

of many Roman lawyers, set them in an accessible and relevant format and laid the foundation for further development of jurisprudence.

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RECEPTION OF THE ROMAN LAW IN UKRAINE

In examining the problem of Roman law reception in Ukraine, we ought to note that for a long time Soviet legal doctrine was based on the dogma about the original and unique character of Soviet law. In this context it is natural that the situation made it impossible to explore the impact of Roman law on Soviet law in general. Owing to this, in almost all the textbooks and teaching aids published at the beginning of the 1990s the problem of the impact of Roman law on the law of Ukraine was not examined. The situation has changed only over the last decade; new editions have been published. The phenomenon is comprehensible, considering the fact that Ukraine has taken the course of integration with the world community, of creating a civil society, and expanding and strengthening a law-governed state, which in turn

necessitates an objective review of the past approaches to the essence and character of the development of Ukrainian law.

To fully understand the reception of Roman law in we should start with mediaeval Ukrainian law to take into account the peculiar character of this process which was conditioned by the civilization orientation of Ukraine and its geopolitical and cultural location on the East-West axis. As a result of both Eastern and Western influences the law of Ukraine was shaped as a synthesis of local customary law, adopted under the influence of the reception of Roman law and Greco-Roman Byzantine law. Roman law reception took place on two planes: direct, thanks to the Catholic influence (the Western Church functioned according to Roman law) and indirect through German, Lithuanian and Polish law. An indirect influence of Roman law also took place through Byzantine law as Byzantium itself adopted some Roman law elements. The factors we have mentioned shaped the impact of Roman legal ideas on the formation of Ukrainian legislation., especially on the bill drafts created in Ukraine in the 16th through 19th centuries, including the Statutes of the Grand Duchy of Lithuania, which were the effect of the use and creative reception of Lithuanian legislation, local court practice, rules of Roman, Polish and German law and of customary law of Lithuania, Poland and Ukraine [1].

After the incorporation of Ukraine into the Moscow Empire, Moscow legislation was not applied in the Land of Hetmans. «Old rules», that is customary law, Polish Lithuanian legislation and the law of Magdeburg were still in force there. Attempts at Roman law reception in left-bank Ukraine were undertaken at the end of the 18th century and at the beginning of the 19th century. And so, the preparation of the draft of a collection of «Laws which govern the Little Russian nation» involved Roman and German sources, statutes of the Grand Duchy of Lithuania, Polish legislation, Ukrainian customary law and its court practice. The content of the «Laws...» was visibly influenced by Roman law (particularly in the sphere of property rights and obligations), as well as by its Byzantine interpretations (in giving priority to family and inheritance law) [2].

An analysis of the general tendencies of development of the drafts of Ukrainian law in the 10th – 19th centuries can lead to the conclusion of a significant influence of Roman private law – by means of its partial reception expressed in the borrowings of legislative solutions. However, the created drafts were finally not implemented, and in the 19th century due to the fact that Russian legislation became widespread, the impact of Byzantine law was becoming less and less noticeable.

Since a significant part of the country was for a long time included in the Russian Empire we should briefly refer to the question of the influence of Roman Law on Russian law. Although the degree of penetration of Roman law into the legal

system of the Russian Empire was insignificant, the unity of Orthodox civil law in the Empire was disrupted by local legislation, which was to a large extent directly or indirectly shaped under the influence of Roman law. The process of the gradual reception of Roman law was intensified especially after the reforms of 1861 and lasted until the establishment of Soviet rule, which from the beginning of its existence began destroying the existing system of property relations and the institutions of law connected with them.

The process of eliminating the previous legal system in Ukraine was slowed down due to an attempt at rebuilding the state during the period of the formation and existence of the People's Republic of Ukraine, the Hetmanat and the Ukrainian Directorate. Nevertheless, the process of destroying the existent system of property relations began after the Bolsheviks took over power. It was slightly impeded by the forced passage to the NEP (New Economic Policy) and the resulting necessity of creating civil codes.

Some legal scholars draw attention to the advisability of the creative use of the ideas and regulations involved in The Foundations of Civil Legislation of the USSR from 1991 and the need for creating, specifying and renewing them (G. Matwiejew, O. Pidoprygora).

