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The unification of the criminal procedure and its impact on the criminal procedure policy of Russia.

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Abstract: The scientific article discusses the model of unification of criminal procedure based on the interaction of national legal systems. It is justified that the key modern models of the criminal procedure at present are the German, French and English models, which set standards for unification for other states, including for Russia.
The article justifies the concept that the criminal procedure policy of Russia, starting in 1864, is based on the unification of the procedural institutions of other legal systems. The Russian Empire unified the criminal procedure with the French model, the Soviet Union introduced German criminal procedural institutions, the criminal procedure of the modern Russian Federation, is the object of competition between the German, French and English models of criminal procedure, which is reflected in the legislative regulation of various institutions of criminal procedure (jury trial, simplified judicial procedures, alternatives to criminal prosecution, appeal of court decisions).

Keywords: criminal procedure, unification, legal system, legislation, trial, appeal, criminal prosecution.

INTRODUCTION

The modern legal system of Russia, despite the presence of serious geopolitical differences, with the countries of Western Europe and the United States is not isolated from their legal influence, as it has a common ideological and technical-legal basis.
Criminal justice as part of the legal system is a conservative part of the legal system. This conservatism is due to the fact that criminal proceedings are an important element of the national security system of the state, as a result of which it is rather strictly regulated and monitored by it. At the same time, the influence of the countries of Western Europe and the USA is present here as well, since all states face the same problems in the field of criminal justice:
1. Rise in crime;
2. The emergence of transnational crime;
3. Increasing demands on criminal justice authorities in the context of human rights observance;
4. Reduced public confidence in the criminal justice authorities.

The solution of these problems forces the political leadership of Russia, when determining the criminal policy of the state, to take into account modern trends in criminal proceedings and to unify certain criminal procedural institutions of other states, which have shown their effectiveness.

MATERIALS AND METHODS

The materials used include scientific research and dissertations that dealt with the issues of unification of criminal proceedings in Russia with the criminal proceedings of Western Europe and the USA.
The study uses a comparative legal method that allows us to identify the criminal procedural institutions of Russia borrowed from the criminal process of Western Europe and the United States and to determine the degree of such borrowing.

DISCUSSION

Unification as a large-scale and multifaceted process of increasing the general in the world legal systems at the levels of lawmaking and law enforcement is expressed in the influence of general standards on the legislation and law enforcement practice of individual states. These processes are valid for all branches of law, including criminal proceedings. At the same time, it can be noted that such influence is not uniform in form and content, but is a conglomerate of competing models of criminal proceedings that have different historical and legal nature.

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The term "model" has been used for a long time in relation to the criminal procedure. G. Packer was one of the first to use it, who published in 1964 a work on models of proper justice and control of crime. Following him, the term "model" began to be used by M. King, who developed and supplemented Packer's models with a number of new models (he called models of criminal justice). Later, this term was entrenched in science and became, in fact, traditional. In the Russian criminal procedure doctrine, the term "model of criminal procedure" was introduced into scientific circulation by A.V. Smirnov.

At the same time, in relation to the unification of the criminal procedure, the main model for the unification of criminal proceedings is a model based on the development of criminal procedure in different states on the basis of similar legal values.

Comparative jurisprudence uses different terminology for its designation. So, R. David uses the term "family of legal systems", K. Zweigert and K.-H. Ebert - "legal circles", I. Szabo - "the form of legal systems". However, the most common in comparative jurisprudence is the category "legal family", which means "a set of national legal systems united by a common historical formation, structure, sources, leading branches and legal institutions, law enforcement, conceptual and categorical apparatus of legal science".

In modern law, there are two concepts of legal families. The first concept was put forward in 1950 by R. David, who identified 3 legal families (Romano-Germanic, Anglo-Saxon, socialist), which adjoin "religious and traditional systems" (Hindu, Chinese, Islamic, Jewish, African). Its classification is based on two criteria: ideological (the factor of religion, philosophy, economic and social structure of society) and the criterion of legal technique, and both of them should be used not in isolation, but in aggregate.

Another concept was put forward by K. Zweigert, who distinguished eight "legal circles": Romanesque, Germanic, Scandinavian, Anglo-American, socialist, Far Eastern, Islamic law, Hindu law, depending on their "legal style", which is understood as "a combination of 5 factors : the origin and evolution of the legal system; originality of legal thinking; specific legal institutions; the nature of the sources of law and the ways of their interpretation; ideological factors".

