the diversity of legal systems worldwide complicates their examination, necessitating their classification. The relevance of this study is determined by the fact that globalization, regional integration, and the development of international law pose new challenges to traditional approaches to classifying legal systems. On the one hand, legal families retain their historically formed characteristics; on the other, there is a gradual harmonization of national legal orders. In this context, the issue arises regarding the criteria for classifying legal systems, identifying their nature, key characteristics, and development trends. The study of legal systems and their

classification is significant not only from a theoretical perspective but also from a practical standpoint. It facilitates mutual understanding between states in international cooperation, aids in the harmonization of legislation, promotes legal transplants, and contributes to the improvement of national legal orders. Particular attention should be given to analyzing the role of supranational legal systems, such as those of the European Union and the Council of Europe, as well as determining the place of religious and traditional legal systems within the general classification.

Thus, the issue of legal system classification remains highly relevant to contemporary legal science and requires further comprehensive research that considers historical, socio-economic, political, and cultural factors.

Analysis of recent research and publications. The study of legal systems and their classification is one of the key areas of modern legal science. Scholars propose various approaches to their analysis, taking into account historical, civilizational, comparative-legal, and methodological aspects. M. G. Khaustova has made a significant contribution to the development of this field by studying the evolution of legal systems in the context of democratic transformations and globalization processes. She emphasizes the complexity and multidimensional nature of legal system classification, highlighting its dynamic nature and dependence on socio-economic factors. Methodological and historical-theoretical aspects of legal systems have been explored by M. V. Tsvik and V. Petryshyn, who offer a comprehensive approach to analyzing their structure and development. The issues of mixed legal systems and their classification have been examined by J. Zekoll, who analyzed the legal system of Louisiana, and H. O. Samilo, who studied the general patterns of such systems. L. A. Luts proposed a typology of modern legal families, focusing on European interstate legal systems and integration processes. V. Ye. Kirkin analyzed the interaction of legal systems in the modern world, their conflicts, and mechanisms of mutual influence, while V. V. Vlasenko studied the impact of globalization on their development. Methodological approaches to studying legal systems, particularly their teleological dimension, have been the subject of academic analysis by B. V. Malyshev.

Thus, contemporary research offers diverse approaches to the classification and development of legal systems. The works of M. G. Khaustova play a crucial role in this field, as they cover both general theoretical issues and practical aspects of legal system transformation in modern conditions.

Formulation of research objectives. The study of legal systems and their classification is one of the key areas of modern legal science. Given the dynamic development of legal systems, the influence of globalization, international integration, and the interaction of various legal traditions, there is a growing need to develop a systematic approach to their classification. The objective of this research is to conduct a theoretical and methodological analysis of the world's legal systems, identify the main approaches to their classification, and reveal the patterns of their evolution.

Presentation of the main material. The category of the legal system has been introduced into legal science to define law as a systemic social phenomenon aimed at analyzing the interrelation and interaction of its structural elements. From the broadest theoretical perspectives, the legal system is characterized as a complex, collective concept that encompasses the entire set of legal phenomena in society and the full range of legal instruments. Thus, any legal phenomenon, in one way or another, characterizes the legal system.

A strategic direction in the development of Ukraine's legal system is the modernization of the conceptual framework of legal science to deepen legal understanding, develop mechanisms for implementing the constitutional principle of the rule of law, ensure legality, and maintain legal order. As a fundamental attribute of state institutions, law – ensuring human

interests as the highest social value – should be studied in close connection with economic, social, and political processes.

The legal map of the world is a complex and dynamic system that reflects the geographical distribution and specificity of national legal systems, as well as their transformation under the influence of political and legal changes and integration processes. It consists of three main groups: (1) legal systems of economically developed democratic countries; (2) legal systems of developing states; (3) post-socialist legal systems that emerged as a result of the transition from a centrally planned economy to a market economy. The latter group includes 15 countries of Central and Southeastern Europe, the Baltic states, 12 CIS countries, and Mongolia [1].

The civilizational approach to the typology of legal systems allows for distinguishing legal civilizations that have developed under the influence of historical and cultural factors. Western and Eastern legal civilizations are further divided into distinct types: at the stage of local civilizations – Ancient Egyptian, Babylonian, Ancient Indian, Persian, Ancient Chinese, and Ancient Greco-Roman; at the stage of particular civilizations – Far Eastern (Confucian), Islamic, and Western and Eastern European legal traditions. The Far Eastern legal tradition is characterized by the secondary role of law in regulating social relations, Islamic law is based on religious norms, while European law perceives law as an instrument for achieving justice.

