HABİL GURBANOV

COMPARATIVE LAW

Textbook

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HABİL GURBANOV SURKHAY
Doctor of Laws, professor
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The textbook is devoted to comparative law, which is one of the integral parts of legal comparative studies. The book covers the history of the development of comparative law, its evolutionary processes, the general characteristics of comparative law, and discusses its place in the general system of legal science and the scientific role it plays.

The textbook touches on the general and specific features of law systems of various countries in the world, discusses their similar and different features, and also considers the specific features and positive aspects of the legal systems of various countries, interstate institutions and interstate associations.

The textbook is intended for students of law faculty, PhD students, teachers and people interested in comparative law.

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INTRODUCTION

Everything in the world is changing, except for natural human rights

Thomas Jefferson

The 21st century has entered the history of humanity carrying many deep-rooted problems. Some of these problems are inherited from the ending century. Most of them are problems that need to be solved. Therefore, we have important tasks concerning the new century. Azerbaijan is currently at such a stage of development that this rise is required to be committed to many human ideals in fulfilling the tasks related not only to the state, but also to the new century. And this is not a coincidence, because our country has won the sympathy of the world community, and therefore progressive humanity expects a lot from our country.

The identification processes taking place in the socio-economic and political life of today`s Azerbaijan in the world community actualize the appeal to the objective laws and manifestations of development of modern state-organizational societies, traditions of their rights and legislation in the context of integration.

It should be taken into account that within the world community, extremely unique legal systems of different states, internal institutions or interstate associations have been formed, their new basic principles, legal concepts, doctrines and categories have been formed, and this development continues successfully.

As a result of such intensive progress, a wide range of experts on state and legal phenomena has emerged in modern civil societies, as well as the scope of their research has

significantly expanded. New methods, techniques and tools of research in the field of state and law have led to a **comparative study** of different legal systems of different countries in a large number. The purpose is to determine the general properties of individual legal systems and the specifics of their appearance. This is exactly what comparative law is engaged in. In modern jurisprudence, this is also called **comparativism**. Comparativism means the comparison (overlapping, comparison) of state-legal objects that existed in the past or present. For this reason, any legal norm or legal institution can be taken as an object for comparative research. Besides that, the legal systems as a whole, the complex legal processes of the past and present are the subject of comparative legal analysis.

As a system of scientific knowledge of legal comparative studies, it is included in the course of general state and legal theory in terms of a comparative aspect. It is noteworthy that it does not imitate the state and law theory. Legal comparative studies as a separate branch of jurisprudence is a subject dedicated to the study of legal comparativistics problems, consisting of specialized legal families. It is the need for objective knowledge concerning the diversity of legal realities that increases the importance of legal comparative studies.

Legal comparative studies, which is an integral part of general legal science, uses its **methodology**. This methodology includes the following different methods, forms and means of understanding the legal reality:

1) **National research methods** (analysis and synthesis, structural-systemic and functional approaches, forecasting, modeling and experimental methods). Based on them, it is possible to study the legal cases as a whole, to assess the additions and directions of the activity of studied legal systems, the processes of re-creation of possible options of the legal

systems of different countries, the results of their realization and the implementation mechanism;

2) **special scientific methods** based on the processes and results of perception of the surrounding world by groups of sciences united on the basis of belonging to specific sciences or certain spheres of knowledge (social and natural sciences, including technical sciences and mathematical sciences). For example, historical and sociological, mathematical and cybernetic approaches, laws and methods of formal logic, social psychology, political science and economics are widely used;

3) **own methods** of legal science. Some of these methods have been formed throughout the development of the science of state and law, and some have been formed in modern times. The study of such methods by comparative law gives direction to the structural parts that make it up in this application - comparative studies of state, comparative jurisprudence and comparative law itself.

The approaches to understanding the legal map of the world include the following:

1) **comparative-legal approach.** This approach includes methods and tools by which the legal systems of different countries are compared to determine the general features and specific features of modern manifestations. Such a comparison involves the study of the overlapping characteristics of laws and legislation currently existing in different legal families or in different legal systems (simultaneous comparison). Legislative acts (microcomparison), more complex components of their unities (institutional, sectoral and cross-sectoral comparison), as well as the legal system as a whole (macrocomparison) can be selected for comparison. Comparative-legal analysis can be carried out, including subjects of complex unitary and regional states, as well as

federations (intra-national comparison), countries belonging to the same legal family (intra-system comparison) and legal systems of different legal families (inter-system comparison);

2) **historical-comparative approach.** This is an approach that allows the study of the comparative characteristics of the legal system and legislation of organized states and societies in the past (historical or simultaneous comparison).

So, comparative law, which is an integral part of legal comparative studies, considers the followings:

- The emergence of a comparative method in law;
- historical formation of comparative law;
- study of the legal map of the world, which gives a description of the diversity of modern legal systems and legal families;
- analysis of legal systems of individual state-organizational societies (associations) or their groups (generalized on the basis of comparable characteristics).

Comparative law, as an independent legal science, is experiencing a period of growth on the basis of the science of state and legal theory. The legal practice of the world testifies to the fact that comparative law is developing rapidly in modern times. For example, if half a century ago it was considered as one of the limited spheres of law, now it has risen to the top as one of the necessary elements of legal science and legal culture.

One of the commendable aspects is that it is widely used in comparative law in the field of history of law, philosophy of law, sociology of law and general theory of law.

As early as the 19th century, comparative law began to play an important role in these aspects. Comparative law allows for a better and deeper understanding of national law, as

well as makes way for its improvement.

Topic 1

HISTORY OF DEVELOPMENT OF COMPARATIVE LAW

History of development of comparative law. Law is not an ordinary social phenomenon. It is one of the most complex events of world civilization. The progress of law has been marked by the development of common traditions based on universal principles. However, it is also known that each organized state has its own law (national, internal) for society. And in such law these fundamental characteristics that belong to organized state-society are manifested, its level of development is reflected in that historical period, legal ideals and philosophical-legal structures that are peculiar to this society are established, the beliefs of the people and their traditions, legal thinking and the characteristics of the legal culture find their expression. Such historical and traditional processes continue today, and the countries of the world feel the specificity of each historical stage in their existence.

In different countries legal systems with their own basic principles, legal concepts and categories, legal constructions, hierarchy of the internal structure of law and its sources, features of the law-making process and the mechanism of force of law are formed. Their existence necessitates a comparison of legal systems, a comparative study of general and specific features in the development of legal systems and the functioning of legal systems. Moreover, such searches have their own history and lead to the beginning of the formation of the rule of law itself, which can be traced in the examples of monuments of common and legal culture that have survived to the present day.

Thus, during the study of the "**Laws of Hammurabi**"

(XVIII century BC), compiled under the name of the ruler of ancient Babylonia, researchers concluded that many of the provisions of the monument were derived before from the laws of the Ashun Babylonian Empire. It also became clear that the roots of some of the monuments lead to the ancient Shumerian legislative monuments.

In its turn, the Jewish "**Laws of Moses**" (twelfth century BC) in many respects contain traces of the influence of the precepts formed in the political and legal thought of Ancient Egypt, and in some cases, the text of the laws coincides with the legal ideas and ideas that emerged in the Babylonian society of slavery. Also, the following clause of "The Five Books of Moses" can be compared with Article 21 of the Hammurabi Laws. "The Five Books of Moses" states: "If someone catches a thief at the crime scene and the thief dies from his blow, this person will not be found guilty for this" (Exodus, XXII, I). According to Article 21 of the Hammurabi Law, "If a person causes destruction in another person`s house, he must be killed and buried for the destruction he caused".

In the "Book of the Ruler of the Shan Province" of ancient China (fourth century BC), a form of despotic rule is defended on the basis of comparisons with neighboring countries. The book states: "In some states the rule is appreciated, and in others slavery is appreciated"; "If we create order and prosperity for stratas of society with the absence of a clear law, a reasonable and honorable ruler-despot, we will always face the chaos and suffering of the people".

In ancient Greece, **Plato** compared legitimate and illegitimate states in his search for an ideal state: where "the law is the ruler over the rulers, and the rulers are the slaves of the law," there is an "ideal" state. According to Plato, it arises as a result of needs, according to the precepts of the gods. People can meet these needs only in a collective way, together,

in cooperation with each other. shoemakers, chefs, soldiers at the same amounts... everyone is doing their job, providing themselves and others. A soldier and a ruler are the same. They are not able to live separately. The police ensure the the main for the society - their existence and interests:

According to Plato, the police (state) should serve the interests of all, not groups or sages. Here the thinker enters into a controversy with the sophist Frasimakh. According to Frasimakh,it is justice and the law, the best for the loaded.

"Yes, it happens," agreed Plato, adding that "this is a government, a state taken by bribe." "Where the law protects the interests of several people, it is not a matter of state structure, but of internal strife".

Aristotle, Plato`s pupil, compiled and compared the constitutions of more than 150 Greek police and other city police in order to draw conclusions about political change in Athens. Only because of this he determined a model form of government for Sparta (in which the monarchy, aristocracy, and democracy, that is, **Athenian politics**, were linked during the election of the ruler).

