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TRANSMISJA DZIEDZICTWA PRAWNEGO

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Adnotacja. Dziedzictwo prawne jest zjawiskiem gromadzącym osiągnięcia ludzi w dziedzinie prawa. Funkcjonalną istotą dziedzictwa prawnego jest zachowanie, wybór, generowanie i jednoczesne przekazywanie osiągnięć prawnych.

Kanałami tych procesów są instytucje prawne, tradycje prawne i mentalność prawna.

Instytucje prawne pojawiają się jako artefakty prawne, czyli odbicie obiektywnych, realnie istniejących stosunków społecznych. Instytucje prawne są obdarzone wewnętrznymi treściami, które mogą być przekazywane, nadawane z pokolenia na pokolenie. Realizują dynamiczną więź pokoleń, kształtują tożsamość prawną i parametry modelu prawnego społeczeństwa.

Inny kanał transmisji dziedzictwa prawnego, taki jak tradycje prawne, gromadzi wartości prawne. Tradycje prawne przenikają do przestrzeni prawnej, doskonaląc i rozwijając system prawny państwa. Znaczenie tradycji prawnych leży w ich funkcji normatywnej i regulacyjnej.

Szczególnym zjawiskiem transmisji dziedzictwa prawnego jest mentalność prawna, która przesądza o stereotypach zachowań prawnych, działalności prawnej i wizerunku prawa.

Słowa kluczowe: transmisja prawa, tradycje prawne, instytucje prawne, mentalność prawna, pamięć prawna, dziedzictwo prawne, wizerunek prawa.

TRANSLATION OF THE LEGAL HERITAGE

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Abstract. The legal heritage is the phenomenon that accumulates the achievements of the people in the sphere of law. The functional essence of the legal heritage is to preserve, select, generate and at the same time retranslate legal achievements.

The channels of this process are legal institutions, legal traditions and legal mentality.

The legal institution is presented as a legal artifact, that is, a reflection of objective, actually existing social relations. Legal institutions are endowed with an internal meaning that can be transmitted, broadcast from generation to generation. They carry out dynamic connection of generations, form legal identity and parameters of the legal model of society.

Another channel of translation of legal heritage such as the legal traditions accumulates legal values. Legal traditions penetrate into the legal space, improving and developing the legal system of the state. The meaning of legal traditions is in their normative and regulatory function.

A special phenomenon is represented by legal mentality, which predetermines the stereotypes of legal behavior, legal activity, image of law.

Key words: translation of law, legal traditions, legal institutions, legal mentality, legal memory, legal inheritance, image of law.

ТРАНСЛЯЦІЯ ПРАВОВОЇ СПАДЩИНИ

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Анотація. Правова спадщина – це феномен, який акумулює досягнення народу у сфері права. Функціональна сутність правової спадщини полягає у збереженні, відборі, генерації та водночас ретрансляції правових досягнень.

Каналами цих процесів є правові інститути, правові традиції та правовий менталітет.

Правові інститути постають як правові артефакти, тобто відображення об'єктивних, таких, що реально існують, суспільних відносин. Правові інститути наділені внутрішнім змістом, який може передаватися, транслюватися з покоління в покоління. Вони здійснюють динамічний зв'язок поколінь, формують правову ідентичність і параметри правової моделі суспільства.

Інший канал трансляції правової спадщини, як-от правові традиції, акумулює правові цінності. Правові традиції проникають у правовий простір, удосконалюють і розвивають правову систему держави. Значення правових традицій полягає в їхній нормативній та регулятивній функції.

Особливим феноменом трансляції правової спадщини постає правовий менталітет, який зумовлює стереотипи правової поведінки, правової діяльності й образ права.

Ключові слова: трансляція права, правові традиції, правові інститути, правовий менталітет, правова пам'ять, правове успадкування, образ права.

Introduction. Legal heritage is an important condition for the reproduction and development of legal culture, which integrates the achievements of the people, the nation, and humanity in the sphere of law. It is an important functional component, because it is the legal heritage that preserves, selects, generates and simultaneously retransmits legal achievements as legal values, legal institutions and legal traditions (Bytiak, Yakovyuk, 2007: 60).