The legal map of the world is highly complex due to the existence of a large number of independent states, each with its own legal system, while some states operate multiple legal systems (such as the United Kingdom and Canada) or even dozens (as in the United States and Russia). In addition to universally recognized states, there are partially recognized entities (such as Taiwan and Northern Cyprus) and territories with an undefined status under external governance (for example, the Palestinian Authority). Despite lacking sovereignty, these entities maintain their own quasi-national legal systems. Within certain states, subnational legal systems also function with significant autonomy, including the legal systems of Quebec in Canada, Scotland in the United Kingdom, and the state of Louisiana in the United States [2, p. 54].

Beyond national and subnational legal systems operating within individual states, there exist legal systems whose jurisdiction extends beyond a single country. These are classified as supranational legal systems, established based on international legal agreements between states. Such systems include intergovernmental legal entities that possess their own legal framework, sources of law, mechanisms for law-making, and legal enforcement.

A notable example is the legal system of the European Union, which functions on the basis of integration treaties and has a supranational character. It includes normative acts that are binding on all member states, as well as specialized legal protection mechanisms that ensure compliance with a unified legal order. A distinctive feature of this system is that its legal norms may have direct effect within the national legal orders of member states, ensuring uniform regulation within the common market and other areas of activity [3].

Another supranational legal system is the legal system of the Council of Europe, which influences its member states through international treaties, particularly the European Convention on Human Rights. Its primary mechanism for ensuring compliance with legal norms is the European Court of Human Rights, whose rulings are mandatory for member states. Supranational legal systems play a crucial role in the development of international law and the integration of national legal orders into unified legal spaces.

The classification of legal systems into national and supranational categories allows for the determination of their nature and operational features within the global legal framework. National legal systems may include subnational entities, whereas supranational

systems encompass intergovernmental and religious legal systems that interact within the framework of international legal order [4, p. 705]. The diversity of legal systems is shaped by historical traditions, conditions of their formation, and specific development features. Their content is influenced both by initial factors of establishment and subsequent transformations under the impact of new socio-political conditions. For instance, Japan's legal system has significantly evolved under the influence of Chinese law.

The systematization of legal systems through their classification is an essential tool for legal analysis, allowing for their organization based on common criteria. In legal science, classification is regarded as the division of legal systems according to shared characteristics, ensuring a structured approach to their study. The general features of legal systems make it possible to group them into legal families – clusters of national legal systems that share common sources of law, legal culture, historical development, and styles of legal regulation [4, p. 31–32]. The formation of these groups is based on an analysis of the legal system's structure, legal techniques, and doctrinal approaches.

The necessity of classifying legal systems is explained by several factors. Firstly, it serves a research function, facilitating a comprehensive study of the global legal landscape. Secondly, it enables the identification of each legal system's place within the global structure and the prediction of possible directions for its evolution. Thirdly, classification has a practical application – it contributes to the harmonization of legislation and the improvement of legal systems [1].

The problem of selecting classification criteria for national legal systems remains one of the key issues in legal science. French jurist G. Glasson proposed a classification of legal systems as early as before 1880, based on their genetic development. The first group includes countries where Roman law predominates (Italy, Romania, Portugal, Greece, Spain). The second group consists of states where the influence of Roman law is minimal, and the legal system is primarily based on customary and early medieval Germanic legal traditions (England, Scandinavian countries, Russia). The third group comprises legal systems of a mixed Germanic-Roman type, which integrate elements of both Roman and Germanic law (France, Switzerland, Germany) [6, p. 46].

A similar approach was applied by Argentine jurist M. Martínez-Paz, who identified four groups of legal systems based on historical and legal criteria. The first group includes legal systems founded on national customs and the legal norms of early medieval Germanic tribes (England, Sweden, Norway) [7]. The second group consists of legal systems that combine Germanic and Roman traditions, shaped under the influence of both Germanic customary law and Roman law (France, Germany, Austria). The third group encompasses legal systems that integrate Germanic, Roman, and Canon law traditions (Portugal, Spain). The fourth group includes systems that incorporate elements of Roman and Canon law, combined with democratic legal institutions (USA, Switzerland) [8, p. 67].