According to Aristotle, the state is the product of nature, the product of natural development. It is based on human communication needs. According to the famous definition of the thinker, man is a "political animal" or a social animal. He cannot live alone, he needs communication and unity. Sociality is an inseparable quality of a person. The main stages of unification are: family - village or generation - police. The state is, in fact, the goal of existence of the family and the village.

Thus, in Aristotle's opinion, the state is "the communication of like-minded people for the sake of a better possible life." From this point of view, the police is an ideal state structure.

According to another Greek thinker, **Plutarch**,

"Alexander the Great inherited the laws of the countries he defeated." He criticized the legendary commander for this. Thus, Alexander adopted Persian moral norms and customs, and executed those who were dissatisfied with the innovations.

When the "**Law of the Twelve Tables**" were being drafted in ancient Rome (fifth century BC), it was decided to send a special group of ambassadors to the Peloponnese to study Greek law, including the laws of Tsar **Solon**. Although the felonious pontiffs later denied in their laws any part of the legal norms of a foreign country, the influence of the Athenian legislation on the Roman legislation was still noticeable. Such influences are reflected in the rules of procedure of commissions (people's assemblies) on legislation, in the selection of jurors, in the procedures for their operation, and so on.

The Romans focused on the specifics of the law of the conquered lands (although Cicero called the law of the barbarians "wrong and almost ridiculous"). **Julius Caesar** wrote in his book "The Battle For Gaul" that different parts of the law, like the language of the peoples who inhabited Gaul, were different in this Roman province. The famous Roman jurist **Gaius** wrote: "All nations governed by law and custom enjoy their share of the law, the common law of all peoples".

In the Middle Ages, a comparative-legal approach was actively used in the process of reception of Roman law. After its initial definition by **glossators** (commentators), especially Irneri and his followers, law schools and their graduates benefited from the Roman legal heritage, which they taught on the basis of a comparison of the real reflection of the classical principles of law in Europe in the legal practice of their countries. However, in this process, too, there were differences in approaches.

The traditional and non-objective nature of the

comparative analysis of British and French legislation in England has led to the assertion of the superiority of one over the other. This fact is stated in Fortescue's book "Commendation of the Laws of England", published in 1453. After all, Lord Chancellor Francis Bacon, during the reign of King Jacob I, in his book "On the dignity and growth of sciences" (1623), suggested an idea that, there should be a worthy motto of comparative law: "Own right cannot serve the criterion of self-assessment".

F. Bacon is considered one of the founders of the science of comparative law in his homeland. He made extensive use of legal comparisons and developed his own inductive method (in the order of similarity and difference tables).

In France, Montesquieu (in full Charles-Louis de Secondat) can be considered a representative of legal comparativism. He has worked on a comparative analysis of the legislation of different countries in order to confirm his legal doctrine on the separation of powers. Accordingly, the thinker added the following title to his work "On the Spirit of Laws": "... On the relationship of laws with every form of government, morality, climate, religion, trade, and so on". Montesquieu spoke enthusiastically about this, and also valued the Roman laws of inheritance and their priority. He also included studies of French law (a kind of "feudal law") as new additions. The thinker wrote by comparing the various factors underlying the law, especially the differences between society and the state: "Laws must be closely linked to the characteristics of the people to which they are defined, but in extremely rare cases the laws of one nation may be useful to another".

Recognition of comparative law in different states. In the new era, when the government in Europe developed and put into practice its ideas about the state-legal system in the

country, **the formation of comparative law** began with the establishment of the new statehood, and this is an extremely active process. However, the reasons and motives for its emergence in different European countries were different, based on personal approaches and assertions.

The interest in comparative law research **in Germany** arose from the need to search for and develop a pan-German ideology on the threshold of a united state**.**

Examples of the **historical school of law** operating in Germany at that time, also **F. Savini**, thought that the law of one country could not be used by another people. At the same time, representatives of South German law schools viewed foreign law as a tool for improving national law through legislation. According to some historians-comparativists (for example, A.V. Kres), the first to consciously begin to lay the foundations of comparative law as a science was **Anselm von Feuerbach** (in his work "A Look at German Legal Science"). Anyway, it was in Germany that the first periodicals appeared, and in 1829 the press under the title "**Critical Journal of Legal Science and Foreign Legislation**" with a comparative legal content began to be published.

In France the development of comparative law took place during the struggle of supporters and opponents of the revision of the first national consultative acres of the Napoleonic era. In 1831, the first department of the history and philosophy of comparative law was established at the France de Collège. Thoughts on comparative law can be found in J.L.E. Lermine's works "The Teaching of Comparative Legislation" and "The Historical Method of Comparative Legislation", published in 1834. In 1869, however, the French comparativists declared that the subject of their research was no longer a stagnant and unchanged legal history, but existing legal norms and institutions, in the National Comparative

Legislative Society. At the end of the century, French jurists began to propagate the idea of creating a common law for civilized mankind, and in 1894 the International Union of Comparative Law and Economic Studies was formed.

The enthusiasm for new beginnings **in England** arose from the spread of Darwinism (the study of the origin of species based on comparative research) on the one hand, and the expansion of the British Empire and the need to develop rules for the proper management of the colonies using "foreign" law on the other hand. In 1861, the Department of Comparative Jurisprudence was opened in Oxford. The department was headed by **Henry Mann**, author of the multi-volume work "Ancient Law".

In the nineteenth century, comparative law was practiced in **the United States**. Its formation happened as a result of the study of the legitimacy of individual parts of the federation for the reasons that exist in their legal systems, and the eradication of **isolationism** in the first decades after independence, as well as the rise of interest in Roman law and British legal heritage.

On the history of the state of comparative law in Azerbaijan. The study of the history of political and legal thought in Azerbaijan allows us to conclude that our country is not left out of the traditions of legal comparativism. However, it should be noted that such a tradition was the result of historical events for Azerbaijan, especially the fact that this ancient country was invaded by neighboring states in different historical periods, under the rule of empires. Nevertheless, comparative law has not been the subject of independent research as a science in Azerbaijan in either the New or Recent Ages. Although there are not many issues that need to be explored, there are enough of them.

That is why, in our opinion, it would be reasonable to take a brief tour of history.

At the beginning of the 7th century, on the eve of the invasion of the Caucasus by the Arab Caliphate, Azerbaijan was under the rule of the Sassanid Empire. The country included into an administrative unit called the Northern Region. In such a historical context, Azerbaijan was subject to the monarchy, and the rules of administration, tax system, land ownership and use were determined and regulated by the legislation of the Sassanid Empire. Even the performance of religious rites and ceremonies was subject to the norms of the Sassanid religious customs and traditions. So, Azerbaijan felt legal comparativism at a time when feudal social relations were beginning to take shape.

This historical tradition has continued under the influence of Islam since the beginning of the 6th century (as a result of the invasion of the Arab Caliphate). As a result of the adoption of Islam, secular law in Azerbaijan was subjected to the norms of Sharia (was actually replaced). It is true that secular law has preserved its existence in a certain sense, but the priority has belonged to the Sharia. Thus, the norms of Sharia were chosen because of its great advantage on the whole occupied territory of Azerbaijan. Although Islamic law (divinity) did not acquire citizenship in Azerbaijan at that time as one of the sources of law, it was recognized as a basic law in legal practice.

So, the legal system and legislation of Azerbaijan at that time were influenced first by the shah (royal) government and then by the theocratic government, but, as we mentioned before, it maintained its secularism. In this sense, the law of Azerbaijan has felt the powerful influence of a number of legislative monuments of the Sassanid Empire, and it is these political and legal acts that have played a significant role in enriching the history of political and legal thought of our people. It is known that the application of foreign legislation in the occupied territories of Azerbaijan, first of all, required their adaptation to local characteristics and national traditions.

Although today we cannot call it the reception (appropriation) of the legislation of the Sassanid Empire in Azerbaijan, in any case, the laws were applied in accordance with the specifics of Azerbaijan. Of course, this can only be imagined at a relative level, but historical facts show that the Sassanid rulers did not understand the realities of Azerbaijan to a certain extent, especially in the application of legislation. In short, the legislative monuments that emerged during the rule of the Sassanid Empire in Azerbaijan played a role in the enrichment of Azerbaijani law. The following can be attributed to these legislative acts:

1) Matikan E Hazar Datastan (“The Digest of a Thousand Points of Law”);

2) Babylonian Gemara ("Gemara" - "learning" - the legal education created in Babylon during the III-V centuries by the Jews, who used a large part of the population without self-government and under the protection of kings);

3) The Babylonian Talmud ("The Talmud" is a religious holy book of the Jews. This book, which has its own colorful content, consists of 63 treatises comprising 6 independent chapters. Two parts of the Babylonian Talmud, such as Halacha ("Provisions of the Law") and Aggadah ("Provisions of the Law" narrated and interpreted in the genre of legends, myths, tales and legends) can be distinguished;

4) The Letter of Tansar;

5) Kahname.