As the basis of legal culture, legal heritage is “objectively existing phenomenon with its own ontological being, which is a system of ideal legal forms – legal patterns, ideals, values” (Hanzenko, 2002: 13). In addition, as a value element of legal life, conditioned by sociocultural experience and traditions, legal heritage is a form of translation (transferring) of legal experience, legal values, patterns of behavior aimed at the regulation of relations between members of society.

1. Legal memory in preserving of the legal identity

Such concepts as socio-cultural memory (national, historical, social, communicative, collective), “historical truth”, “historical experience”, “communicative tradition”, “legal tradition” correlate with the concept of legal heritage as a component of legal culture. They are based on the accumulation, preservation and transmission of socially significant information between generations. In a broad sense, they are united by the concept of “social memory” as a fundamental category of human culture and a mechanism for the preservation of socially significant information (Boldycheva, 2009: 1). According to V. Boldycheva, “culture preserves social experience of humanity in concepts and words, formulas of science, various languages of art, tools, customs and traditions. Except culture, society has no other mechanisms at its disposal for the transmission of the entire wealth of experience accumulated by mankind” (Boldycheva, 2009). The transmission of legal memory ensures the continuity of the functioning of law, and therefore preserves its identity, despite the constant change of generations. This means that legal culture maintains the legal stability of society in historical terms and is a way, a channel for transmitting such experience.

Reflecting on the significance of memory in the transmission of any information, O. Petrik notes that its essence lies in the field of value and meaning (Petrik, 2010).

Law, as part of culture, has been and remains one of the main origins of the legal values' system in society. Such values are distinguished by the presence of historical memory, which preserves in the public consciousness the evaluative attitudes formed under the influence of historical events. By focusing on the needs, goals and values that set the dynamics of legal processes – legal memory actualises some past events and ignores others. In this way, certain patterns of behaviour and attitudes are historically reinforced, which mainly work to preserve and maintain the legal identity of a particular society.

From the point of view of M. Verenych, memory is “a necessary condition for existence of society and is based on accumulation, preservation and translation of socially significant information in intergenerational communication” (Verenych, 2011: 218). G. Osipov presents his own interpretation of the nature of “memory”, who defines it as a set of socio-cultural tools and institutions that select and transform actual social information into information about the past (retrospective) in order to preserve accumulated social experience and pass it from one generation to another. Moreover, social memory does not mechanically transpose the past into the present, but “understands it as a heritage in order to discover its actual meaning, which is realized by contemporary culture” (Osipov, 2000: 312).

Accordingly, legal memory is a condition for the existence of legal culture, which manifests itself in the accumulation, preservation and transmission of legal information by comprehending it as a legal heritage in order to identify its actual meaning.

Every society has its own semantic continuum of law, which includes value legal codes, the most used legal symbols. It is these that determine the persistence of legal memory – as a means of transmitting legal information between generations (Kalita, 2007: 15).

2. Channels of legal heritage broadcasting

The means of expressing and conveying the meaning of information, including legal content, are the “word”, the “text” and the “sign”, which “structure the categorical framework of semiotics” (Kutsepal, 2006: 3).

Based on O. Pavlishin’s ideas on the recognition of law as a multidimensional sign system in which there are links between the elements of one level, inter-level connections, as well as connections of signs with the objects of spiritual, social and material reality that they denote, law can be considered as a form of legal consciousness, value and normative system, regulator of social relations, practice of organization of human life (Pavlishin, 2017: 252). In cultural studies, the phenomenon that describes the stable set of fundamental perceptions and manifestations of the subjects of society formed on the basis of social and spiritual experience of previous generations, which guides and determines the consciousness and behaviour of the subjects – is the mentality. Mentality also includes a way of thinking, attitudes, disposition of perception, disposition of mind. This complex predetermines the stereotypes of behaviour, activity, way of life and is a way of fixing and transmitting the sign elements. Mentality is the basis of a way of life. Depending on the mentality, it determines the system of thinking, advantages and values (Makeeva, 2003).

Thus, the legal mentality expresses the generally recognisable content of the objects of legal heritage, which are fixed in the legal experience, and provides a mechanism for its reproduction and modification – it acts as a means of translation (transmission) of the legal heritage. Semiotics of law is a rational methodological paradigm studying of law, which objectively describes the sign structures that represent legal reality. Semiotic approach to the analysis of legal being has both integrative (makes it possible to avoid the traditional opposition of natural and positive law) and independent methodological significance (makes it possible to reveal properties and attributes of legal reality that remain understudied, because they are not in the field of view of alternative approaches).

