

Актуални проблеми на правото

EUROPEANIZATION OF THE RUSSIAN LAW

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Historical introduction

Russia and Europe are not at all so distant from each other – historically, politically, in the cultural, legal and religious plan. Russia is not the barbarous country – it is simply a little different and is less objectively known to the Europeans. «Europeanness» - that is being a European - is not purely geographical, but the civilizational factor.

But let us return to the problems of law and travel a little into the past. Democracy and the law were quite progressively developed in Russia of the middle Ages, when Europe was not as advanced, as today... There were examples of democratic elections and comparatively developed human rights situation in Russia at that time. In Pskov they used birch tree cork as voting bulletins at the elections.

Historically Russia has always been an integral part of Europe interested in its unity and legal uniformity. Accordingly, Europeanization traditionally was and remains today as one of the basic trends of development of the Russian law.

The legal system of Ancient Russia of VIII-X centuries was based on customs of the East Slavonic peoples and ideas of invited to rule Russian territories Varangs (i.e. foreign or European) princes. It included agreements with Byzantium and the local so called “Russian law”. This legislation was recognized not only in Russia, but also was considered by one of the greatest powers of that time – Byzantium, as the one corresponding to the international standards of that time.

On the basis of “the Russian law” a new important document called “the Russian Truth” was created in the XI century. It was rather close in its meaning and regulating role to the “barbarous truths” (laws) which have not long before appeared in the countries of Western and Central Europe. On a basis of “the Russian truth” in XIV-XV centuries in two medieval Russian republics – Pskov and Novgorod - there were adopted codes of law or “Judgment charters”. They were in correspondence with legal achievements of European countries of that time.

In XV century Russia represented by the democratic and developed Pskov and Novgorod were included into the Hanseatic league. In this sense Russia was one of the components of the European “common market” of that time. It was unforgettable historical period. The Flemish Belgian city of

Bruges was an international center of the Hanseatic league. The trade in the League was financed by Italian banks.

It created a natural network for distribution of Roman law which was brought to life by Italian academics. This reception of the old Roman law is a remarkable example of implementation of the best legal European standards in national legislation of different countries. Through the Hanseatic league Russia of that time used in practice and borrowed elements of the Roman Law which was the historical predecessor of the modern law of the European Union. At that time single legal and economic space of Europe and Russia originated for the first time and developed until its unfortunate interruption.

The Russian emperor Peter the Great who has cut through “a window to Europe” and introduced in the country the European usages was one of the first real “citizens of Europe”. He even spoke in “Euro-Russian” language, adding to Russian basis German, Dutch, English and other foreign words. Once, having sent to Europe the ambassador Veselovsky, Peter the Great has ordered him “to find the legal book”. It was Peter the Great who in the beginning of the XVIII century has carried out a large scale Europeanization of the Russian Law in the form of reception of West European rules of public and private law. Since that time the Russian the term “Europeanization” meaning “modernization, reorganization of public system with use of an advanced experience of the developed European peoples” has taken roots.

The first Decree of the empress Catherine II, who was German, began with words “Russia – the European power”.

Accordingly, the ideas of building of the common European home were in detail developed and propagandized not only in Europe, but also in Russia. So the director of Tsarskoselsky lycée Vasily Malinovsky in the beginning of the XIX century suggested establishing of the European court, the common European customs and the uniform European currency.

The Russian emperor Alexander I actively participated together with leaders of other European countries in creation and activity of the Holy Alliance. Its motto was to rule the peoples of Europe in the spirit of “love, truth and peace”. This union, however, in reality has appeared to be conservative and even reactionary.

Many progressive Russian public figures traditionally saw their motherland as an integral part of Europe and developed ideas of uniform Europe. This ideology was close to revolutionary Russian Decembrists and Petrashevsky movements. The well-known Russian (and European) revolutionary and anarchist Michail Bakunin repeatedly called for creation of integration associations in various forms – Slavic federation “from Adriatic coast to the borders of the White Sea and Siberia”, “General Federation of European Republics” and “the United States of Europe”. In his opinion, all Europe, including Russia, should be transferred into one federal democratic

republic. He in practice participated in organization of the League of Peace and Freedom which had obviously an integration orientation. Russian professor of international law L.A. Kamarovsky has devoted tens of his scientific works to the idea of creation of the United States of Europe.