“Matikan E Hazar Datastan” (“The Digest of a Thousand Points of Law”) It was compiled in 620 as an information book with practical recommendations for the rulers of the Sassanid Empire. The digest is the only example of the legal collections genre of the empire. It is possible that it used a set of laws of several countries, but does not mention the names of those countries and their digests.

The articles of "Matikan E Hazar Datastan" discuss different areas and institutions of law. It is clear from the content of the collection that during the Sassanid rule in Azerbaijan, a number of advances were made in solving some problems of legal science. The digest has played a role in improving the initial understanding of the forms of procedural law.

The frequent reference of the authors of the **"Babylonian Gemara"** to the legal norms of the Sassanid Empire, to the laws and decrees of the shah, and even the specific instructions given by the Babylonian Jews that the officials in charge of the administration should be tried according to "Persian laws" allow us to assume that the legal norms and legislative acts of the Sassanid period also played the role of the main normative-legal acts for Azerbaijan. Undoubtedly, in this process, some comparisons took place and the content and nature of foreign legal instructions were adapted to local specifics.

The proclamation of the decree "The law of the state is the law" by **Mar Samuel Japh** (III century), chief physician, doctor and astronomer of the city of Nagarden, one of the founders of the "**Babylonian Talmud**", gives grounds to believe that legislative acts of the shahinshah (laws, decrees, orders and directives), in general, were in force in all provinces of the empire, including the territory of Azerbaijan, and their implementation was binding.

"**The Letter of Tansar**" has its own reason for writing as a set of instructions with different content, consisting of legal norms. The purpose of its writing was to regain and the rights of the privileged classes as a result of the Mazda movement. Thus, the main content of the monument was to reflect the processes related to the restoration of lost rights and privileges.

The book **"Kahname"** focuses on the social and state

structure of the Sassanid Empire, issues of domestic governance, the rights and privileges of government officials, high-ranking officials and other palace officials.

The separate interpretation of the norms contained in the "Kahname", which are often applied in practice, has made it more readable and has increased the number of those who refer to it. The book was a tool of the Sassanid Empire that was used almost directly in practice and, if we put it in modern language.

Along with all this we would like to note with regret that there is almost no comprehensive study of comparative law in Azerbaijani jurisprudence. Despite the fact that this field of legal science has been taught for decades in neighboring countries and significant research has been conducted, we are still in a kind of waiting position. However, we have no doubt that in the near future we will be interested in this interesting field of law and expand the scope of research in the field of comparative law.

Comparative Law in the New Age. At the beginning of the last century, in July-August 1900, a unique result of the search for approaches to comparative studies in law, the "First International Congress of Comparative Law" was held in Paris within the framework of the World's Fair. The results of extensive discussions in the Congress were as follows:

1) formation of basic concepts and categories of comparative law;

2) creation of the main categories of comparative law;

3) Defining the subject of comparative law (both the subject of study and research), its tasks and the main goal (objectives) facing it;

4) Compilation of the first classification of the basic legal systems of the states at the beginning of the XX century.

The First International Congress defended the proposals of the French comparativists (E. Lambert, R. Saleyl) on the

independent importance of this science, which determined the future directions of development of comparative law.

The International Academy of Comparative Law, the International Association of Comparative Law, which advocates such an approach to comparative law, formed their own organizational activities by creating specialized journals, comprehensive network of international institutions for the study of the problems of comparative law and its teaching in the legal education system.

Founded in 1924, the International Comparative Law Association now brings together hundreds of comparative activists from the country's family, who meet regularly as part of international meetings, conferences and congresses. For example, the XVIII International Congress of Comparative Law, held in Washington (USA) in July-August 2010, focused on the current problems and prospects of comparative law, its place in university education, its role in the courts and the tribunal. The XIX International Congress held in Vienna in July 2014 was dedicated to the traditions of convergence of national legal systems in modern times.

In the above mentioned, it is important to point out that the rate of development of modern comparative law is satisfactorily assessed by comparativists. Although there are some delays in this development process, they are not considered unstoppable obstacles to the future prospects of comparative law. Any field of science, including comparative law, can achieve success in the field of scientific research. According to researchers, such a development process requires the joint scientific efforts of the world community. It is necessary to take into account that one of the strongest factors in the development of comparative law is the modern level of development of national, domestic legal science. The improvement of the legal systems of different countries of the

world and the innovations they have gained as a result of new research give a new impetus to the modern progress of comparative law and enrich the prospects for its development. From this point of view, it is important to form a perfect system of political and legal factors that contribute to the development of modern comparative law.

To some extent, the following contributes to the modern development of comparative law:

1) a significant increase in the number of sovereign states (if in 1900 the number of such states was 57, in 2014 their number reached 195);

2) the emergence of modern international unions and associations with their own rights and the formation of their independent legal system on this basis;

3) multiple features of the basic legal systems of the modern age (legal systems of states, internal state institutions, interstate associations, interstate unions, dependent territories, organized associations);

4) expansion of integration relations between states on legal systems based on global traditions;

5) return of post-socialist states to former legal families and their groups.

So, in short, we can distinguish the following three main positions that reveal the importance of comparative law in modern times;

1) the studying the legal history of comparative law is useful from the point of view of the study of the history of law;

2) modern comparative law is important for a deeper understanding of national law;

3) Comparative law is distinguished by its role in the field of mutual understanding between different peoples, the creation of the best legal forms of relations in international relations.

Thus, modern comparative law serves as a whole in the renewal of jurisprudence and in the development of new provisions in both national and international law. All this must meet the needs of the modern world, and the comparativists are building their activities in this direction.

This is because it is not enough for the comparativists to discover a role that is unique to comparative jurisprudence. The goal of comparativists, and of comparativism in general, is to train legal experts to be professionals who are able to carry out their duties properly in their field.

Comparative law should not be the field of activity of individual legal experts interested in that field of law. All legal experts should be interested in knowing comparative law and being closely involved in its improvement. Comparative law is, for legal experts, a method of comparison, while for others it is an independent branch of law, that is, the realm of understanding the law.

Comparing different legal systems in the world is indeed a very difficult task. Before engaging in this field, it is necessary to keep in mind the expected dangers and to be extremely careful. Because it is very difficult to correct the mistakes and inconsistencies made in this way later.

So, comparative law should play a primary role in legal science, first and foremost, using the positive experience of all states and peoples to explain the role of law to legal experts. In order for comparative law to play its full role, legal experts must not only study the national law, but each of them must have a deep understanding of the features of comparative law in their field and apply them in their day-to-day practice.

Topic 2

GENERAL CHARACTERISTICS OF MODERN COMPARATIVE LAW

Comparisons of the legal systems of neighboring countries on a geographical map of the world have their roots in the ancient layers of history. Thus, the history of comparative law is as old as the history of legal science itself. It is clear from its general characteristics that comparative law has developed rapidly. It is the result of this that the definitions of the concept of comparative law have been numerous, and its meaning has been explored from different points of view.

As already mentioned, comparative law is used in research in the field of history, philosophy and general legal theory. In the nineteenth century, comparative law gained its significance in this respect. The French thinker SL Montesquieu did not say in vain that comparative law is a fashionable branch of law that has created a historical and philosophical picture of the development of law. This was based on the dominance of ideas about social progress and evolution at that time. To do this, one of the main goals was to exercise the rights of the most diverse peoples.

At the present stage, the fashion for such generalization is long gone. However, the contribution of comparative law to historical or philosophical research is indisputable. For centuries, law has been aimed at revealing the terms and principles of scientifically just law. Because just law was in harmony with God's will, human nature and human mentality. Legal science was torn from positive law. Judicial practice and practicing legal experts were interested in the study of customs. The ordinances of the rulers were of interest to the authorities of other countries. However, neither customs nor ordinances

attracted those who thought about and wrote about law.

This was also the case in universities that hated the banditry and barbaric nature of customs and ordinances, and it was believed that the study and teaching of law and its methods was the only good and necessary. It is with the help of true legal science that the foundations of justice that are common to all countries can be discovered. From this point of view, the study of Roman law and canonical (church law) law is considered to be the most convenient method. In the works of commentators on Roman law and canon law, these areas of law were the common law of the civilized world.

Only in the nineteenth century did the idea of "universal law" leave the scene of life as a result of the collapse of the jus commine, which was intended to be a national issue, and as a result of this "cultural revolution" a different European country emerged. In general, both the science of law and the teaching of law in universities began to be based on national legal systems. The development of comparative law was a reaction to the nationalization of law in the nineteenth century. On the other hand, the development of comparative law has contributed to the gradual expansion of the most diverse international relations, leading to the convergence of legal systems.

As already mentioned, comparative law, which was formed at the turn of the twentieth century, was developing rapidly. The first steps of comparative law, which is one of the necessary elements of legal science and legal culture in our modern days, have been accompanied by intense discussions. These discussions were aimed at defining and clarifying its essence and subject, its place among other branches of legal science, its methods and the purpose of its study. These discussions usually covered the following:

- whether comparative law is a legal science or not;

- whether comparative law is a comparative method of this science or not;

- the study of comparative law as an applied science, and so on.

