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Związek między metodologią prawa porównawczego i zasadami synergetyki

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THE CONNECTION BETWEEN THE COMPARATIVE JURISPRUDENCE METHODOLOGY AND PRINCIPLES OF SYNERGETICS

ABSTRACT

The legal system is examined; the structure of legal system is given; synergetics is analysed; the thesis describes the synergetic approach in comparative jurisprudence; the work illustrates synergetics as a science giving the theoretical explanation of the process of the self-organization of the legal system; the comparative jurisprudence is explained; the main methods of the connection between the comparative jurisprudence methodology and principles of Synergetics are investigated.

Keywords:
legal system, synergetics, synergetic approach, comparative jurisprudence.

Problem statement. Legal system is an actively interacting with the external environment totality of principles and interrelated elements that form a stable reality. The structure of the legal system appears as a result of appearance in a certain way of communication among the elements that act according to the adopted in the legal system set of norms and values. Synergetics reveals the principles of formation of legal system from the components. Combining of the sciences of "Synergetics" and "Comparative Jurisprudence" has already occurred.

The state of the research. A significant contribution to defining the basic concepts of comparative jurisprudence and to the synergetic analysis has been made by such scholars as: R. David, K. Tsvayhert, R. G. Barantsev,

V. E. Voitsekhovitch, Damirli Mehman Alisha ogly, I. S. Krivtsov, I. R. Prigozhin, I. Sitar, S. S. Slivka, H. Haken and others.

The purpose of this research paper is to reasonably prove that in fact, it is possible to overcome the existing problems within each legal system through the application of principles of synergetic approach in comparative jurisprudence.

The presentation of the basic provisions. The regularities of the construction and existence of the legal system are the same for any and all of its varieties: the self-organization, self identification, and self regulation [1, p. 130]. The interrelated elements of legal system have some integrative features and internal regularities [2; 3, p. 6]. Legal system is a unity of components (legal means that regulate social relations and legal phenomena arising from such regulation) that manifest themselves as a whole and have a new quality. The legal system can be described by a small number of basic forms of representation of reality as a regular legal environment, where legal norms, institutions and other components of the legal system are placed in a certain sequence, and identify common trends of processes within it [4, p. 63].

On the part of the legal framework, there can be observed the implementation of actions that are necessary to achieve the chosen goals [5, p. 477]. In complex legal systems, the structure reflects the most significant elements and relationships among them [6]. Dismemberment of the element causes changes in its properties [7, p. 20]. Stance and orderly structure of legal system is the result of unstable and disordered one [8, p. 36]. Structure of a system as a functional unity of elements is regulated by inherent in only it regularities - a process of self-regulation takes place that supports balance of elements under certain conditions [9, p. 157]. Different legal systems vary because of certain traits, characteristics, one of which is a size of their legal structures [3, p. 31].

Relatively simple legal structures are combined into complicated ones. Complicated legal system arises as a consequence of the combination of substructures inside of it and their evolution. Signs of the relationship among elements within the legal system are its resilience and ability to make modifications. Phase transitions from one steady state of legal system to another take place under the influence of changes in external conditions [10, p. 396]. The open legal systems can be controlled by external factors that influence them [11, p. 26]. The unstable legal structure acquires the ability to withstand both external and domestic impacts. The order of the legal system reaches stability. Process of such a transformation consists of certain quantity

of successive changes of phases of the development of legal phenomena that proceeds in a natural order.

Any legal system at a certain stage of development under the conditioned change of relevant indicators provides the phase transitions, resulting in the emergence of processes of self-organization [11, p. 10]. The phase transition is led essentially by the instability of complicated legal organizations. Volatility is a random motion inside the completely specified field of parameters of the legal system. Instability arises from the resistance and resistance sooner or later becomes the volatility - distinct cycles are fixed. Processes in nonlinear legal system develop continuously in space and time. Growth of non linearity leads to the increase in number of ways of combining simple legal structures into the complex. Therefore, there are possibilities for building more complicated legal entities, organizations, structures. As a result of the described above, there are two ways of further development of events: legal organization ceases to exist, and the sophisticated legal framework is no longer a solid unity, or moves to new mode of operation. Before the replacing of a balanced state of legal system to chaotic, the occurrence of other information and formation new legal structure takes place [4, pp. 55, 58, 84, 88-90].

We believe that support is non-linearity concerning making legal decisions increases the paths of developments in the legal world in future.

An independent state receives information about its position in the legal Universe primarily from the surrounding countries. The process of self-organization of legal system is random.

Synergetics is engaged in studying the imbalanced open legal systems and the factors that underlie the formation of their structure [8, p. 36; 4, p. 38; 12, p. 23]. It also helps researchers in the field of comparative jurisprudence to make the right decision and predict the likely consequences of certain actions [4, p. 38].