From the point of view of semiotics, legal heritage is a huge information sign system, in which scenarios of human legal behaviour are created by means of special codes. According to A. Ovchinnikova, the entire legal heritage can be imagined as a multilingual space. It is in legal signs that people select and structure their knowledge about the world of law (Ovchinnikova, 2016: 64–65). Accordingly, different types of legal heritage select and structure information in different ways. Semiotics considers all phenomena of legal heritage as facts of communication, separate messages (epistles) which are organised and become understandable only according to a certain code. The legal heritage thus speaks in symbols and signs. Therefore, by studying the sign systems of different cultures, it is possible to identify their underlying meanings by mining this or that information.

This model of legal inheritance was developed in general terms by R. Jakobson. According to his position, the necessary components of a sign situation are the addressee (the person who transmits information), the addressee (the person who receives information), the message, the text (the sign medium in which the message is “encrypted”), the code (a certain set of rules by which the information is interpreted) (Jakobson, 1964: 123). According to this approach, the main purpose of heritage is to “structure the world around”; to be a kind of “generator of structure” that produces demands on an individual’s social life (Lotman, 1971: 146).

Legal tradition is the informational component of this structure, which captures the elements of legal heritage that are preserved and transmitted (translated) from generation to generation over a long period of time in a relatively unchanged form. Tradition, which is understood as inheritance and heritage, emerges as the lifeblood of culture, as a mechanism of preservation and reproduction of cultural constants (Sorokin, 2008: 19). Legal traditions accumulate legal values, bringing them into the legal space by influencing the legal sphere of society. Through legal consciousness, legal culture, legal technique legal traditions penetrate into legal space, improving and developing legal system of the state (Sulipov, 2010: 49–53). As R. Sulipov notes, the meaning of legal traditions in their normative-regulative function and is manifested in that they allow to preserve not only the basis, content of those specific forms of life of society, which generated them, but also specific forms of their existence. Today, this brings to the fore the problem of legal traditions, traditional values and their transformation in the modern legal space (Sulipov, 2013: 2).

The phenomenon of legal tradition is seen as an integral component of the legal life of society, subject to the regularities of functioning and development of legal culture, as a mechanism for the preservation and transmission of the most important value orientations and legal attitudes of activity, which make an important impact on the nature and direction of the legal dynamics (Anokhina, 2010: 92–95).

According to I. Kovalenko, legal traditions ensure the integrity of legal culture as a system, perform a formative role and meaningfully accommodate many different cultural manifestations. Legal tradition, in her opinion, creates certain legal and cultural contexts. The author notes that the existence of tradition depends on the persistence of the contextual framework, as tradition provides for a measure of worldview integrity with an intensive reference to non-reductional experience. The complex of legal traditions acts as the “bloodstream” of the entire legal culture in terms of its architectonics, which makes it possible to translate its codes and meanings by various means. And even the modern legal culture acts as nothing other than a field of implementation of legal tradition mechanisms in transformed forms (Kovalenko, 2013: 119).

Tradition emerges as “a factor of cultural continuity and stabilisation of social development”, “a group experience expressed in socially organised stereotypes which, through spatial and temporal transmission, accumulates and reproduces in different human collectives” (Markarian, 1983: 172).

Legal tradition is one of the means of transmission of socio-cultural and legal heritage, which allows N. Mednis to consider the translation of legal traditions as a critical component in the assimilation of the actualized part of the legal heritage (Mednis, 2007: 11). In the opinion of this author, the transmission of legal traditions is an interactive process and has an autonomous character in relation to other transmission processes by virtue of fixation and conservation of some or other elements of legal experience. At this time, N. Mednis observes, there is a modification and expansion of the sphere of “tradition”. This process on the one hand leads to a detailed study and restoration of legal traditions as heritage of the past and on the other hand, interactive processes of their transmission in information society allow us to speak about the possibility to create a unique system of preservation of “living” legal tradition (Mednis, 2007: 12).