K. Marx and later V. Lenin and L. Trotsky in early Soviet Russia supported the idea of the led by the Soviets “United Socialist States of Europe”¹. They saw united socialist Europe as a milestone somewhere half way on the road to the victory of the World socialist revolution. Napoleon and Hitler also cherished the idea of their leadership in United Europe.

All noted above reflected understanding by both progressive and conservative layers of the European society and Russia of the logic of historical development directed at achievement of European unity.

Historically Russian law is very close to European law – to the German, French, Dutch law and to the European legal thought and tradition.

The origin of the Russian legal education was also European. At first not Russian law but law of the European countries was taught in our universities. The teachers of law were from Europe too: Germans, Frenchmen, Italians and so on... Teaching was conducted in Latin, German and French and only much later they started to teach in Russian language. The “natural law”, “the general legal encyclopedia”, “scientific history of law” were the first subjects in Russian universities and only later there was introduced a “comparative Roman and Russian law”, and only after that – “the Law of Russia”.

The cultural and language level of Russian pre-revolutionary lawyers was so high, that lengthy citations in Latin, French, English and German languages were given in the text books for lawyers without translation into Russian. That is why the legal culture of Russia as well as legal thinking – are inherently European. Even 70 years of socialism did not eliminate this deeply rooted cultural heritage.

Paradoxically – the socialism released from authoritarian distortions, has given the modern European law some of its strongest points – its social orientation. After all it is directly stated in the Lisbon Treaty that the European Union aspires to provide sustainable development, the balanced, social market economy with full employment. It promotes social progress, justice and social protection (art. 3)²! In this sense speaking about legal borrowings one should never forget that this process is reciprocal, moreover, mutually and culturally advantageous.

¹ Ward I. A Critical Introduction to European Union Law. L., 1996. P. 4.

² Европейский Союз: Основные акты в редакции Лиссабонского договора с комментариями. Под ред. С.Ю.Кашкина – М., ИНФРА-М, 2008. С.171.

The Mechanism of Europeanization of the Russian Law and the ways of making it more effective

Europeanization of the Russian law as a rule takes form of harmonization of Russian legislation with that of the EU. It is very important to study its mechanism.

Russia and the European Union are key partners in the European region. Steady and harmonious social and economic development of the region depends on strengthening and expansion of their cooperation as a whole. Such strengthening and expansion of relations between them is a necessary element in shaping of the collective security system in Europe, in particular. Russia and the European Union are indispensable economic partners for each other, their economies and political interests are compatible, mutually dependent and complimentary.

This kind of interdependence dictates acceleration of the integration processes between Russia and the European Union, including their extension into the sphere of legislation.

Development of the European integration without Russia's participation in that process is incomplete, while the construction of the so-called "Wider Europe" is impossible. The leaders of Russia and other European countries should pay to that special attention.

Russia can and should establish closer ties with the European Union.

Such cooperation does not, by far, imply Russia's membership in the European Union though in the long-term perspective such development cannot be ruled out. There are examples and mechanisms of "softer" models of integration. However, in order to formalize such relations with the EU it takes a more complex mechanism and a precise legal regulation of its functioning.

The basic document regulating the current relations between Russia and the EU is the Partnership and Cooperation Agreement of 1994. This agreement covers all facets of the relations between the EU and Russia and is a model one in terms of contents, a framework one in terms of the form and a prospective one in terms of the orientation.

The Partnership and Cooperation Agreement has chosen harmonization (approximation) of the legislation as a way of legal integration between Russia and the European Union.

As a whole, harmonization or approximation of the national law consists in introduction of the general principles of legal regulation in specific areas of public life while the states retain some room for their own legal regulation.