In the field of comparative jurisprudence, there can be observed the emergence of new characteristics of the scientific activity in general, due to the interactions of synergetic and other approaches [4, p. 23]. The aim of synergetics is to carry out the scientific study of the processes of self-organization, self-settlement, and self-guidance self in legal system and regularities that underlie them, and "identify the mechanisms of setting the ordered structures from chaos" [13, p. 20]. Since chaos is the basis for further development, that is an intermediate stage in the evolution.

Complex legal organizations of various levels, reaching a moment of maximum development, become unstable to deviation of legal norms from

the state of balance [4, p. 84]. It is the synergetics that explores the process of unsettlement and disorganization of the legal system [13, p. 143]. Synergetic approach in comparative jurisprudence clearly substantiates the position that we should have deep knowledge in the field of law to define the location of information that is necessary for a successful comparison and make an appropriate decision. Making correct legal decisions based on information received in the performance of comparison is interconnected with the principles of formation of the evolutionary whole from the parts. Preparation of methods of solving of specific problems is exercised due to a combination and aptly use of information about the legal world. We believe that the structure of the legal system is influenced by external conditions, their change.

The task of synergetic approach in comparative jurisprudence is to manage without having direct control, to push legal system to the positive route of further promotion, to provide the self-ordered development. The new is formed by the destruction of the old [4, p. 74-78].

The essence of the legal system through the prism of synergy: - elements of legal systems are interrelated and act as a single entity; - the legal system is changed when the rights of certain elements are reduced or added, or their quantity is replaced; - to divide the legal system means to destroy it; - elements act in a concert way; - the behavior of the legal system is determined by its structure, the changes of structure mean changes in the system; - the legal system is endowed with specific properties that are not present in elements [7, p. 20; 14, p. 17].

All processes in open non-linear legal systems are directed at the structure-attractor. It is impossible to predict in advance which one position will be accepted by the legal system while reaching the point of attractor [6]. It is necessary to successfully analyze the available information, to compare and bring legal system out of balance – that is, to reach the state of fluctuation, to give the legal system an opportunity to choose the route to the attractor in a point of bifurcation [4, p. 39; 15, pp. 181-183]. If fluctuation is not large enough, the system will return to the previous balance. In the core of the relations that arise between components of the legal system, the self-organization lies [3, p. 32].

Each legal phenomenon arose due to some circumstances, through which the choice has been made in the point of bifurcation [16, p. 117].

Synthesis in this case is a combination of synergetics and comparative jurisprudence [5, p. 309].

Synergetics explains the process of self-organization in complex legal systems:

1. The legal system must be open. The closeness leads to the condition of maximum entropy[1] and terminates any evolution.
2. The legal system should be at some distance from the point of balance. In point of balance, each system has the largest entropy and is unable to self organization – it does not change its state.
3. The main principle of self-organization is the emergence of a new order and the complexity of the legal system through fluctuations of the states of their elements and subsystems. Negative feedbacks (international legal policy) ensure the safety of the structure and the state of the system that is close to the balance that steadily grows and is able to adapt – the rule of self- preservation is triggered. More complex open legal system differently responds to the unfavorable external factors: the state order becomes unstable, chaotic condition arises, the existing structure is being destroyed, and a new order arises. Fluctuations are random - the appearance of any innovations in legal system takes place due to the influence of the amount of random factors.
4. The stage of self organization occurs only in case of prevalence of positive feedbacks that operate in an open legal system over the negative.
5. Self-organization in complex and open legal system leads to irreversible destruction of the old and the emergence of new structures and systems [6].

An important feature of comparative jurisprudence is the ability to receive and independently study and compare a stock of information that is needed for making the right decision through comparing positions of different legal cultures [18, p. 130]. The fact that in the base of the process of comparing both legal systems that existed in the past (USSR) and that exist presently (EU, EEA, etc.) the synergetics lies, is regarded as doubtless [13, p. 26][2].

Comparative jurisprudence, given postulates of synergetics, does not impose the ways of the development on legal systems, and only provides further developments in the world of law. Each self-organized legal system has not one, but many of their own development paths that correspond to its nature. [19] Different ways of development inherent in legal environment can

[1] Entropy is an increase in the degree of disorder within the legal system that threatens of a collapse to it [17, p. 5].

[2] N. Y. Klimontovych, *Synergetics studies the processes of self-organization, stability, decay and rebirth of various structures of a living nature* [13, p. 26].

be influenced through changing external circumstances. Actually, synergetics is focused on the necessity to predict the emergence of several possible future states of legal norms etc. and choose the most coveted one of all possible. [4, pp. 45, 87].

Making comparison, the scholars of comparative jurisprudence picked up in a particular order the required micro level, legal institutions and legal areas (meso level), legal systems and legal families (macro level) – all are performed independently, and the principles of the theory of science "Synergetics" are used as a basis [20, pp. 22-23]. Just synergetics distinguishes the "quality" of information [4, p. 39].