Researcher M. Khaustova notes that the idea of classifying legal systems was first recognized at the International Congress of Comparative Law in Paris in 1900. At that time, five legal families were identified: the French, Germanic, Anglo-American, Slavic, and Muslim legal families. In 1913, Soze-Hall proposed an ethnographic classification of legal systems, distinguishing Indo-European, Semitic, Mongolian, and so-called "barbarian" legal systems. Furthermore, he subdivided the Indo-European family into Hindu, Iranian, Celtic, Greco-Latin, Germanic, Anglo-Saxon, and Latin-Slavic subgroups [9, p. 89–90].

J. Wigmore developed a general classification of legal systems, dividing comparative law into three components: describing legal systems, analyzing their characteristics, and studying the evolution of legal ideas. In his work *Panorama of the World's Legal Systems*, he identified 16 legal systems, including Egyptian, Mesopotamian, Jewish, Chinese, Hindu,

Greek, Roman, Japanese, Muslim, Celtic, Slavic, Germanic, maritime, ecclesiastical, Romanist, and Anglican legal traditions [10, p. 132]. Wigmore's modern classification includes five major groupings: the law of primitive peoples, ancient law, North American legal systems, religious legal systems, and the legal traditions of the Semito-Hamitic language family. His approach integrates both synchronic and diachronic perspectives, which complicates classification but effectively reflects cultural and legal differences [10, p. 127].

In the second half of the 20th century, two main approaches to the classification of legal systems gained prominence. The first, proposed by R. David, was based on the concept of a tripartite classification, dividing legal systems into three primary families: Romano-Germanic, Common Law, and Socialist legal systems. This classification was founded on legal technique and the shared philosophical, political, and economic principles within these systems. He grouped all other legal systems under the category of «other types of social organization and law», which included Muslim, Hindu, and Indian law, as well as the legal systems of African and East Asian countries [11]. David emphasized that, while these three primary legal families encompass a significant portion of the world, they do not fully account for the diversity of legal traditions, as many countries have adopted alternative models of societal organization [1].

The second approach was further developed by K. Zweigert, who refined the classification originally proposed by J. Rmanjon, B. Nolde, and G. Wolf, rejecting purely external criteria [22, p. 76]. Zweigert introduced the concept of “legal style” as the basis for classifying legal systems. This approach considers five key factors: (a) the origins and evolution of the legal system; (b) distinctive features of legal reasoning; (c) the specificity of legal institutions; (d) the nature of legal sources and methods of interpretation; and (e) ideological factors [12, p. 251].

In their foundational work *Introduction to Comparative Law in the Field of Private Law* (1971), K. Zweigert applied this approach to the systematization of legal systems worldwide. They identified eight legal families: Roman, Germanic, Anglo-American, Socialist, Scandinavian, Far Eastern, Islamic, and Hindu legal traditions [2, p. 55]. Both the general tripartite and the detailed classifications hold scientific value; however, neither is exhaustive, as they fail to encompass all legal systems. A key logical flaw in such typologies is the inclusion of religious legal systems, particularly Islamic law, within legal families, despite the fact that they do not integrate different legal systems but rather exist as independent normative frameworks.

The complexity of legal system classification arises from their diversity and the uneven nature of socio-legal development, which allows for the coexistence of legal systems at different evolutionary stages. The analysis of legal families requires consideration of the historical conditions that shaped them. As R. David notes, classification should not be based solely on technical criteria (common legal methodologies) or ideological factors (shared legal concepts) but also on historical and sociological dimensions. States lacking well-established legal traditions cannot be grouped within the same legal family as those with long-standing legal development and a high level of legal culture. A comprehensive approach to classifying legal systems necessitates the application of methodologies from legal studies, sociology, and political science [13].

R. David proposed a division of legal systems into two primary groups. The first includes systems sharing technical, ideological, and sociological characteristics, such as the Romano-Germanic and Common Law systems. The second group consists of legal systems based on a unified ideological foundation, notably Islamic and Hindu law [2]. M. Khaustova supports the need to consider political, ideological, and, above all, cultural factors in the classification of legal systems. He identifies the most widespread and influential legal families: the

Romano-Germanic, Anglo-Saxon (Common Law), legal systems of socialist and post-socialist countries, as well as Jewish and Islamic law. The scholar emphasizes that no classification can be entirely definitive, as every legal family inherently possesses a relative character [1].