The PCA Article 55 is especially devoted to that process. This Article nominates the spheres of legislation approximation and obliges Russia to perform necessary measures for that purpose.

Harmonization of legislation is an important and effective tool of partnership between Russia and the EU in the long run aimed at the expansion of such partnership and its development into stable neighbourliness on the basis of a free trade area.

The prospect of an enhanced partnership is seen in a context of establishing between Russia and the EU of four mutually interfering spaces: the Common European Economic Space, the Common Space of External Security, Common Space of Freedom, Security and Justice, and the Common Space of Research, Education and Culture.

Alongside with other mechanisms of the partnership provided for in the PCA, the tool of legislation approximation, as stipulated in the PCA Article 55 should undoubtedly become a reference point in their shaping.

For each of the four spaces it is necessary to adjust a special mechanism of interaction which should certainly include among others the reception of the EU standards into the Russian law. At the same time, establishment of other spaces in the framework of the EU-Russia integration cannot be ruled out, either. They may logically appear in different spheres of life.

The European Union law today functions as a legislative model according to which virtually all European countries are harmonizing their laws. In that respect, the EU law becomes a truly European one.

The legal system of the European Union is quite comparable to the Roman law and its well-known Justinian Code (*Corpus Juris*) adopted by many European countries and having affected among others the legal system of Russia.

The European Union law plays a role of the single standard determining the rules of the game for all participants of the Common Market including Member States, citizens and legal entities on the territory of the Union. After coming into force of the Treaty of Lisbon that standard became even more legitimate, clear and binding one.

Establishment of the common European space in economic and other spheres is impossible without emergence of single legal space, stressed academician O. Kutafin³.

The legal integration between Russia and the EU may have unilateral or bilateral nature.

In the former case, it would have to do with the reception by our country of the legal achievements of the EU in the sphere of education, legal drafting, technical standards and international obligations.

³ О.Е.Кутафин. К читателю. В кн.: Право Европейского Союза. 2-е изд., под ред. С.Ю.Кашкина. – М.: Юрист, 2008. С.30.

In the latter case, the components in the framework of the reception of the *aquis* will have to include an agreement on cooperation in the legal sphere or on application of Article 55, additional agreement(s) or protocol(s) to the PCA on the common economic space and other agreements. They should provide for partial extension to Russia of the EU Internal Market treatment and discussion of an option of granting Russia a special privileged status for the EU similar in many respects to the one of a Member State or an Accession State.

The largest shortcoming of the ongoing legal reform in contemporary Russia is its lagging behind the more “legislatively civilized” countries towards approximation and harmonization of rules and standards.

It is fully logical for Russia to pursue the measures for legislation approximation with our European neighbours.

Harmonization of the Russian law with the legislation of the EU fully complies with the rules and spirit of the Constitution of the Russian Federation.

Harmonization of the Russian law with the EU legislation constitutes an assumed obligation for the establishment of partnership as stipulated in Article 55 of the PCA. Alongside with that, 15 spheres for the legislative approximation are outlined therein. Unfortunately they are not the major fields of law.

When modeling the mechanism of legislative approximation and undertaking specific measures in that field one should take into account the fact that the Russian Federation is a federal state and areas of legal harmonization touch upon all three levels of the legislative competence of the federation and its subjects identified in Articles 71-73 of the RF Constitution.

It means that the harmonization mechanism for the Russian legislation should provide for participation in such process of the authorities of the subjects of federation, or, for sure, their opportunity of access to this process.

Comparative analysis of the provisions of the PCA with Russia, Ukraine and Moldova shows that the articles of the Ukrainian and Moldavian PCA dealing with legislative harmonization also contain the third part, which is missing in the Russian PCA. That part is dedicated to the issues of technical assistance on the part of the Union to the legislation approximation process.

To the credit of the European partners, they have provided and continue to provide Russia with certain technical support on this issue in the framework of the Tacis and other programmes.

Without doubt, when creating the harmonization mechanism we should take into account these provisions as a model and expression of commitment of the partner to provide such mechanism. The provisions on the technical assistance to the process of legislative approximation following the example of Ukraine and Moldova should be replicated when the PCA is extended by the signing of the relevant protocols to it or when concluding a special agreement on legal cooperation.