In comparative jurisprudence, the rule of self- settlement is widely used: to independently adjust the definition of solutions of legal collisions using a method of comparing different legal systems. The process of comparison is exercised in a self-ordered way on basis on natural (of inner senses) instinct of matching and simultaneous analysis of the objects considered. Self-organization is based on real knowledge, hypotheses, and versions. It is necessary to narrow the broad understanding of current legal issues to simple shape the perception and successfully compare it with already existing analogues: to make the transition from complex to elementary. Due to the principles of synergetics, it is possible without any psychological fear to examine components of complex legal systems.

We recognize that obtaining of information for the large-scale comparison reduces the value of regularity and sequences of actions[3]. Therefore, experts of the field of comparative jurisprudence, following the synergistic approach, act orderly: they explore the objects of law "by the simple eye"; take into consideration the global level, taking into account every legal decision that arose; fix the moment, in which the complicated legal system goes out of balance and approaches to bifurcation points; choose the best possible way of the development of events.

Comparing the complex legal structures, you must have the ability to combine the structures as of "different ages" and those that are developed from different degrees of stress and intensity. Progress in the development of complex legal structure requires coordinated development of substructures of "different ages" in it. The above mentioned thing causes abnormal spatial matching. Using of information from the past is the violation of symmetry in

[3] I. G. Prigozhin, *The growth of the organization may be accompanied simultaneously by the decrease of ordering* [13, p. 51].

space, because there is no complete uniformity of effects after taking similar decisions in different time moments.

At any time period, certain processes work in the field of law by some specified conditions of internal and external fluctuation can lead the legal system, which stands away from the balance, to the outlined in advance changes, to the appearance of various new relatively stable structures, but not only the previous state of balance. To achieve the desired result, it is necessary to reach the state of fluctuation that is to withdraw the system from balance[4]. On micro level, fluctuation takes place in the first place, and then - at the macro level [11, p. 136]. Fluctuation contributes to the disintegration of integrity of the legal organization to the parts and the departure from uniform speed of the development of its components[5]. During this process, it is important to take into account the magnitude of fluctuation - the more, the better. Under the influence of external factors, the system becomes unstable and bifurcations occur. Study of phase of fluctuation allows describing respectively the areas of transition that will take place during bifurcation [11, p. 362]. In the behavior of nonlinear legal system, there can be not one, but several bifurcations of the process in time. Steady state of legal system in synergetics is considered to be the attractor, to whom all components of the legal structure aspire to approach. These components move in one of several existing routes in the state of chaos. And, further, in the point of bifurcation, the route to the attractor should be selected [4, pp. 39, 177]. Our attention is focused on the imaginary future legal structure - structure-attractors, to which the processes in different legal environments are directed [20, p. 27].

Even given sensitivity of legal system to initial conditions and taken account of forecasting of the expert scientists, it is impossible to predict the behavior of legal system [11, p. 46].

Conclusions. Elements of the legal system being self-organized interact with each other and with the outside world. Similar unbalanced legal systems and nonlinear processes of evolution of legal systems are studied by synergetics. Synergetic approach in comparative jurisprudence allows to clearly understand the principles of evolution of complex legal systems, identify the causes of the crisis, imbalance and chaos, to learn the management techniques over complex legal systems that are in an unstable condition without preservation of certain sequences; to confidently with hope to perceive the presence of a complete mess. To achieve the objectives in the legal

[4] I. G. Prigozhin, *The order is established through bifurcation* [4, p. 39].
[5] I. G. Prigozhin, *Fluctuation launches uncertainty* [4, p. 59].

world, it is necessary to successfully analyze the available information and make comparisons.

Scientific provisions, theoretical principles of synergetics and comparative jurisprudence are in unity. In our opinion, scientific researchers in the field of comparative jurisprudence while making decision are able to deftly overcome unrest that prevails in any legal system, due to the successful use of the initial positions of the science of "Synergetics".

REFERENCES

[1] Chaiyka G. L., *Synergizm v upravlinni* /G. L. Chayika. – K.: Znannia, 2011. – 70 s.

[2] Filosofia: *Navchalnyi posibnyk* / I. F. Nadolnyi, V. P. Andrushchenko, I. V. Boichenko, V. P. Rozumnyi ta in.; Za red. I. F. Nadolnogo. – K.; Vikar, 1997. – 584 s.

[3] Klaud G., Taunsend D,. *Medzi* – Lviv: Vydavnyctvo "Nova nadia", 2010. – 328 s.

