

Секция «Юриспруденция»

Legal system as a cultural and historical phenomenon

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Law is one of the significant components of modern life. Growing from the primitive forms, law has become a condition of a proper society functioning. Under its influence an individual himself undergoes changes, becoming a legal being.

The birth of law is a complex process. As a special form of social life, law has its specific regularities of origin and development. The law of every state (or nation) is a phenomenon. A national law can differ in level of codification, correlation with morals, philosophy or religion. In jurisprudence to characterize historical, legal and ethnocultural differences of the laws of states the concept of a legal system is used.

Modern researchers determine a legal system to be a historical set of law, legal culture and legal practice, both of a state, and of the association of states [1]. In a static condition it can be presented as a set of legal regulations, principles and institutes (the normative part of the system), legal establishments (the organizational element), legal views, ideas and the conception peculiar to a certain society (the ideological element) [2].

The statics and dynamics of a legal system are influenced by historical features of formation and development of society, ideological factors, geographical position, foreign influence and migratory processes.

Taking into consideration a civilizational approach, it is noted that a legal system is under the influence of a number of material and non-material factors. One can speak about a legal system since the earliest stages of development of society. Throughout its existence the legal system has undergone various quantitative changes which are reflected qualitatively.

The idea of correlation between a person and nature, society and nature is not a new one. The geographical factor has an important value for historical backgrounds and prospects of any state or nation. At the initial stages of human history, nature dictated the forms of community and economic organization.

The geographical factor is also shown in the formation of a legal system. In particular, in England the island isolation, lack of foreign culture ethnic effect promoted the formation of a different law, unlike the continental one. The singularity of the English law is based on continuity in its development [3]. According to Konrad Zweigert and Hein Kotz "for correct understanding, English law and order as no other demands a thorough study of its historical roots" [4].

The identity of Japan's legal system is connected, in particular, with its environment. Geographical position, natural features of the Japanese archipelago which is basically a narrow ridge of islands, promoted a preservation of local features of lifestyle and mentality.

Ethnic, religious and social uniformity of Japan's population was combined with a rigid system of social regulations. The relative overpopulation in terms of the impossibility of an "outgo" (or psychological unwillingness to do it) dictated a need of strict rules of social coexistence [5]. Nowadays the features of Japanese society are shown in law. They are traced

while solving conflicts directed to reconciliation and in mechanism of mental perception of the law.

In conclusion it should be mentioned that the correlation between environment and historical cultural process isn't determined, however, at the initial stages it sets the parameters within which a legal system is formed. Original legal systems are created by a complex nature of various factors interaction.

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