The Partnership and Cooperation Agreement (as well as the future Agreement which is being negotiated now) is a framework agreement and on its basis special agreements in concrete spheres of cooperation are to be concluded. It is quite possible to conclude on this basis the special agreement on application of the PCA Article 55 which would foresee the mechanism of legislation approximation between Russia and the Union.

Such agreement could become one of components of the Common European Law Space (CELS) between Russia and the Union which logically proceeds from the measures for legislative approximation. It can also be organically incorporated in the concept of the Common European Economic Space.

The Common European Law Space should include four levels:

I. Reception of *acquis de L'Union* in the Russian legislation in the spheres outlined in Article 55 of the PCA. This process should include the establishment of the lists of acts of the Union in the respective 15 spheres containing the rules necessary for replication in the Russian legislation. These lists could be included into protocols to the Agreement on application of the PCA Article 55. It is necessary to identify also the respective Russian legislation which is subject to change according to the harmonization process.

II. Creation of the mechanism insuring that for adoption of new decisions of the European Union in sensitive for the Russian Federation spheres the interests of Russia are taken into account. Harmonization should take place not only on the Russian part. It is a bilateral process and it should be based on partner relations.

III. Achievement of homogeneity, i.e. uniformity of application and interpretation of harmonized acts by the Russian courts according to the existing practice of the Court of the European Union. This can be accomplished with a special mechanism similar to the one applied for the Common European Economic Space. That would become "a European component" of the judicial reform in Russia.

IV. Future expansion of frameworks of harmonization beyond the limits of PCA Article 55.

However, this process requires thorough preparation including the study of the European Union law and raising awareness about it, development of the

relevant Russian legislation, draft agreements or agreements which would provide relevant mechanisms for implementation of different levels of the Common European Law Space, the training of qualified staff and improvement of professional skill of the judges and officials.

Though lagging a little behind the other European countries in harmonization of the internal legislation, Russia gets a unique advantage expressed in the opportunity of study, generalization and use of the experience of such harmonization already accumulated by other countries.

On the whole, it is possible to divide all harmonization mechanisms of national legislation existing in Europe into 5 primary groups:

1. Harmonization mechanisms inside the European Union, in the EU Member States.
2. Harmonization mechanisms in accession states.
3. Harmonization mechanism of the Swiss national law.
4. Harmonization mechanism within the framework of the European Economic Space.
5. Harmonization mechanism in other European partner countries.

Comparative analysis of the indicated mechanisms enables us to make a conclusion that the most interesting and practicable one for the Russian situation is the experience of creating a system of corresponding legislation by the European Free Trade Association countries (Norway, Iceland and Lichtenstein) in the framework of the European Economic Area and the experience of Ukraine in preparing the ground for setting up such harmonization mechanism.

Like the majority of mechanisms discussed above, the legislative harmonization mechanism for Russia should include two components, external and internal.

The external component should consist of four elements: informational, administrative, organizational and financial.

Implementation of the external component of the harmonization mechanism could be commissioned as a whole to the departments of the RF Foreign Ministry. However, the direct and practical legal part of this work should be handled by the departments of the RF Ministry of Justice in coordination with the Foreign Ministry.

The internal component appears to be the most significant one since approximation of the Russian law should take place namely through it. International component does not dominate here. Therefore the bodies focused on internal law-making and dealing directly with internal legislation should be engaged in realization of this process including its coordination as may be required with relevant structures of the Foreign Ministry and the European Union.

In addition, the creation of a special ministry or a department on the European affairs in Russia is extremely desirable, but not achievable for the moment.

Different EU programmes could play an important part in establishing such a mechanism and providing the unique technical assistance to the above undertakings.

The internal component of the harmonization mechanism should be designed in cooperation between the RF Ministry of Justice and the State Duma of the RF Federal Assembly.