They also stress the sense of the reception of private Roman law which forms the basis of the majority of Western codifications (J. Wasylczenko, W. Kopejczykow, J. Charytonow).

Irrespective of the variety of views expressed in the course of the ongoing discussion, several projects of the Civil Code of Ukraine have been formed: General assumptions, Property law, Ownership and other property rights, Law of obligations, Intellectual property rights, Inheritance law, International private law

Elements of Roman law reception can be found in the «Obligations» chapter, which includes obligations for running the business of another without a commission, creating a threat of causing damage and other obligations known in Roman law but not appearing in our legislation.

The project of the Civil Code from 20 March 1996 differed from the aforementioned in its structure, its greater scope of subject-matter, the system of exposition and a series of new solutions. The tendencies of protecting the sovereignty of a person were in particular reflected in book II: «Personal non-property rights of natural persons.» It contains norms orientated towards securing the natural and social existence of a natural person. The attitude toward issues of property rights has changed. They are included in book III «Property rights», containing a chapter which involves a collection of general rules of property law, as well as two detailed chapters: «Ownership law» and «Ownership and other property rights.» An essential

novelty is the inclusion into the Civil Code of book VI – «Family law», which generally reflected a justified tendency for regulating relations between citizens in one code.

The complicated process of creating law in independent Ukraine presents, as particularly topical, the problem of determining the place of Roman law in the Ukraine of the 21st century. As has been mentioned before, Roman law is one of the fundamentals of contemporary European civilization. Thus, the readiness of our country to integrate with the European community will to a large extent depend on the scope of the influence of the ideas of Roman law.

Taking these determinants into consideration we will try to define the place of Roman law in the concept of creating law in Ukraine in general, and private law in particular.

It is worth noting that at present the influence of Roman law on national legal systems can manifest itself first of all in the following areas: influence on the philosophy of law, influence on legislation, influence on forming the legal consciousness of a society, influence on forming the general legal culture of lawyers.

One can state that all of the aforementioned tendencies appeared in Ukrainian law at the turn of the millennium.

Firstly, as has already been mentioned, the influence of Roman law on the philosophy of law was recognized at the end of the 20th century. Roman law is attracting increasing attention from researchers. This tendency is expressed i.a. in the preparation of several doctoral theses and professorial dissertations on Roman law reception in Ukraine. Attempts at defining the specific character of this process have also been undertaken.

Secondly, as a result of the expansion of the methodological base the approach to law-making in the area of private (civil) law is changing. The Civil Code of Ukraine, which is rightly assessed as a private law code, has been created.

Thirdly, the citizens' legal consciousness is undergoing a slow transformation. Even though it would be unjustifiably optimistic to state that consideration for the law constitutes an everyday moral imperative, there is a growing conviction that the protection of rights in court is more effective than the administrative path in seeking justice.

Fourthly, certain transformations can be observed in realizing the role and significance of Roman law in shaping the general culture of lawyers. Roman private law is an obligatory subject at almost all higher education institutions in Ukraine, and some of them are additionally offering specialist lectures devoted to selected aspects of Roman law, its reception, influence on other areas of legislation and other topics[3].

Also, worth mentioning the formation of the Ukrainian (Odessa) school of reception of Roman law that formed after the change in doctrine law in 80s and was developing by research works of numerous professors to explain and fully understand this phenomenon. In recent time were published dissertation works by V.V. Vasylchenko regarding the problem of reception of Roman inheritance law, O.S. Kozlova and R.F. Gongalo about the influence of Roman law on the development of Ukrainian institutes of law and many others.

Summing up the above conclusions, we can state that Roman law played a great role in the development and formation of the Ukrainian law, and with the new course of our country more positive changes, regarding European law system, that also is influenced by Roman law, yet to be made.

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LEGAL PERSONALITY IN ROMAN PRIVATE LAW AND MODERN CIVIL LAW OF UKRAINE

The doctrine of a modern state of emergency understands by the term legal personality the ability of a person to be a full participant in regulated legal relations – a subject of law. Roman lawyers defined the subject of law by the term persona (the legal meaning is «man»), persona is the carrier of certain subjective rights and obligations.