A more detailed classification based on the ideological and religious approach was proposed by K. Sakve. At the first level, he divides legal systems into religious and non-religious. The religious category includes Islamic law, Jewish (Hebrew) law, Canon law of the Catholic Church, and Hindu law. Within the non-religious legal systems, he differentiates three groups based on legal understanding and the role of law in society: Western, non-Western, and quasi-Western legal systems. The Western group comprises the Romano-Germanic, Anglo-American, and Scandinavian legal systems. The non-Western group includes legal systems of Southeast Asia, Africa, and other regions, while the quasi-Western group encompasses socialist legal systems (China, Laos, Cambodia, North Korea, Cuba, Angola, Ethiopia, Mozambique) [2, p. 55].

V. Afitsky notes that legal systems may form communities based on national and historical roots, common legal objectives, structural-functional features, and stylistic characteristics of law. Within the Christian legal tradition, he distinguishes the Romano-Germanic (continental), Anglo-Saxon (common law), Scandinavian, Latin American, and Slavic legal families. National legal systems that originated within certain states continue to operate there today: Hindu law in India, Confucian law in China, Shinto law in Japan, and Jewish law in Israel. The scholar emphasizes that assigning a legal system to a particular family or group is determined by a dominant factor or a combination of factors in its formation [14].

V. M. Sinyukov presents his own concept of legal family classification, taking into account historical tradition, legal style, and cultural-spiritual factors, including religion and ethics. He identifies the following major legal traditions: general (Anglo-Saxon) law, the Romano-Germanic legal family, the traditional legal system based on customary law, and religious legal systems (Islamic and Hindu law). Additionally, he highlights the Slavic legal family as a distinct branch of legal civilization that emerged after the collapse of the global socialist system. He justifies its specificity by the preservation of the socialist type of law in certain states and significant transformations in their socio-political structure, which give this legal family new characteristics and necessitate further scientific research. T. V. Kashanina defines a legal family as a group of national legal systems that share common characteristics, including the form of law, its principles, structure, legal culture, and traditions. She emphasizes that legal principles are a key feature of any legal family. Based on this criterion, the researcher identifies several legal families [2].

The customary law family includes the legal systems of African states, characterized by the priority of duty over subjective rights, collectivism and tribal solidarity, the absence of private property institutions, the conciliatory nature of justice, and the inseparability of substantive and procedural law [15].

The Muslim law family unites the Arab legal tradition, Islamic, and Muslim law, which are based on the principles of the eternity and immutability of Sharia norms, its universality and supremacy, as well as the principle of equality, which applies exclusively to male believers [2, p. 56]. The common law family is founded on judicial precedent and rational principles, requiring the mandatory approval of norms through judicial practice, defining their regulatory significance through court decisions, applying the principle of justice to ensure proportionality in punishment, and assessing liability not only based on guilt but also considering the final outcome of the judicial process [16].

The Romano-Germanic legal family is characterized by a high level of doctrinal development, earning it the designation of "professorial law". Its distinctive features include the pivotal role of legal scholarship in shaping legal norms, judicial authorities lacking

the power to freely alter or reject doctrinal provisions, legal principles being enshrined in legislation and forming its foundation, and a hierarchical system of legal principles that encompasses civilizational, legal family, general, intersectoral, sectoral, and institutional principles. An essential element of this legal tradition is also the principle of equality before the law. M. V. Zakharova identifies the style of legal thinking as the primary criterion for classifying legal systems, considering it a method of intellectual activity in the legal sphere. She distinguishes four main styles of legal thinking: the Continental European style, oriented toward a legislative method of law-making; the Anglo-Saxon style, where law is primarily formed through judicial practice; the traditional style, based on an intra-social mechanism of law-making; and the religious-doctrinal style, which results from religious revelation, codified in sacred texts or legal doctrines interpreting them [2].

Depending on the specifics of the normative element's structure, the researcher classifies legal systems into mononuclear and polynuclear types. The majority of modern legal systems are mononuclear, as their structure is based on a single style of legal thinking. In contrast, polynuclear systems combine two or more styles of legal thinking, which is particularly characteristic of states with so-called "nomadic legal systems". In such countries, despite the dominance of a particular legal style, other legal traditions may prevail in certain regions. For example, in the province of Quebec, unlike other territorial units of Canada, the fundamental legal tradition is not Anglo-Saxon but Romano-Germanic [16]. Applying the civilizational-formational criterion, V. Ye. Kirkin identifies three contemporary legal systems: the Muslim legal system, the totalitarian-socialist legal system (encompassing over 1.5 billion people and operating in China, Vietnam, Cuba, North Korea, and Laos), and the liberal legal system, which includes the German-Roman and Anglo-Saxon legal families [2].