One of the issues being focus on during the discussions was the problem of distinguishing comparative law from the history of comparative law, the general theory of law, and the sociology of law. The issue in which area of law comparative law is more effective was also at the center of the discussions. In the written works issues like which systems of law are useful or not, the expediency of comparing these systems with each other, and other issues were considered. As a result of these discussions, the works that have appeared in different countries can be considered as the first books on comparative law. That is, those discussions formed the basis of the written works.

Consideration of the above-mentioned issues in science at the time when comparative law was still "very young" was inevitable. Similarly, discussions about the place of comparative law in the university education system were inevitable at that time. Research in this area was also one of the main problems of the comparativists. At a time when comparative law is firmly on its feet today, the problems presented have lost their relevance. One of the most important issues in the modern world is to give a fair and detailed general description of comparative law.

One of the important contributions of comparative law to the development of legal science as a whole is the passage it has opened up to the study and research of law and its history in chronological order. It is with the help of comparative law that many aspects of ancient Roman law, ancient German law and feudal law have been discovered.

According to researchers, such aspects can be said about the philosophy of law. Comparative law regenerates many

legal concepts related to the philosophy of law. It introduces us to a society in which we have no understanding of law. It is a society in which law is synonymous with obligation and even recalls the symbol of injustice, as well as the fact that law is closely related to religion and constitutes its sacred part (R. David, K.Koffre-Spinozi).

Undoubtedly, the history of the philosophy of law can be limited to the description of encounters and ideas about the nature and role of law that exist in any part of human society. But at the same time, philosophy also requires universalism. There is no need to talk about such a narrow circle of philosophy of law, based solely on the study and research of one's own national law. It is clear that comparative law helps to overcome such barriers.

Much attention is paid to different aspects of law in the scientific literature. For example, it is shown that there is a difference between general law and private law, civil law and the right of action, imperative norm and dispositive norm, law and regulation, the right of thing and the right of obligation, movable and immovable property. However, a person who has studied French law considers such a confrontation in itself necessary. However, comparative law shows that such differences are not universally accepted. Thus, in some countries they have lost their meaning or have been abandoned altogether (R. David, K. Joffre-Spinozi). Apparently, this leads us to the need to look at these categories from a different perspective, to rethink their true meaning in modern national law.

The same considerations can be made for legal ideas and concepts. Comparative law helps to break with the tradition of giving these concepts a general binding character. Because in the history of a number of states, there have been many situations where the law has to serve the interests. Even logical schemes

have been sacrificed for this.

It is acceptable in legal science to know and improve national law. Comparative law also creates favorable conditions for this. Because it is difficult to understand the specific features of the legal systems of different countries without a detailed and in-depth mastery of national law.

The legislation of individual countries has used comparative law, its terms and principles in all historical periods. The goal was to enrich and improve their creations. It is no coincidence that **comparative legislation** in the nineteenth century is mentioned in the scientific literature. The establishment of the Comparative Legislative Society in France in 1869, the establishment of comparative law departments in universities, and the study of new problems in various countries were the result of great care, and this is due to the comparison of their features with the French problems (R. David, K. Joffre-Spinozi). The purpose was to show this or that change in the legislation.

Not only legislation has the power to use comparative law to improve national law. Legal doctrine and case law also have such an opportunity. The law has a national character. However, the law itself is not the same as the law. The law is passed by the country's parliament. It is, by its very nature, an expression of the will of the legislature (including the state). The law is enforceable in any case. Because when any socially dangerous act or other violation of the law is committed, the legislation, not the law, is applied. The generality is that in the process of restoration of rights and freedoms, both the violated rights and the concrete norms of the violated law are restored.

From this point of view, law, by its origin, is the product of the intellect of the society (members of the society). The law is not given, it is created. The advantage of the law here is that it precedes the legislation in terms of age. Therefore, the term

"legal act" is used asca priority. The term "legal right" cannot be considered appropriate. Thus, the law at the same time ensures the domination of the legislation by its superiority. It also considers it a priority to give the law a high legal force.

The legal science is transnational in nature. Although the laws of different states differ in content, they do not differ significantly from the point of view of structure and traditions of influence. Such similarities are especially common in the legislation of neighboring countries. Different features can usually be found in court practice. Because the subject of the application of law and the content of the application may have different characteristics in the legislation of different countries. The most important common denominator is that the law regulates the most important spheres of public relations in all states. For this reason, comparative law has set itself the task of comparing the most specific similarities and differences, general and specific aspects of the legal system and the legislative system of different countries. As the task of comparative law is not limited yet.

Comparative law reveals its usefulness to its nature and character in the formation of mutual understanding between peoples and ethnic groups. It is as a result of the efforts of comparative law that the most appropriate regimes of interaction are formed in international life. This, in turn, plays an important role in the development of general international law. This is especially relevant in a modern, but at the same time extremely complex and controversial period. This urgency is first and foremost a matter of general international law. The current state of the modern world requires a renewal of international law. The world community must take into account that international law is the law of all states that are members of the world community, not of general powers, but of greatness and smallness, the level of economic power, as well

as the pace of development. Unfortunately, it is difficult to say in the current situation.

The settlement of military conflicts and clashes in different regions of the planet (especially in the Muslim Eastern region) shows that, in particular, the world's superpowers are indifferent to international law, and in some cases, the aggressor is not called as he should be called, and finally, it is thought that general international law exists only for large and economically and militarily developed states. The most striking aspect of the matter is that the norms of general international law are ignored. Where the settlement of the conflict is extremely necessary, there is often a wait-and-see attitude, and where the settlement of the conflict has nothing to do with time, international law is immediately remembered. It should be said that in such situations, the religious factor comes to the fore. Thus, the Islamic world is often ignored, and the Christian world is especially sympathetic. This can not be called anything but political and legal hypocrisy. In such cases, comparative law has nothing to say, or its terms and principles lose their relevance. As already mentioned, although it is a clause of mutual understanding between peoples and ethnic groups, in the implementation of the instructions and requirements of this clause, the superpowers retreat or take a wait-and-see attitude. In fact, it is an example of disrespect for the principles of comparative law. All this can be applied to the ongoing military conflict between Azerbaijan and separatist Armenia. As if the violation of the territorial integrity of Azerbaijan, the occupation of lands and the transformation of Azerbaijanis into internally displaced persons and refugees in their homeland is not a gross violation of international law ... Realizing that it was not punished by the world community, the fascist regime of Armenia continues its activities of aggression and terrorism. Thus, the occupying Armenia is clearly violating

the universally accepted norms and principles of general international law. Superpowers and almost all international organizations, including the United Nations, are watching from the sidelines, only rarely making weak statements, and thinking that this is enough for their activity.

It should be noted that one of the sources of general international law, provided for by the status of the International Court of Justice, is "the general principles of law, recognized by civilized nations." The interpretation of this formula can only be based on comparative law.

In addition to general international law, one of the areas of law in which comparative law has certain benefits is **private international law**. Compared to general international law, private international law operates in a complex situation. The implementation of this area of international law is not so simple. Thus, private international law consists mainly of conflicting norms. Such norms mainly serve the following cases:

- determining whether the relevant national law has jurisdiction over this or that foreign elemental legal relationship;
- determining exactly which national law applies to this or that legal relationship.

Such a method would be beneficial if states with different legal systems could reach a consensus. In fact, the conflict and jurisdiction of the laws in each country is resolved without regard to what is done in another country in this regard. As a result, different regimes have been established for different elemental relations in different countries. This situation is sometimes associated with the following two consequences:

1) the unpredictability of the decisions made;

2) disagreement between decisions made to solve the same problem.

It is important to note that both of these consequences are distinguished by their danger. Therefore, making decisions in this context can lead to anarchy.

One of the main tasks of modern legal experts is to put an end to this anarchy. In today's world, where international relations are expanding year by year, it is extremely important to create a solid legal basis for such relations. The gradual strengthening of such relations, in its turn, facilitates the development of mutual scientific exchanges in the field of comparative law, and the bonding of different peoples and ethnic groups brings them closer to the legal systems of the countries to which they belong.

At present, international relations have reached such a level of development that it has become possible to reach general agreements on the application of the same norms in this or that type of relations between different states everywhere. That is why the states of the world must develop and implement the same norms in every sphere of mutual relations. International conventions may also be concluded for this purpose. Besides that, while the court practice of each country creates a conflicts-of-law rule, it must focus on how the problem is resolved by law and court practice in another state. Only in this case it is possible to reach the necessary understanding in mutual relations and relations, to realize that the conflicts-of-law rules adopted by individual countries can be applied in other neighboring states. This is one of the most appropriate and favorable recommendations of comparative law for the modern age.

The practice of comparative law testifies to the fact that

from a practical point of view, it would be more expedient to develop a single set of rules governing one or another category of legal relations instead of contributing to the unification of conflict rules.