Considering legal tradition as a form of fixation, fixation and selective preservation of those or other elements of legal experience, scholars emphasize on the universal mechanism of its transmission, which provides a persistent historical and genetic heredity in legal processes. Transformation contains what is transmitted and how this transmission is carried out, i.e. the communicative-translational-transmutational mode of information transmission. In other words, within the legal culture there is interaction between generations based on a relative, common understanding and interpretation of the meanings and values accumulated by the culture (Nadolny, Pilipenko, 2001: 396).

Legal tradition as a process of crystallisation and translation of the cumulative legal experience is considered by A. Hurevich. The scientist defines the essence of legal tradition as a process of transmitting legal information by reproducing the living spirit of legal culture (Hurevich, 2003: 215–216).

Noteworthy is the thought of D. Vovk, who interprets legal tradition as a concept that characterizes the specificity of the ideal and material being of law in the context of the idea of its historical development or the historical development of phenomena that affect the law. At the same time, he insists on that the legal tradition is not the legal system itself or certain legal phenomena, but a category that explains their singularity, peculiarity, taking into account the history of their emergence and development under the influence of certain factors (Vovk, 2013: 305).

The study of legal traditions enables us to see why such an image of law, such social meaning of law and legal system have formed in a society or group of societies united in a civilisation and thus reflects the dynamics of the historical existence of the legal system, formation and implementation of legal rules, cognition of law by the subject of law, reproduction of legal prescriptions in the form of legal behaviour, etc.

A legal institution can be identified as an independent means of transmitting legal heritage. As objects of legal heritage, through which the connection with the past generations is carried out, modern legal institutions, of course, are not copied elements, but by them we can determine the trend of legal development, formation of approaches to legal regulation, isolation of the method of legal regulation, which became the basis for further, more complex constructions. In other words, the process of legal inheritance is carried out through the legal institute, as well as through the legal mentality and legal traditions.

In essence, inheritance is indirect communication which results in the transfer of information. Structurally, it can be described as a subject-object-subject triad. Being in this world, the subject develops it, accumulates knowledge, and carries out certain activities, as a result of which new knowledge appears, new objects that become objective reality (object) and exist in this world without any relation to the creator. The objective reality thus born becomes a source of knowledge for other subjects. As far as legal inheritance is concerned, there is not a mechanical use of the legal practices of the past, but a process in which they are transformed by the following generations, reinterpreted and transformed into something new, enriched by previous experience. Such objects, which are the foundation of the origin of any legal system, are the primary social relations that found normative expression as legal institutions.

Conclusions. Thus, we should assert the importance of studying the very means and methods of translation of the law. Understanding the principle of operation of the channels of transmission of meanings and values embedded in the objects of the legal heritage, will allow to express more accurately the existing experience, methods and approaches to the regulation of relations by identifying the deeper meaning of the objects of the legal heritage. The supposed channels of translation of legal heritage, such as: legal institutions, legal traditions, legal mentality, have a significant impact on the preservation of continuity and further development of law, as they encapsulate the stereotypes of behavior, activity, lifestyle and system of thinking.

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CECHY ORZECZEŃ SĄDOWYCH W POSTĘPOWANIU GOSPODARCZYM

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Adnotacja. W artykule naukowym autor przeprowadza analizę gospodarczego prawa procesowego i bada opinie naukowców dotyczące orzeczeń sądowych. Należy zauważyć, że badanie cech orzeczeń sądowych w postępowaniu gospodarczym wskazuje, że instytucja orzeczenia sądu jest jedną z głównych w postępowaniu gospodarczym, ponieważ orzeczenie sądu kończy rozprawę sądową i zapewnia realizację władzy sądowniczej w postępowaniu gospodarczym. Określono cele orzeczeń sądowych, podkreślono cechy postanowień i orzeczeń sądu, które są podejmowane przez sąd gospodarczy pierwszej instancji. Zaznaczono, że prawo procesowe wymaga dalszej poprawy w ramach instytucji orzeczeń sądowych. Udowodniono, że istota orzeczeń sądowych przejawia się w ich cechach i znakach, które się uzupełniają. Wskazano, że orzeczenie sądowe powinno opierać się na zasadach praworządności, legalności, zasadności, motywacji i ujawniono ich treść.

Słowa kluczowe: orzeczenie sądowe, sąd gospodarczy, postępowanie sądowe, sędzia, strony postępowania sądowego, zasada motywowania.