L. Luts proposes a complex criterion for classifying legal systems, assessing their current state and distinguishing the following objects of comparative analysis: the Romano-Germanic (continental) system, the Anglo-American (common law) system, the mixed (dual) system represented by the Scandinavian subtype, religious-communal systems, the Muslim and Hindu subtypes, traditional-philosophical systems (the Japanese and Chinese subtypes), customary-communal legal systems, and interstate legal formations. She defines that the complex criterion of comparative jurisprudence includes institutional, functional, and normative aspects of each type of legal system [11, p. 12].

Conclusions. The conducted research establishes that the legal system is a complex structural formation encompassing a set of legal norms, institutions, regulatory mechanisms, and legal culture. Its classification serves as a necessary methodological tool in legal science, facilitating the systematization of legal phenomena, the identification of common patterns and differences between legal systems, as well as the analysis of their historical development and contemporary transformation. The study confirms the existence of various approaches to the classification of legal systems. The historical-genetic approach examines legal systems through the lens of their origins and interaction with Roman law and the legal traditions of specific nations. The civilizational approach is based on the analysis of the socio-cultural environment in which legal systems emerged, allowing the differentiation of Western, Eastern, religious, and traditional legal civilizations. The legal style concept offers a typology of legal systems based on their methodological characteristics, sources of law, legal reasoning, and features of legal application.

It has been established that legal systems are divided into national, subnational, and supranational categories. Supranational legal systems play a crucial role in the functioning of international organizations and regional integration entities, as evidenced by the legal systems of the European Union and the Council of Europe. Religious legal systems constitute a separate category, operating as independent legal orders based on normative prescriptions

of religious doctrines. The modern development of legal systems is characterized by processes of globalization and integration, which foster interaction between different legal families. However, significant differentiation persists due to historical, socio-political, and cultural factors.

Thus, the study confirms that the classification of legal systems is a complex and dynamic process that requires a comprehensive approach integrating legal, historical, sociological, and philosophical aspects. Future research should focus on refining the methodology of legal system classification, analyzing processes of legal convergence, and studying the impact of globalization and regional trends on the evolution of legal orders in the modern world.

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ТЕОРЕТИКО-МЕТОДОЛОГІЧНИЙ АНАЛІЗ ПРАВОВИХ СИСТЕМ І ЇХ КЛАСИФІКАЦІЇ

У статті здійснено комплексний теоретико-методологічний аналіз правових систем і їх класифікації. Розглянуто правову систему як складне структурне утворення, що охоплює правові норми, інститути, механізми правового регулювання та правову культуру. Визначено, що стратегічним напрямом розвитку правової системи України є вдосконалення понятійного апарату правової науки, що сприятиме зміцненню принципу верховенства права, забезпеченню законності й підтриманню правопорядку.

Досліджено основні підходи до класифікації правових систем, зокрема історико-генетичний, цивілізаційний, порівняльно-правовий і концепцію правового стилю. Проаналізовано загальні критерії типологізації правових систем, що враховують джерела права, методи правозастосування, ідеологічні й соціокультурні фактори. Виокремлено три основні групи правових систем: економічно розвинених країн, держав, що розвиваються, і постсоціалістичних країн. Окрему увагу приділено змішаним правовим системам, які поєднують елементи кількох правових традицій. Розглянуто питання існування субнаціональних і наднаціональних правових систем. Проаналізовано специфіку правових систем Європейського Союзу й Ради Європи, що функціонують на основі міжнародно-правових угод. Окремо досліджено релігійні

правові системи, які ґрунтуються на нормативних приписах релігійних доктрин. Установлено, що класифікація правових систем є динамічним процесом, що зумовлений історичними, політичними та соціальними трансформаціями. Зроблено висновок про необхідність подальших наукових досліджень щодо вдосконалення методологічних засад типологізації правових систем і їх адаптації до глобалізаційних процесів.

Ключові слова: правова система, класифікація правових систем, правові сім'ї, цивілізаційний підхід, наднаціональні правові системи, глобалізація права.