The international unification of law, which regulates international legal relations, is undoubtedly one of the most important tasks of our time. Organizations such as Unidroit serve to accomplish these tasks. Uncertainties should be avoided in international legal relations. While international unification of law is taking place, it is not a question of replacing national legal systems with supranational law enacted by the legislature worldwide. There is no need to go that far. This can be achieved through the conclusion of international conventions, the conclusion of principles and standard agreements that are universally understood.

Some unification and harmonization of international law has already been achieved. Such unification and harmonization has been carried out by the member states of the European Union. This is discussed in the Treaty of Rome and in many other derivative texts.

"The Principles of European Contract Law" were developed by a working group of the Lando Commission (the Commission is named after its chairman). These principles can serve the same international model of contract law. Provided that they are adopted by the member states of the European Union at one time.

The application of the European Convention for the "Protection of Human Rights" by the Strasbourg Court and its impact on national legal systems, as well as the definition of similarity in the field of criminal procedure, are important.

Regardless of the specific issues and geographical boundaries we are talking about, the task of synthesis and harmonization cannot be accomplished without the help of comparative law. Without comparative law, it is impossible to determine the fact that the rights of different states overlap or disagree. Here it is important to develop its unit technique without taking into account the specifics of unification applied

in different countries. It is necessary to create conditions for efforts directed to unification to be highly successful.

As was mentioned before, comparative law plays a major role in the modernization of legal science and the development of a new international law that meets the conditions of the modern world. However, comparativists should not be content with discovering the role of comparative law. Another goal of comparative law is to train legal experts who are able to carry out the duties in their field.

Until now, there was no need for special co-operatives, and legal experts were only interested in a limited range of issues. As shown in the scientific literature, legal experts in France were only interested in European legal systems, because these legal systems were to one degree or another close to French law in terms of their traditions, structure, methods and spheres of force. Even today, if it is necessary to take an interest in the legal systems that belong to the same family to which French law belongs, it is possible to remain in the same new positions. In this case, it is not necessary to appeal to the comparativists (R. David, K. Joffre-Spinozi).

Because today's world is not the world that existed before, but humanity is a witness to countless changes. Legal experts with a modern legal education use different terms. Their outlook and ability to understand the law differs from the previously accepted methods and means of understanding. In such a situation, we need comparativists who teach legal experts to understand their interlocutors and to make logical judgments with them. The comparativists must warn and prepare legal experts of the difficulties and misunderstandings that may arise. This explains the modern development of courses at universities and institutes where comparative law is taught.

Another important problem that is important for

comparativists to reveal is the **structure of the law**. This, in turn, makes it necessary to pay special attention to the differences between legal systems.

It is well known that every legal system uses concepts. The legal system forms its norms with the help of these concepts. In this case, the legal norm of that system can be understood in its own way. In addition, the system of norms can be constructed differently from a structural point of view and, accordingly, the study of that legal system implies an understanding of the structural differences between the law we have and the law we have studied.

The balance between conflicting interests and the search for fair solutions to the efforts of the law can be achieved in one way or another in the country by one or another legal system. For example, in one country the protection of citizens from the administration may be entrusted to the judiciary, while in other countries it may be entrusted to special bodies within the organization itself. It can be done through parliamentary commissions or through a "mediator". The individualization of punishment can be shared in one way or another between judges and potential government officials. The decisive role played by evidence in one country may be limited to formal statements in another. The comparativist must pay attention to such different approaches, show the need for a lawyer who compares different legal systems, do not revolve around concepts, and teach the problem. One should be wary of questionnaires, a method often used to compare different legal systems. The most accurate answers contained in the leaflets can create misconceptions. This usually happens when a legal expert who studies the questions on the papers forgets that there are other norms and principles that are not on the papers, and does not assume that the papers only teach the facts on the papers.

The lack of overlap of concepts and even universally accepted legal categories poses great challenges for the legal expert who wishes to compare different legal systems. Although the legal expert is ready to face differences in the content of norms, sometimes in foreign law the norms seem natural to him and the direction is lost when a classification arising from the nature of things can not be found. But in the meantime, the following should be understood:

- legal science has developed independently within different legal families;
- concepts and categories that are elementary for a legal expert in one state are sometimes foreign to a legal expert in another country. For example, issues that are of paramount importance to a Muslim legal expert may not arise for a Russian legal expert and may only have a limited meaning.

The comparativists must create the necessary conditions for productive dialogue by extensively studying the structure of other societies and various legal systems. They should explain the mentality and methodology of the concept of foreign systems and create scientific legal dictionaries that allow people to speak different legal languages in the broadest sense of the word.

This means that comparative law should play a primary role in legal science. He tries to explain to lawyers, first of all, the meaning and role of law, using the experience of different peoples of the world. On the other hand, it seeks to promote the development of international relations, mainly in practice, and opens the way for the coordination of forms of regulation of these relations. Finally, comparative law helps legal experts in different countries improve their national law.

In order for comparative law to play its role properly, legal experts should not be content with the study of national law, but should resort to the comparative method whenever

possible. Although many of our modern legal experts understand the benefits of comparative law, they do not resort to the comparative method because they have not previously acquired sufficient knowledge to do so. The new generation of legal experts already has such knowledge. The new generation is not so sensitive to the realities of the modern world and does not want to agree on the need for interaction between peoples. As Yering expresses with great sorrow, modern law has fallen to the level of "local judicial practice." It may be necessary for practicing lawyers to limit their horizons in their day-to-day work to the framework of national law. However, law is a field of science distinguished by its scientific universality. Comparative law is one of the elements of such universality, which is especially important in our time. It plays a key role in the study and development of modern law and legal science, and it will continue to do so in the future.

Comparative law as a science. Comparative law has at least the following three meanings:

1) historically formed method of understanding the essence of a legal event and (or) on the basis of its comparison;

2) a science known by a legal entity for its characteristics and features of formation;

3) a subject that is included in most educational programs for the training of future legal experts.

Modern law as a science is a set of knowledge learned on the basis of comparing the state and legal phenomena of the modern world.

The **subject** of comparative law is the field of science that studies the origin, development and activity, and general and specific regularities of the legal systems of organized societies (associations) through comparative understanding.

The **object** of comparative law consists of the legal systems found through the comparison of organized societies

(associations), their components (law, understanding of law, law-making, sources of law, legal institutions, legal system, system of law, its force).

Achieving a complete picture of the legal development of the modern world is the **goal** (purpose) of comparative law.

Principles and main directions of comparative law. The following are the **guiding principles** of comparative law:

1) the **principle of comparison** of the event, institution and process under consideration**.** They are connected by the **overlap of the object** of comparative and legal research, ie there must be a direct and obvious connection between them. Objects must belong to the same category of legal event, institution or process;

2) **the principle of compatibility** of different levels, forms and types of components of comparable systems;

3) **the principle of representativeness**, which requires accounting in the study of parent (primary) and derivative (receptive) legal systems.

The main directions of comparative law can be combined in some of the following approaches!

1) the following comparisons are distinguished during the functional approach:

- **analytical comparison.** The purpose of the science of comparative law is to expand its potential (for example, the study of the formation and current state of the legal sciences of continental law);

- **pragmatic comparison.** The purpose of this comparison is to put into practice the results obtained (law enforcement agencies in the continental and Anglo-American legal systems to improve the state's law enforcement system);

- **cognitive comparison**. Carried out in order to obtain information about the state of affairs and the quality of the institutions of foreign law;

- **information comparison**. It allows to get acquainted with the traditions of development of foreign law;

- **integrative comparison**. Incorporates all of the above types of comparisons in the process of legal research;

2) The institutional approach includes the following types of comparisons:

- **macrocomparison** – comparative analysis of the general structure of different legal systems (historical aspects of the formation, classification and methodology of the legal culture of society);

- **microcomparison** – a comparative analysis of the specific provisions of individual institutions in the legal system (for example, a study of the status of heads of state in EU member states);

3) **the hierarchical approach** assumes the following:

- **historical comparison** of legislation relating to overlapping legal systems (for example, a study of the processes of reception of French articles in the legislation of Latin America and Africa);

- **inter-systematic comparison** of several legal families (study of Far Eastern and Islamic law from the point of view of the influence of religions and traditions);

- Intra-system comparison of several legal systems belonging to the same family of law (as in the countries of the German family of law, comparative legal study of Germany and Austria);

- **intra-national comparison** of the legal system of several subjects of complex states (for example, the study of the legal system of states, republics, provinces, cantons);

- **cross-sectoral comparison** of legal institutions and (or) branches of law within one state;

4) **chronological approach**;

- **diachronic comparison** – reflection of overlapping

events, institutions and processes in development (for example, comparative-legal study of the institute of criminal law in European countries);

- **Synchronous comparison** – synchronous comparison of similar legal systems according to the main features of the current temporary framework (comparison of similar and different, general and specific areas);

- **Asynchronous comparison** – Comparison of different legal systems of states with certain similarities on other aspects of development being compared (for example, a comparative study of the Institute for Legislative Determination in the United Kingdom and Belgium);

- **binary comparison** – analysis of two parallel legal systems (for example, a comparative legal study of "laws" - the law of the United States, Mexico, Russia and Azerbaijan).