To that end, it is necessary to create a special department within structure of the Ministry of Justice which would handle the issues of legislative harmonization. Under the auspices of such department it would be possible to create permanent expert groups in each sphere of harmonization.

In the case of concluding an agreement on application of the PCA Article 55 according to the model proposed in the present report, the above-mentioned expert groups could perfectly cooperate both directly and through the Foreign Ministry with the relevant departments of the Commission and EU Council working groups in the course of the development of the EU legislation.

It would be possible to create an ad hoc committee or other division of the State Duma on the questions of harmonization of the RF legislation.

The department of the Ministry of Justice in charge of harmonization could be assigned 2 more tasks:

- firstly, the translation of the EU legislation in the 15 harmonization spheres into Russian and drawing up a database on such legislation;

- secondly, support of the training of the Russian experts in the field of the European law.

The first task is somewhat easier. The Ministry of Justice can commission that work to the "Rus-EU" (Russia-European Union) International Cooperation and Development Centre", working with the Chair of EU Law of the MSAL. The "Rus-EU Centre" jointly with the MSAL Chair of EU Law is capable of establishing a special database on the European legislation for the RF Ministry of Justice.

The second task is more difficult, and may only be solved through the common efforts of the existing educational establishments with comprehensive support from the Ministry of Science and Education, the Ministry of Justice and other ministries and departments of the Russian Federation.

Creation of the European Study Institute at MGIMO (University) through an arrangement on the top level is a promising way towards partial

solution of the problem. However, to make the idea work really effectively it is necessary not to copy blindly the European approaches to training in the European Union law, but to develop from the outset a curriculum and methods of training capable for working effectively on the Russian soil together with the leading Russian schools of European law.

Besides, it would be feasible to include the EU law in the obligatory standard of higher legal education and support the establishment of special EU chairs at law schools.

Initial result of activity of the above-mentioned “European Gateway” i.e. a set of practical structures for the harmonization of the RF legislation with the one of the EU should be laying down a programme of harmonization of the legislation which can be approved both by the RF State Duma and the governmental structures, in particular, the already mentioned RF Ministry of Justice.

The program of harmonization of the Russian legislation with the legislation of the EU could have two main phases:

1st phase – legislative harmonization programme in the framework of the already achieved agreement according to PCA Article 55, as the minimum programme.

The inventory of statutory legal acts subject to amendment in connection with harmonization of the legislation should be included in such programmes. It would be feasible to involve the Russian and European experts in the development of this program. Its funding could come from the European and Russian institutions interested in such programmes;

The 2nd phase – a comprehensive programme for harmonization of the Russian Federation legislation with the legislation of EU in the framework of the 4 Common European Spaces (maximum programme).

Structurally, this programme of legislative harmonization as the major component of the emerging Common European Law Space could be broken according to the 4 Road Maps signed between the two sides in 2005 into 4 primary groups of strategic problems: 1) Common European Economic Space; 2) Common European Space of External Security; 3) Common European Space of Freedom, Security and Justice; 4) Common European Space of Research, Education and Culture.

Further, inside each of these groups it is possible to structurally designate the specific spheres which will be studied by the relevant expert groups.

The first phase was not realized on time while the second became too grandiose under the changing less favorable conditions of relations between EU and RF.

Thus the third way was found. In November 2009 at the EU-Russia Summit in Stockholm president of Russia D. Medvedev proclaimed the idea of

a new Programme – “Partnership for modernization”. After Rostov-on-Don Summit in June 2010 EU and Russia started to implement this programme. It is not very ambitious, but logical and more realistic under the circumstances. It can give a new start to our relation and later we can move to implementation of a broader programme based on the 4 spaces described above.

Europeanization of different fields of law of the Russian Federation

The fundament of Europeanization of the Russian legislation lies in the very base of our law – in the Constitution of the Russian Federation. It was adopted at the referendum (on December 12 1993) just one month after coming into force of the Treaty establishing the European Union. The two historical documents of constitutional meaning – the Constitution of the Russian Federation (Art. 2) and the Maastricht Treaty (Art. F) proclaimed the respect of human rights as the basic principle of their political organization.