[4] Kniazeva E. Nikolaevna, Kurdiumov S. Pavlovych, *Osnovania sinergetiki: Sinergetichiskoe mirovozrenie*. Izd. 3-e, dom. – M.: Kniznyi dom "LIBROKOM", 2010. – 256 s. (Sinergetika: ot proshlogo k budushchemu.)

[5] Kuprianova K. O., *Odeska nacionalna academia zviazku im. O. S. Popova. Synergetychnyi efekt, iak zasib pidvyshchennia efektyvnosti dialnosti pidpryemstva*. – Dostupnyi z: <http: // www.rusnauka.com /12_KPSN_2010/Economics/63516.doc.htm>.

[6] Leskov L. V., *Futurosinergetika: universalnaia teoria system. Nauchno-uchebnoe posobie* / L. V. Leskov. – M.: ZAO "Izdatelstvo "Ekonomika", 2005. – 170 s.

[7] Makarov V. I., *Filosofiia samoorganizacii*. – M.: Kniznyi dom "LIBROKOM", 2009. – 432 s.

[8] Mayik I. S., *Zastosuvannia pryncypiv synergetyky u porivnalnomu pravoznavstvi* / I. S. Mayik // Problemy pravovoi reformy ta rozbudovy gromadianskogo suspilstva v Ukraini: tezy dopovideyi uchasnykiv zvitnoi naukovoi konferencii adiunktiv, aspirantiv ta zdobuvachiv (30 veresnia 2011 r.). – Lviv: Lvivskyi derzavnyi universytet vnutrishnix sprav, 2011. – s. 130-139.

[9] Mayik I. S., *Naukovyi syntez porivnalnogo pravoznavstva ta synergetyky* /I. S. Mayik // *Problemy pravovoi reformy ta rozbudovy gromad-*

skogo suspilstva v Ukraine: tezy dopovidei ta povidomlen uchasnykiv zvitnoi naukovoi konferencii adiunktiv, aspirantiv ta zdobuvachiv, 28 veresnia 2012 r. – Lviv: Lvivskyi derzavnyi universytet vnutrishnix sprav, 2012. – s. 130-133.

[10] *Porivnalne pravoznavstvo*: *pidruch. dlia stud. iuryd. spec. vyshch. navch*. zakl./ S. P. Pogrebniak, D. V. Lukianov, I. O. Bylia-Sabadash ta in.; za zag. red. O. V. Petryshyna. – X.: Pravo, 2011. – 272 s.

[11] *Porivnalne pravoznavstvo (teoretyko-pravove doslidzennia)*: Monografia / Za red. O. V. Zaichuka, N. M. Onishchenko. – K.: "Vydavnyctvo "Feniks", 2007. – 430 s.

[12] *Pravova systema*. – Dostupnyi z: <http: // www.uk.wikipedia.org>.

[13] Protasov V. N., Protasova N. V., *Lekcii na obshcheyi teorii prava i teorii gosudarstva*. – M.: Izdatelkiyi Dom "Gorodec", 2010. – 752 s.

[14] Shterenberg M. I., *Sinergetika: nauka? filosofia? psevdoreligia?* – M.: Academia, 2007. – 176 s. (Monograficheskie issledovania: filosofia nauki).

[15] *Sinergeticheskaia paradigm. Socialnaia sinergetika*. – M.: Progress – Tradicia, 2009. – 688 s., il.

[16] Slyvka S. S., *Filosofia prava: [Navchalnyi posibnyk]* / Stepan Stepanovych Slyvka. – Lviv: LvDUVS, 2010. – 264 s.

[17] *Sociosynergetika*. Material dostupnyi z: <http:// www.ineka.ru/parter>.

[18] Xaken G., *Sinergetika: Ierarxii neustoichevostei v samoorganizyiyshchixsia sistemax i ystroistvax*: Per. s angl. – M.: Mir, 1985. – 423 s., il.

[19] Zelenevskiyi I. A., *Organizacia trudovyx kollektivov. Vvedenie v teoriy organizacii I upravlenia* / Perevod z polskogo. Pod redakcieyi doktora ekonomicheskix nauk professor G. E. Slezingera. – Izdatelstvo "PROGRES". – Moskva, 1971. – 312 s.

[20] Zuravlov V. I., *Sistema, vzglad iznutri*. – SPb.: Izdatelstvo DEAN, 2007. – 176 s.

ZWIĄZEK MIĘDZY METODOLOGIĄ PRAWA PORÓWNAWCZEGO I ZASADAMI SYNERGETYKI

Analizowano system prawny, w tym strukturę systemu prawnego; stosowanie podejścia synergetycznego w prawie porównawczym, synergetykę jako naukę, która teoretycznie wyjaśnia proces samoorganizacji systemu prawnego; są badane sposoby połączenia metodologii prawa porównawczego z zasadami synergetyki.

Słowa kluczowe:
system prawny, synergetyka, podejście synergetyczne, prawo porównawcze.