The system of comparative law and its conceptual-categorical apparatus. Comparative law structurally includes the following parts:

1) **The general part**: This section presents the theory and history of legal comparative studies, as well as the legal map of the world, which gives an idea of the modern legal systems and the diversity of legal families;

2) **Special part**: this section contains an analysis of the legal systems of modern states (societies and associations, their groups, families).

Comparative law has had its own set of concepts, categories and terms, making extensive use of the common legal language that has been piled up for centuries. Their specific ones are as follows:

- **legal system** – historically conditioned and objectively organized organization of legal events, legal institutions and processes that establish and support normative-stable relations in an organized state-society (jointly);

- **legal family** – generality of development traditions, as well as a set of national legal systems that differ on the basis of their own characteristics and clocks;
- **legal arrays (groups)** – union of legal families (for example, legal families of continental law);
- **legal geography (legal map of the world)** – the distribution of states according to similarities and differences in the legal system;
- **state-identification** – a country in which the legal system can be taken as a criterion in the comparative study of legal families;
- **Western law** – group of legal families with legal traditions (continental and Anglo-American law), criteria of which are embodied in the ideas of the European theory of natural law, in the concept of justice and freedom of will, in the society, in the independence of the individual, in the non-interference of the state in the private affairs of the individual;
- **Eastern law** – group of legal families (religious and traditional law) based on interdependence, the supremacy of the duties and tasks, the dependence of the individual on society, the unconditional subordination of man to the state, the willingness of the public interest to compromise in the name of the state's interests, the willingness to compromise;
- **ideological law** – a group of legal systems based on the supremacy of communist ideology and securing the fundamental interests of the socialist state.

Topic 3

THE LEGAL SYSTEM OF THE MODERN WORLD

One of the issues that traditionally pays special attention to in modern law and is considered in a comparative-legal plan is the study of the legal systems of the world. Numerous scientific publications, books, scientific articles and materials of international conferences testify to it. A number of problems of the legal systems of the modern world have been repeatedly discussed at "round tables", symposiums and international congresses with the participation of comparativists and legal experts. Textbooks and teaching aids published after the Second World War, as well as official scientific publications of various countries, provide detailed information on comparative law. In this regard, regular lectures and seminars on comparative law and world legal systems were held in universities of Western Europe, the United States, Canada, Japan and a number of other countries.

The need to pay such close attention to the problem is due to **objective** factors on the one hand and **subjective factors** on the other. Objective factors include the development of the economy, science, culture, new technologies, the improvement of the production process and the education system at the stage of modern development, as well as the expansion of the system of relations between different peoples and ethnic groups. Subjective factors, on the other hand, are purely pragmatic goals and considerations.

It is noted in the scientific literature that although the nature of subjective factors leads to the development of various aspects of relations with all countries and peoples, but in the expansion of such relations, states pursue their own interests and understand that such relations are deadly for the economic,

socio-political and other spheres of development of a separate country (M.N. Marchenko).

A comparative review of this or that legal system, paying attention to it from the point of view of legal systems, allows us to gain a deeper understanding of the events and processes that take place in the relevant legal system. This helps to effectively address the problems that have arisen, taking into account the positive foreign experience, and accelerates the timely correction of the necessary adjustments in the mechanism of legal regulation of public relations of the country concerned. In addition, the existence of a system of training and retraining of legal personnel in various legal systems also creates conditions for the development of personnel exchange (in the direction of training) between countries in this area.

That is why 200 years ago in a number of Western European universities the "Comparative Law" courses (in the domestic interpretation it is called "Comparative Law") were established, and within the framework of this course the course "Foreign Law" was taught.

At present, the comparative study of national legal systems and legal families has become a legal tradition for most foreign universities. Relevant lecture courses, specialization courses, collegiums and seminars on comparative law with comparative analysis of different legal families and systems are held in the most prestigious universities in Europe, the United States, Canada, Japan and other countries.

As for Azerbaijan, including the former socialist republics, it can be said that this academic subject is still an exotic, non-traditional subject. Undoubtedly, this is an abnormal situation and it requires its own immediate solution. A modern Azerbaijani legal expert can consider himself a

modern legal expert in the true sense of the word, provided that he has at least a minimum knowledge of the legal system of any region of the planet where he lives.

We can justify the fact that legal education in our country is at the required level only if the training of legal experts is carried out comprehensively.

This versatility does not mean that the legal education system, as well as research institutes related to legal research, are burdened with unnecessary subjects that do not give the lawyer anything. The training of a future legal expert requires, first of all, the teaching of basic legal sciences. One of such basic legal sciences is comparative law. It is necessary to modernize the legal system in Azerbaijan and raise it to the level of modern requirements. The future legal expert will not be able to achieve any positive results in the development of his national legal system without the necessary knowledge of the legal system of the modern world, without the necessary level of understanding of foreign positive experience. It should not be overlooked that Azerbaijan is one of the youngest states to gain independence in the recent past. Maintaining this independence and development requires a deep and comprehensive mastery of world experience. So, we need to study the general and specific features of the legal systems of different countries and peoples and apply it in our national legal system in the current historical period. Undoubtedly, the time will come when other foreign countries will embrace the positive aspects of Azerbaijan's improved legal system with great enthusiasm and interest. Thus, the study and research of comparative law in our country should be given priority.

It is known that in the modern world, every state has its own national, domestic rights. All countries are interested in having their own national rights, because it stems from its historically formed local traditions, national culture and local

characteristics. Without exception, it is difficult for most countries to exist without national rights. This can often lead to a weakening of national self-esteem, a sense of national pride and a weakening of the spirit of belief. In short, the law, which is one of the most important elements of spiritual culture, is as important for any organized state-society as the national language and national culture. It should not be forgotten that the lack of national rights sometimes plunges society into a vortex of moral slavery. In short, as much as the existence of a country and a people without a national language and music is impossible, so the absence of national law lays another brick on the walls of such impossibility. This is the breaking of the national will, the darkening of the spirit of the nation.

The legal map of the world has emerged as a result of the formation of numerous national legal systems that have been formed and operated at the present stage of development of different societies. Most national legal systems are interconnected and interdependent, and they interact with each other.

The degree of diversity of interrelationships and interactions is due to the fact that some national legal systems have greater common features and aspects than others. The other part, on the contrary, differs in the superiority of specific aspects and features in relation to each other, embodying less general aspects among themselves.

As the scientific literature shows, many of the hundreds of legal systems that exist in the modern world have similar advantages. This similarity is usually due to the same or very close types of societies, very similar general historical conditions of development, or similar religious affinities and other similarities (M. Bogdan).

Allows to classify the presence of common features and aspects in different legal systems or to divide them into

separate groups or **legal families** according to these or other common features and criteria. In scientific and educational legal literature, **legal families** are generally understood as a **set** of national legal systems, which are generally distinguished on the basis of the commonality of various features and aspects (VN Sinyukov). This, of course, does not preclude the notion of legal families and groups of legal systems. The necessity and urgency of the classification of legal systems stems from the following reasons.

First of all, it is for purely "**cognitive**" and "**educational**" reasons, as well as for scientific reasons. Because a deep and comprehensive understanding of the legal map of the world includes not only a consideration of its general aspects, but also a study of the similar features of its legal systems**.** Only an in-depth and comprehensive study of the similarities of legal systems allows us to assess the realities of the legal map of the world in an accurate and adequate way.

Secondly, this is due to purely practical purposes - the unification of existing legislation and the **improvement of national legal systems**. Noting that the idea of grouping "legal systems" into "legal families" originated in comparative jurisprudence in 1900 and became widespread in the early twentieth century, P. Cruz rightly points out that one of the most important (if not the most important) reasons for such a classification were efforts of legal experts engaged in theoretical and practical work to ensure the most important part of the process of unification of civil law systems, but not in full or in part.

P. Cruz's above statement was supported by other authors. Because it is quite clear that the more fully or partially any unification is closely related to the classification, the more successful it will be.

Logically, it can be assumed that unification and its

consequences occur on the basis of a combination of common and similar features of legal systems. This frees legislators and researchers dealing with unification issues from pre-analyzing legal systems.

However, this may seem so. The real legal life and legal practice of many countries suggests that there are greater grounds for unification between similar legal systems of the same type. It is impossible to see such grounds among the legal systems belonging to different groups, types or families.

For example, the similarities between the legal systems of Muslim countries (Libya, Iran, Iraq, Afghanistan, etc.) are greater due to their religious nature and character. This means that the grounds for unification among them are also objectively in the majority. The same cannot be said of the legal systems of the Anglo-Saxon countries of the legal system (USA, Great Britain, Austria, Canada, etc.).

However, in practice, the classification is not limited to defining the general features and aspects of grouped legal systems. This does not apply to the creation or discovery of the grounds necessary for unification.