In fact – and nobody deny it - the Russian Constitution itself was to a great extent tailored according to the best democratic European models and incorporated their ideology, mechanisms and provisions.

The amendments of the Treaty of Amsterdam widened the list of common European values by addition to it of freedom, democracy and rule of law state. The same common values have already been fixed in the Constitution of Russia of 1993 in the chapter devoted to the fundamentals of the constitutional order. The definition of the economic base of the Russian Federation – its internal market in (par. 1 Art. 8) of the Constitution of the RF⁴ – is almost a translation of the par. 2 of Art. 14 of the Treaty Establishing the European Community.

This proves that constitutional norms, establishing the economical, political and ideological basis of both Russia and the EU are identical. It makes the reception of the European legal norms and concepts by the Russian legal system not only possible but logical and reasonable.

Thus we have common ideology and similar economic basis.

Art. 79 of the Constitution of the RF provides for participation of Russia in activities of international organizations with delegation to them of some of its competence. It gives “the green light” for participation of our country in the processes of the European integration even involving elements of supranational legal relations. In fact the Constitutional provisions do not exclude even the possibility of membership of Russia in the EU.

The Partnership and Cooperation Agreement of 1994 raises the relations between the two Sides from traditional international cooperation to a new level of partnership which presumes integration as an objective of their interaction. The European Community Court mentioned this in its decision on the Simutenkov case.

⁴ Конституция Российской Федерации. М., Норма, 2004. С. 5.

As an international treaty of the Russian Federation, the PCA in conformity with par. 4 Art. 15 of the Constitution of the RF is an integral part of the legal system of Russia. Its norms enjoy priority in case of collision with the norms of Russian legislation. In its decisions the Russian courts of different instances may directly refer to the PCA provisions. In a number of cases they successfully used it in practice. This is an important achievement of the EU-Russia legal cooperation.

In 1997 Russian Federation joined the European Covenant on Human Rights of 1950 and became a member of the Council of Europe. It fully recognizes the jurisdiction of the European Court on Human Rights and its decisions. According to Art. 49 of the Maastricht Treaty membership in this Covenant is a condition for membership in the European Union. Provisions of par. 4 Art. 15 and Art. 17 of the Constitution of the RF provide for direct application of norms on defense of human rights. Russia makes further steps in the process of implementation of the European Covenant on Human Rights 1950. In 2010 the State Duma of the Russian Federation has at last ratified the 14th Protocol to the Convention. The Strasbourg European Court on Human Rights enjoys the highest authority among the legal community and the citizens of Russia.

The scale of Europeanization of the Russian law is also illustrated by everyday judicial practice. Today we have about 50 cases in which the Constitutional Court, the Supreme Court and different arbitrary courts of the Russian Federation addressed legislative norms of the EU law. The number of such cases is growing. During 2002-2007 there were 2-2,5 times more court decisions with references to EU acts and norms than during the same period from 1997 to 2002. More often the courts refer to the PCA provisions and agreements based on it as well to other sources of secondary (and once – primary) law of the European Union. Besides this Russian courts start to resort to use of the EU judicial precedents⁵. It is a new phenomenon in Russian legal reasoning.

I conducted a field study in a form of questioning of arbitration court judges of the Magadan region, probably the most remote territory of the Russian Federation, close to Alaska. 24 judges participated in it. 2/3 of them had some knowledge of the Treaty of Lisbon, but only 42% knew about the Partnership and Cooperation Agreement between Russia and EU. 33% used in their practice the European Covenant on Human Rights 1950 and 21% resorted to the concrete precedents of the European court on Human Rights. It vividly shows that Russian judicial community very far from Europe and

⁵ Калининченко П.А. Конституция РФ 1993 г. как основа для европеизации российского права. В сб. Материалы международной научно-практической конференции, посвященной 15 летию Конституции РФ. Том 2. М. 2009. С. 21-22.

even from Moscow is not only aware of the European law but is using it in their everyday practice, especially in the sphere of human rights.