With regard to criminal justice in the context of legal families, we can talk about two approaches to models of criminal justice. The first is based on the concept of R. David and classifies "national types of criminal procedure" depending on which area of legal matter prevails: norms, practice or ideology.

1. Romano-Germanic legal family (continental system). This family includes most of the countries of continental Europe, as well as the countries of South and Central America, Francophone Africa, the Middle East, Indonesia, Turkey, and, in terms of formal legislation, Japan, Singapore, Thailand, etc.
2. Common law family (insular or Anglo-Saxon system). Its representatives are England, USA, most of the countries of the British Commonwealth of Nations, Australia, New Zealand, etc.
3. Systems of traditional (customary) law..

Another approach, based on the analysis of regional procedural features, classifies the models of criminal proceedings, depending on the legal forms of legal proceedings. A.V. Smirnov identifies 4 such models, three of which "grew" from the national models of criminal procedure (French, German, English), and the fourth is based on religious principles (Muslim). At the same time, it should be noted that in Islamic countries (except Saudi Arabia) there is a dualism of criminal proceedings, expressed in the simultaneous existence of a secular model within the framework of the criminal process, based on the French, German or English models of criminal justice and the traditional model based on the provisions of Sharia law. , and it is the norms of secular criminal procedure that have priority (with the exception of cases of crimes against Allah (hadd, hudud).

Thus, the main legal models of the criminal process of our time are:

1. French (Romanesque) model, formed with the adoption of the French Code of Criminal Procedure in 1808. This model is currently followed by Belgium, the Netherlands, Italy, Spain, a significant part of the African states. In addition, after the reform of the criminal justice in Egypt (1890), the Egyptian version of the reception of the French model was adopted by the states of the Middle East.
2. The German model, formed with the adoption of the Criminal Procedure Code of the German Empire in 1877. This model is typical for the countries of Central and Eastern Europe, Turkey (reform of 1924), Japan (reform of 1922-1924).
3. The English model of criminal justice, which was formed from the 12th to the 19th century and became the basis for the criminal process of the USA, Canada, Australia, India, South Africa, and parts of African countries. At the same time, it should be noted that the criminal proceedings in the United States have actually transformed into an independent model of criminal proceedings, which has a great influence on the procedural institutions of other states.

Globalization has greatly influenced the development of these models. The main trend here is their gradual rapprochement, the reasons for which are ideological and economic in nature. The ideological component of rapprochement is expressed in the gradual modification of these models on the basis of uniform legal standards reflecting liberal values, as well as the need to ensure the advanced development of their own countries in accordance with the requirements of the "global peace", cooperation with other states to solve similar or

common problems. The economic nature of the convergence of these models is expressed in their restructuring on the basis of uniform tendencies to accelerate and reduce the cost of criminal proceedings.

Modern criminal procedure provides a significant number of examples of the unification of models of criminal procedure. These include, in particular:

1. The 1965 statutory reform in England, carried out in accordance with the principles of continental codification;
2. The spread of precedents as sources of law in the countries of continental Europe (primarily in the Scandinavian countries);
3. Establishment of a prosecution service in England, reducing the scope of jury trials;
4. The abolition of the preliminary investigation in a number of European countries (in Germany - in 1975, in Italy - in 1988.);
5. Dissemination and legislative regulation of the practice of negotiations of the parties as an alternative to criminal prosecution (mediation in France, England and other countries);
6. Inadmissibility of the victim from participation in the plea bargain in England and Wales;
7. Expansion of the scope of application of simplified forms of pre-trial proceedings and trial in all models of criminal proceedings.

Moreover, according to the research of P.N. Biryukova at present "... states, in order to solve the problems that unification entails in terms of the development of national legal systems, follow several paths.

1. Preservation of a closed legal system focused on the legal and cultural values inherent in a given state-organized society. At the same time, those traditions and values that are considered by the rest of the world as the basis for the gradual unification of national legal systems are either ignored or interpreted in their own spirit.
2. Consistent implementation by the state of a legal policy aimed at joining the newly emerging "global empires". This policy involves setting objectives of unification of the national legal system in accordance with the requirements of the Western states and is "copying" Western models.
3. Gradual modernization of the legal system by borrowing the state and legal experience of other states while maintaining their own legal traditions"

The indicated directions of development of national legal systems in the context of globalization have their advantages and disadvantages. Isolation of the legal system maintains its stability, but over time inevitably leads to its stagnation. In addition, this path of development in the modern geopolitical situation inevitably leads either to political isolation (DPRK), or an object of violent Westernization (Libya, Iraq). It is obvious that this way of solving problems, which globalization entails for the national legal system, cannot be considered optimal from a political point of view.