In this regard, the scientific literature rightly states that this is the work of a comparativis-researcher. Only he can decide in the process of classification of legal systems in which aspect of the object under study should be paid more attention in the process of carrying out this or that comparative-legal operations (M. Bogdan). But the solution to the problem of analyzing similar aspects and features separately, or all of them at the same time, is already another aspect of the work.

The choice of this or that approach depends on many factors, and the following can be attributed to the following in the first place:

1) legal values advocated by the author-researcher;

2) similar or different aspects of legal ideology;

3) the degree of closeness of legal systems;

4) direct objectives of the comparative study of legal systems.

In this regard, M. Bogdan notes that especially when interconnected legal systems, such as the legal systems of the United States of America like New York and New Jersey are being discussed researchers pay more attention to very different aspects than similarities.

In other cases, especially when different legal systems are compared with each other, general or similar aspects may be of great interest in relation to the characteristics of those systems. For example, when comparing similarities between institutions, such as the freedom to contract, which is common to most legal systems, there is no need to talk about their obvious similarities. As shown in the literature, their characteristics - content, mechanism of closure and implementation, provision, etc. is of great interest (M. Bogdan).

However, it should not be overlooked that, in order to classify legal systems as one of the grounds for unification, attention is still paid to identifying similarities, as legal systems are grouped accordingly. And their features are secondary. Undoubtedly, the analysis of the features of legal systems plays an important role in both their classification and unification.

The question of the choice of classification criteria for national legal systems is an important problem both theoretically and practically (A.H. Saidov). This is inevitably accompanied by some of the following questions.

What should be the nature of the general feature-criteria? What are their features and types? Finally, what should be their content? Should they have the temporality or permanence inherent in the systems being compared at all stages of development?

The discussion of such questions occupies a significant place in the comparative and legal literature of science and education. Their complexity and versatility have led to disagreements between the authors.

For example, **on the question of whether there should be one basis or several common criteria in the process of classifying legal systems,** the authors are of the opinion that there should be "a single criterion" (A. Snitzer). Other authors argue that the classification of legal systems should be based on **a number of criteria**. But in this case, the classification can have some positive meaning (R. Zando).

A similar picture emerges in the solution of other issues related to other criteria for the classification of legal systems. For example, when deciding **on the nature of the criteria for classification**, considerations are made as to whether the criteria are simple and unambiguous, as well as whether they are complex and general.

A simple, unambiguous criterion is the legal tradition common to all legal systems grouped in one family. By legal tradition here is understood as a set of traditions that are deeply rooted in the minds of people in Western legal literature and conditioned by the role of law in their relations (J. Merriman). In the domestic legal literature, legal traditions refer to "elements of social and cultural heritage that exist and are preserved in society and passed down from generation to generation".

Complex criteria of legal systems include, for example, criteria such as the "style" of these systems. In this case, the concept of "style" of the legal system includes the "legal nature of legal systems", "superior way of legal thinking", "basic characteristics of legal institutions", parts such as the hierarchy of sources of law and methods of their interpretation, the dominant ideology of legal systems (M. Bogdan).

Such a conclusion can be drawn by summarizing the above considerations of the factors influencing the formation of the general **aspects** of different legal systems, as well as the **requirements** for their classification. In our opinion, in order for the classification criteria of legal systems to be useful and for them to be as effective as possible in order to perform their respective functions, they must meet the following requirements:

1) these criteria should be based on permanent, fundamental criteria, not temporary and accidental ones;

2) they should include as many specific criteria as possible;

3) these criteria must be of a sustainable and objective nature;

4) In cases where not one, but several criteria are selected for the classification of legal systems, one of these criteria should be the main one;

5) When studying the general aspects of legal systems, their classification criteria should take into account not only objective but also subjective factors that directly affect the formation of these criteria.

It should be noted that these requirements are not always taken into account in the scientific literature and educational literature (including the legal literature of foreign countries). As a result, **there are different differences in the processes by which specific types of criteria are identified**.

Considering this fact, D. Rene rightly wrote that "**sometimes only commonalities and differences are taken into account in the theory of sources of law and in the methods of works of legal experts** when they are determined. Sometimes they envisage the adoption of **substantive and legal** criteria based on the basic principles of law and expressed in it and based on interests. Suggestions are also made based on

the structure of the law, its division and concepts adopted by legal workers. These proposals are often enriched with political considerations.

Rejecting the attempt to use a "single criterion" for the classification of legal systems, D. Rene, in his view, as a criterion for the classification of legal systems, the term "decisive for the classification" is equivalent to two terms:

1) **legal techniques** used by legal experts in one country or another**.** It can be used when the **working methods** of legal experts in different countries, the **sources of law** and the **legal dictionaries** of different legal systems are identical to each other, in whole or in part, in their main parts. That is, these legal systems should belong to the same group, which are close to each other, and should be distinguished by the fact that they belong to the same legal family. Otherwise, these legal systems are considered to be "belonging to different families of law.

Thus, on the basis of the above analysis of the modern legal system of the world, it would be expedient to focus on the concept of the legal system itself and its interpretation.

The concept of the legal system and its explanation. It is extremely difficult to reflect the modern legal reality with the help of old, sometimes quite limited constructions. It is then that the need for the inclusion of complex categories in law, combining mobile and adequate scientific operations, leading to a higher level of generalization, is realized. One of them is **the legal system**. It is able to analyze and evaluate the whole, not just individual components of legal reality.

As time passes the comparativists agreed that the legal system should be understood in a **broad** and **limited** sense. The term is used in a broad sense as a synonym for "historical type of law." The historical type of law is a set of legal systems of states, united by a common origin of legal sources, based on legal concepts, methods and techniques of development. In a

narrow sense, this is the so-called "national legal system" of a certain state in terms of terminology (A.H. Saidov).

The most diverse concepts of legal systems developed in modern times are based on the concepts, ideas and provisions of the French comparativist **David Rene** (1906-1990), who played an important role in the development of comparative law in Europe in the 1950s and 1970s. D. Rene viewed the legal system as a phenomenon of the same order (on the sign of systemicity) that interacts with the state and other unifying systems. He suggested focusing on processes that are intertwined with the rule of law and the rule of law in the middle of the legal system of the state, especially in the pursuit of socially significant goals.

The exceptional identification of the legal system with the state, which is characteristic of the comparative law of the last century, is a continuation of most of the works of foreign authors devoted to the legal systems of the modern era. The English legal philosopher Dennis Llyod's "Idea of Law", which is characterized by legal pluralism, again makes the following comments about the state nature of the legal system: "Although no legal system relies on the coercive apparatus to enforce its norms and guidelines to the fullest extent possible, no legal system in the past, present and, if possible, in the future cannot operate taking into account human society and human psychology".

Such an apparatus is the state power.

The following encyclopedic definition, based on an **etatist** approach to the problem, is widely used: "The legal system is an internally agreed, interconnected, socially homogeneous legal instrument by which the state power regulates public relations, people's behavior and their associations".

Due to the main structural features, the sociological

approach to this definition is closer. According to the sociological approach to the problem, "legal system" refers to the level of legal reality, the level of legal development of society, which has an independent status, reflects the cumulative concept of all legal manifestations of society and is associated with it.

The authors' views on how to link the legal system itself to the framework of the state or a society "united in the state" are now widely accepted. For example, the legal system is declared to be "a leap from the past to the present" and it is manifested in "rules, texts". These rules were created in the authorities, where people who implement the legal norms work, legal entities, other legal entities, the largest number of different decisions are made, and where mistakes arising from the implementation of legal norms are made". (A.Jalinski, A.Rerikht).

The American lawyer Lawrence Friedman gave an original description of the legal system. According to him, this wide sphere of life accompanies a person in all his actions. The legal system can be thought of as a line of "demarcation between norms and doctrines and their structures, institutions and processes".

From the presented analysis it can be concluded that the concept of "legal system" in the legal science of the homeland and foreign countries is defined by different researchers from different positions. This is explained not only by the fact that the authors have different approaches to the problem, but also by the fact that it belongs to different areas of jurisprudence. From the unifying beginning of such approaches to the end of the twentieth century, it has been used to characterize legal events, means, and processes that exist within a particular state or are specific to a particular group of countries.

Indeed, the legal system is a priority and is considered,

above all, as the main carrier of general power, in the context of relations with the state. Comparative law, which is an integral part of general law, distinguishes the types of legal systems of states on different grounds. The classifications presented in the works of comparativists are extremely different, but all of them are similar or different in the creation of the legal systems of states and in the movement of their various components.

For example, D. Rene, arguing about the multiplicity of legal systems both within a separate state and between states, writes that "In the modern world, every state has its own rights, but it also happens that in the same state there are several competing legal systems." According to the French comparativist, legal systems have a non-governmental commonwealth and an international community.

It is important in principle to note that legal systems are not only differentiated at the state level. They need to be considered in the context of the specific history of law, legal culture and both the individual state and state institutions.

Legal systems of the modern world. Organizations of the most diverse types of **government** have acted as common elements of society or association throughout their 5,000-year history.