Both Russian and European Union Law function according to the same general principles of law formed long ago in the classical Roman law. It is commonly known that not only Constitution, but the Civil law, the Criminal law, the Labor law, the Tax law and many Codes of law were worked out in a new democratic Russia with comprehensive study and reception of the norms of European countries.

These processes were especially intensive in the Russian law in transitional period in the 1990s. Very often it happened so that adapting the legislation of this or that concrete country Russia in fact adopted unified or harmonized previously by the country in question of the legislation of the European Union. This was the case with the reception by Russia of the value added tax from the German law in which it had already been harmonized by the EC directive.

Thus we see that reception may take place through direct or indirect reception of norms of legislation of the European Union. When necessary the specific needs of national legislation are also taken into account.

The modern form of Europeanization of the Russian law is the Europeanization of the law-making through reconciliation with and adaptation of rules and standards according to the common European models.

Most vividly it can be illustrated by European human rights standards which have officially been accepted by the Russian Federation on the constitutional level.

No less important is the adaptation of the rather technically looking economic and technological rules and standards which are vital for the development of economic relations with our neighbour and global partner – the European Union. In contrast with member-states and those who plan to join the EU Russia (except for the PCA provisions and the four Road Maps discussed above) is not obliged to harmonize its legislation and its reconciliation with the European legal standards is of rather utilitarian character.

At the same time this process of approximation of our legislation with that of the EU goes hand in hand with harmonization with the standards of the World Trade Organization. Russia now is just in the process of entering it. In fact European standards are as a rule accepted as the world standards (including the WTO) which are good to follow by any civilized nation. So they are good for Russia too.

On the 30 of December of 2009 there was a revolutionary amendment to the Federal Law on Technical Regulation of the 18th of December 2002. It directly provides for introduction in the Russian Federation by the decision

of the Government of the technical regulations of the European Union⁶. The practical importance of this act cannot be overestimated!

As a professional lawyer and a scientist the President of the Russian Federation Dmitry Medvedev suggested “reconciling the principles of the Civil Code of Russia with regulation of corresponding relations in the law of the European Union”⁷.

In accordance with the Decree of the President of the RF N 1108 of July 18th 2008 “On Improvement of the Civil Code of the Russian Federation”⁸ among the aims of modernization of civil legislation it is directly stated: “reconciliation of provisions of the Civil Code of Russia with the order of regulation of corresponding relations in the law of the European Union”. “The Concept of Development of Civil Legislation of the Russian Federation” worked out on the basis of the above mentioned Decree reflects the essence of the idea of Europeanization of the Russian private law.

“Integration of Russia in the European and international community – as academician O.E. Kutafin stated – makes us change many of our traditional legal institutions and interpret national norms and principles of constitutional law as well as corresponding norms and principles of international and European law”⁹.

Another form of the Europeanization of the Russian legal system – is the Europeanization of the Russian legal culture, to achieve which we need more time and which is a much more difficult and complex problem. The main two problems have been underlined by D.A. Medvedev: they are legal nihilism and deeply rooted corruption. But to study this we need a special long article...

Practically all new laws in Russia to this or that extent are coordinated with the European law. Let me name just some most vivid and new examples.

All laws in the sphere of ecology pass European ecological expertise.

Transportation and automobile safety rules and standards are oriented mainly on Europe.

Consumer protection laws try to follow European standards.

Measures for stimulation of scientific and technical progress are looked for in the EU legislation.

⁶ Par. 6 Art. 2 introduced by the Federal Law of 30.12.2009 N 385-ФЗ.

⁷ Medvedev D.A. The New Civil Code of the Russian Federation: Problems of Codification. In. Codification of the Russian Private Law. Ed. Medvedev D.A., Statut. 2007. P. 16; Medvedev D.A. The Civil Code of Russia – its Role in Development of the Market Economy and Creation of the Rule of Law State. Civil Law Herald (Vestnik Grazhdanskogo Prava). N2, 2007.

⁸ Российская газета от 23 июля 2008 г.

⁹ Кутафин О.Е. Российский конституционализм. М: Норма, 2008. С. 50.