In turn, the main advantage of direct copying of one of these models is the ability to be considered a state that has adopted "general democratic values", using "best practices" in the field of criminal proceedings, which positively affects the image of the state. At the same time, the use of this method of unification of criminal proceedings is inevitable will lead to its rejection by a significant part of the population and law enforcement officials who must apply it in practice, which will significantly reduce its effectiveness and will create political instability. This path is usually typical for states with limited sovereignty or those in strong economic dependence on the modern metropolis (the United States or the European Union).

Based on the foregoing, the third way seems to be optimal - the way of unification of criminal proceedings, taking into account national legal traditions.

At the heart of Russian criminal justice is the continental model of criminal justice, which was formed in the USSR in the 20s of the XX century on the basis of the German accusatory model of criminal justice and the legislation of the Russian Empire.

The predecessor of the current Criminal Procedure Code of Russia in 2001 and the Soviet Criminal Procedure Codes (1923, 1960) was the Charter of Criminal Procedure of the Russian Empire of 1864. The Charter of Criminal Procedure of 1864 was based on the best practices of European countries (primarily France). In fact, in the 19th century the Russian Empire adopted the French model of criminal procedure, and when creating the Charter of criminal proceedings, the Code of Criminal Investigation (Code d 'instruction criminelle) of 1808 was taken as a model. At the same time, it should be noted that the reform of criminal proceedings in 1864 did not copy the provisions of the French criminal procedure directly, but used its principles and structural structure, filling them with the result of their own lawmaking.

In Soviet times, there was a departure from French criminal justice and there was a reception of the key provisions of German criminal justice - the institution of the investigator as an official of the executive body, the leadership of the prosecutor in the preliminary investigation, the introduction of the court of lay judges (by analogy with the Scheffen court) instead of the jury, the court's powers on establishing the truth in the case, regardless of the position of the prosecution, building the stages of appealing court decisions. At the same time, the Criminal Procedure Codes of the RSFSR of 1923 and 1960 "... differed greatly from the Criminal Procedure

Code of the Federal Republic of Germany and the Criminal Procedure Code of France, which even now do not give the accused, defenders and victims of such a volume of rights and corresponding guarantees as our legislation. The same can be said for the English and American criminal procedure. Their undoubtedly adversarial design, in principle, does not imply such an expansion in pre-trial proceedings"

The development of the 2001 Russian Criminal Procedure Code was accompanied by the involvement of numerous foreign experts (Western European and American). However, not all of the proposals put forward by the experts were taken into account. Thus, M. Spence noted that "... the advisers from the United States did not see in the final version of the law all the reforms that they would like to see", As a result, the Criminal Procedure Code of Russia as a whole retained the features of the continental model of criminal justice. According to N.G. Stoyko "... the new ideology of the Russian Criminal Procedure Code actually largely continues what was already laid down in the previous 1960 RSFSR Criminal Procedure Code: expanding the rights of accused and victims, providing them with additional guarantees to protect their legitimate interests"

In particular, the Russian criminal process "retained the written language of criminal proceedings, the predominance of the principle of legality, the institution of the investigator, departmental procedural control in the pre-trial stages, strict regulation of means of evidence, as well as the original structure of pre-trial proceedings.

At the same time, one cannot fail to note the appearance in the Russian criminal process of some features reminiscent of the Anglo-American legal procedure. So, L.V. Golovko notes that the Criminal Procedure Code of Russia “was a conductor of a completely different criminal procedural ideology, focused not so much on continental as on Anglo-Saxon values, which was expressed in the rejection of the principle of material truth, proclaiming adversarial not only judicial proceedings, but also preliminary investigation, the assignment of an inquiry officer, investigator, prosecutor to the participants in criminal proceedings by the prosecution". K. Lehman believes that "... the Russian judicial system as a whole has become more adversarial in substance", and P. L. Mikhailov believes that it "... is shifting more and more towards the system of common law".

The influence of the English model of criminal procedure in its American version was manifested in the inclusion in the Criminal Procedure Code of the Russian Federation with the active participation of lawyers from the Department for the Enforcement of Law and at the US Embassy in Russia (US Embassy Law Enforcement Section) and experts from the American Bar Association (project American Bar Association's Central Eastern European Legal Initiative - ABA / CEELI) procedures of a special order of criminal proceedings when the accused admits his guilt on the basis of the American procedural procedure "plea bargaining". As M. Spence noted, "without the participation of experts from the United States and the removal of Russian specialists from writing its text, Chapter 40 of the CCP would never have been included in the final text of the law."

Another important aspect of the influence of the adversarial English model was the introduction of an American-style jury trial procedure into the Russian criminal process, which entailed significant organizational and procedural difficulties in the activities of this institution. At the same time, the controversial decisions of the jury had a negative impact on the reputation of the judiciary, which ultimately led to a reduction in its jurisdiction.

Subsequent amendments to the Criminal Procedure Code of 2001 were of a multidirectional nature.

Thus, the reform of criminal prosecution by Federal Law №. 87 of June 5, 2007, as a result of which prosecutor's supervision over the preliminary investigation was replaced by departmental control of the “head of the investigative body, as well as the inclusion in the number of participants in criminal proceedings of the head of the department of the inquiry body and the head of the inquiry body"is undoubtedly a reflection of the Soviet model of legal proceedings in terms of the administrativeization of the criminal process by giving the departmental control a procedural status.

In turn, the influence of continental criminal justice can be traced in the reform of the procedure for appealing court decisions. Initially (from 2001 to 2010) the Russian criminal procedural institutions of appeal and cassation were modeled on the German model of criminal justice. So, according to Part 1 of Art. 361 of the Code of Criminal Procedure of the Russian Federation, as amended in 2001, only sentences and decisions of a magistrate were subject to appeal. In the Federal Republic of Germany, in turn, only the sentences of the district court are subject to review on appeal (§ 312 of the CCP), also the lowest tier of the judiciary. Similar provisions formed the basis of the cassation appeal. According to §333, 341 of the CCP of the FRG, the cassation appeal in the Supreme Regional Court, which was the court of 1 instance in cases of state crimes, was subject to the sentences of the courts of the 1st instance, which did not enter into legal force, as well as decisions of appeal (part 3 of §335 of the CCP of the FRG). Differences in the competence of the appeal and cassation instances were manifested only in the fact that if the German legislator provided the person appealing the sentence of the district court with the opportunity to choose between appeal and cassation (part 3 of §335 of the CCP of Germany) and the subject of appeal (in the appeal - questions of fact and law , in cassation - only questions of

law), then the Code of Criminal Procedure of the Russian Federation distinguished between this appeal and cassation by establishing a strictly hierarchical order of appeal.

The 2010 reform of the appeal and cassation proceedings showed a gradual departure from the German model and the convergence of the Russian appeal and cassation with the French model, built on the basis of the two-court rule. For the appeal, it, in particular, manifested itself in a change in the category of cases subject to appeal (in accordance with Part 1 of Art. 389 of the Code of Criminal Procedure of the Russian Federation as amended by the Code of Criminal Procedure of the Russian Federation in 2010, all decisions of the court of first instance that did not enter into legal force could be appealed by way of appeal), which is characteristic not of the German, but of the French model of appeal (Articles 380-1 496, 547 of the Code of Criminal Procedure of France)

In addition, the influence of the French model manifested itself in the inquest procedure in an abbreviated form included in the Code of Criminal Procedure of the Russian Federation by the law of March 4, 2013, in which there are features of the French inquiry of obvious crimes and misdemeanors (Art.53-74-2 of the French Code of Criminal Procedure) and the procedure of a judicial fine , as an alternative to criminal prosecution, which is a reflection of the French criminal procedure procedure of a criminal agreement (composition penal), which provides for the payment by the accused of a fine in the public interest in exchange for the termination of criminal prosecution (art.41-1-2 of the French Code of Criminal Procedure).

CONCLUSION

The process of unification of global legal systems (French, German, Anglo-American) undoubtedly influences the modern Russian criminal process, reflected in its individual procedural institutions. However, this influence is not decisive and mainly affects the judicial stages of criminal proceedings, as well as simplified procedures and alternatives to criminal prosecution. At the same time, pre-trial proceedings, as well as the status of participants in the criminal process and the provisions on evidence and proof, preserve the continuity of the Soviet model of criminal proceedings, which gives the Russian criminal process individual features and does not allow it to be attributed to any of the above models of criminal procedure.

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