Banking law, bookkeeping, insurance law, tax law – all these spheres in modern Russian legislation are becoming more and more “European”.

2009 EU Mediation Directive was to be transformed in Member countries by 2011. Similar Russian Law on Mediation is already in force since 2010!

Immigration and visa politics in the RF encounter the same problems as in Europe. We even think of introduction of a kind of our own “blue card” type regulation in Russia.

Russian education is being transformed according to the Bologna system.

Our country is taking into serious consideration the European food safety regulation.

Legal regulation of the electronic signature in Russia was copied from the European model and is being amended along the same European line.

The new Russian Law on Production and Turnover of Drugs of January 28th 2010 was worked out in conformity with the law of the European Union.

I would like to touch upon the legal regulation of defense in the European Union and Russia.

For the Russian Federation and its partners in the Organization of the Treaty of Collective Security (OTCS) in the light of creation of Collective Forces of Operative Reaction (CFOR) the experience of security and defense organization of the European Union and its legal regulation is very useful.

The concept of CFOR itself (allocation by the participating states of military formations of various combat arms not losing their national identity under the joint command) looks extremely like the Rapid Deployment Forces of the EU. It should be especially underlined that the decision on creation of Collective Forces of Operative Reaction is the first step on a way to formation of a uniform policy in the sphere of collective defense. The European Union has taken such step in 1999.

On January, 18th, 2010 the Secretary General of the Organization of the Treaty of Collective Security declared the necessity of working out of the second package of documents on Collective Forces of the Operative Reaction. They will regulate the questions of the status and composition of such forces, a decision-making process and procedure of formation of these forces as well as various questions of jurisdiction.

All such mechanisms have already been created and are effectively functioning in the European Union. The status of military and civilian staff seconded to the institutions of the EU is regulated by a special agreement

concluded between all the Member States in 2003 (EU SOFA)¹⁰. The NATO experience had been taken into account in this document. It is interesting to note that Russia prefers when possible to borrow the more elaborated and ideologically neutral European versions.

The Headline Goal 2010 set up by the European Council has established the system of organs, status, composition, procedure of formation and coordination of activities of different spheres of the European Politics of Security and Defense. It may be of great help in working out of legal regulation of corresponding defensive structures of the Organization of the Treaty of Collective Security.

The mechanisms of civil crises regulation as a constructive example of the specific for the European Union source of “soft force” is vividly expressed in “Objectif global civil 2008”. It is even a more interesting example of the EU to follow by Russia. The concept of “soft force” is not very traditional in Russia but it may be much more effective for our country in the nearest future.

The more Russia is getting acquainted with the European “soft law”, the easier it will be to understand the economic, political and military effectiveness of the European style “soft force”.

The experts working on the draft of the new Treaty between the RF and the EU discuss the reasonability of providing it with legal regulation of cooperation of defense and security structures of the two Sides up to conducting of joint military exercises and training of military personal. As an important additional aim of interaction between European Union and Russia in this sphere there could be the creation of the Common Space of Defense and Security which might increase stability and mutual trust in Europe and in the world.

Interestingly enough is the fact that the Europeanized Russian law serves in a way as a specific “bridge” through which it transforms logical and effective European legal ideas, concepts, norms and culture to other countries on the territory of the former USSR. Especially it happens by means of still not forgotten Russian language, education and traditional cultural ties.

Like the English language spoken in different countries the European law used in different states may have “different accents”, but it serves as the

¹⁰ Agreement between the Member States of the European Union concerning the status of military and civilian staff seconded to the institutions of the European Union, of the headquarters and forces which may be made available to the European Union in the context of the preparation and execution of the tasks referred to in Article 17(2) of the Treaty on European Union, including exercises, and of the military and civilian staff of the Member States put at the disposal of the European Union to act in this context (EU SOFA) (OJ C 321 31.12.2003, p.6).

effective means of cooperation between the peoples perfecting themselves in the direction of the Law of the Mankind which the great German thinker Immanuel legislation Kant was dreaming of.