They could have preceded the first state unions to be recognized by history. For example, the Upper and Lower Nile provinces were eventually formed as the state of Ancient Egypt (Upper Egypt, Lower Egypt). Or they could be independent in the management of the city-police (city-states). Such city-police were united only in the unified Greek state during the reign of Alexander the Great. Examples of such state institutions in the Middle Ages were the kingdoms, duchies, principalities, or "free" cities of the German people, which were part of the "Holy Roman Empire" and had their own

partisan rights and lived for hundreds of years.

Almost half of the modern states were colonies, protectorates or dominions of European states, but at the same time they had a certain level of self-government. There are examples of numerous state institutions that have not been recognized by the international community for centuries, both past and present. Because such state bodies have their own law-making and law-enforcement bodies.

It should be noted that if an attempt is made to generalize the types of modern organized states-societies (associations) in comparative jurisprudence, in our opinion, in practice, the following can be attributed to them:

1) a **state** consisting of a sovereign general government organization that extends this power to the whole territory and population of the country by legal means;

2) **internal institutions** that use a certain independent part of a single union state;

3) **Dependent territories** under the control of the governing states, but having their own governing structures that form the direct administration by means of normative instructions;

4) unrecognized states, state-like institutions called **quasi**;

5) **interstate associations** based on an international treaty of states, in which some sovereign powers are voluntarily conceded to national bodies.

Taking in to account what has been said on the multifaceted nature of the legal system, the following explanation of the legal system can be given.

Thus, the **legal system** is a **historically conditioned summary** of the legal events, legal institutions and processes that establish and support normative stable relations in an organized state-society (together).

Purpose and content of the legal system. In our opinion, the desired result can be considered the goal of the legal system. The following can be considered as the result:

- **legal rule** as a state of public relations in an organized state society (together);
- achieving the realization of the law on the basis of the legal rule.

The legal rule is formed on the basis of the activity of all the constituent parts of the mechanism of force of law. It includes both practically "immobile" elements (for example, sources of law), as well as the processes of law-making, legal-realization and legal interpretation. Therefore, the definition of the legal rule as part of the goals of the legal system implies the consideration of the legal system in statics and dynamics. This allows the structure of the legal system to include the sum of its elements and the relationships between them.

The **components of the legal system** are explained below. In this explanation, taking into account the research conducted in comparative law, attention should be paid to the sequence of manifestations of its structural parts and the interrelationships between them. They are universal categories and are considered as follows:

1) **law** in all its manifestations in public life (natural and positive law, legitimate and legal law, objective and subjective law, customary law and formal law, official and shadow law, etc.);

2) **understanding of law** in the set of superior doctrines existing in the society, the level and features of the legal thinking of the people;

3) **creation of law** as a method of establishing the cognitive and procedural rules of preparation, formalization and acceptance of the general rules of conduct existing in the society;

4) Sources of law, such as official legal documents and (or) provisions that contain general rules of conduct in an organized state-society;

5) a **legal area** as a system of normally-defined and interrelated normative-legal acts officially defined, containing the legislation in force in an organized state-society;

6) **legal institutions** created for the operation of its legal system in an organized state-society (law-making, law-enforcement, law-protective institutions);

7) **the mechanism of realization of the law** – This mechanism summarizes the processes of realization of law (legal relations, legal facts, legal analysis, filling in gaps in law, resolution of legal disputes and conflicts, interpretation of law);

8) **consequences of the force of law** – in an organized state-society, the legislative regime and the rule of law determined by the legal culture of its subjects.

Functions of the legal system. When addressing the conceptual and content aspects of the legal system, the problem of clarifying its purpose in the mechanism of regulating public relations cannot be ignored. As a result of clarifying this, the question of what role the legal system plays in the framework of an organized state-society is answered. At the same time, there is a need to address **the functions of the legal system**.

Based on the analysis of different approaches to the legal system, the following classification of its functions can be given:

1) **high level function** – it serves to ensure the existence of the system itself as a whole event and is therefore presented as an **integrative** direction, which must correspond to the basic, as well as more specific and precise elements of the legal system;

2) **main level function** – it determines the processes that take place in the legal system as a whole. The following

functions should be included here:

- **axiological function** – in defining the goals of the legal system, among which the rule of law, justice, lawful approach play a key role, that is, it leads to the formation, maintenance and stabilization of the existing social community;

- **informative function** – is a communicative link between the components of the system, helps to establish their regular order, to regulate the conscious activity of the subjects, directing the legal system to achieve the desired result;

- **regulatory function** – in the formation of normative bases, in the definition of positive rules of conduct in accordance with the patterns of activity, they are reflected in the inclusion of the individual in the legal culture and its knowledge;

- **protective function** – The purpose of which is to protect political, economic, cultural, ethno-national and other values of general, socially significant significance and, respectively, socially dangerous, harmful and illegal events;

3) **supply level function** – is directly related to the components of the structure of the legal system and is determined specifically by:

- the direction related to the historical, religious, ideological factors of the perception of law in an organized state-society or other factors of legal development;

- formation of sources of law, through ways that respond to the specificity of their different types, the characteristics of the development of different societies and civilizations, the formation of the traditions of statehood;

- the establishment of the basic law institutions (this traditionally includes the whole system of laws and regulations, the normative legal acts regulating public relations of national importance);

- the status and activities of legal entities, i.e. organizations, which have the authority to adopt legal acts or apply the law;
- through the implementation of normative legal acts, their interpretation, filling in gaps in the law and the practice of resolving legal conflicts;
- by determining the results of the realization of law (this is determined by the qualitative legal status of the person, the level of his legal thinking and legal behavior).

Grouping of legal systems in legal families. The legal practice of the states of the world shows that if the most permanent elements used for the creation, interpretation and evaluation of norms, rather than the content of specific norms of law, are based on differences between different countries. Legal norms themselves can be infinitely different, but the methods of their development, systematization and interpretation show that there are not many types of legal norms (R.David, K.Joffre-Spinozi).

From the above point of view, it is possible to group legal systems into legal families. Such grouping is practiced in other sciences as well, and in the process, secondary differences are set aside and separated into families. For example, this can be observed in the following fields of science:

- a family of Romance, Slavic, and Semitic languages in linguistics;
- Christianity, Islam and other religious families;
- In the natural sciences, animals that live in both spheres (aquatic and land animals), rodents, reptiles, birds, etc.

The partial convergence of legal systems in some parts of the world today does not call into question their classification, which is necessary in any endeavor for the study of foreign law.

In such a situation, a pragmatic approach is required. As a result of this approach, it is sufficient to characterize what is most important at the outset. This allows us to talk about the two main groups of rights in the modern Western world - the Romano-Germanic family of law and common law.

Detailed information about these legal families is provided in the next topics of the textbook. Therefore, we consider it expedient to suffice with the above.

Topic 4

CLASSIFICATION OF LEGAL SYSTEMS

The problem of the typology of legal systems.

The types and criteria for the classification of legal systems, as well as their grouping in the relevant legal families, have been considered from the most diverse positions in the comparative law literature of Western countries. A number of classification criteria are examined, even if only partially, in the previous topic. However, in addition to the criteria mentioned above and grouping options, some other criteria for the classification of legal systems have been put forward in the scientific literature by different authors at different times.

For example, as early as the beginning of the twentieth century, it was proposed to classify legal systems on the basis of **racial** and **linguistic** criteria and to group them according to these criteria in legal families. Based on this criterion, the following groups of legal systems were distinguished:

- Indo-European group of legal systems;
- Semitic group legal of systems (legal families);
- Mongoloid group legal of systems (legal families).

The Indo-European group of legal systems, in its turn, was divided into the following subgroups of legal systems:

- Greco-Roman group of legal systems;
- German legal group of systems;
- Anglo-Saxon group of legal systems;
- Slavic group of legal systems;
- Iranian group of legal systems, etc.

In the following period, efforts were made to use criteria such as the **characteristics of the legal culture of the classification of legal systems, the nature and content of law, legal ideology, the characteristics of the sources of law**.

From the post-World War II period to the present special attention was paid to such criteria as, **the generality of the historical roots, the classification of legal systems, the similarity of the style and model of legal thinking, the proximity of the main legal institutions**, and etc.

When talking about the criteria for grouping national legal systems, it should be borne in mind that in such groupings, political, ideological and, most importantly, **cultural factors** are in the center of attention. We must not forget the fact that each legal system, as well as the legal family, is a "unique product" of a whole complex of specific cultural factors (B. Grossfeld), which has been repeatedly emphasized in the scientific literature and is constantly confirmed in everyday life, and it is argued that "every culture has its own legal life, and every legal life has its own culture" (H. Kohler).

The American scholar D. Black rightly noted that each legal system is to a large extent a "unique individuality" conditioned by the appropriate level of development of culture and depending on the characteristics of the culture. Black's thesis sounds like this: law is culture, and culture is law. Cultural factors co-exist with law, and therefore it is as ancient as law itself.

There is no doubt that the majority of the world's legal systems are based on elements of a common culture and legal culture. So, if this factor is taken together with other factors, they can act as criteria of legal systems.

On the basis of these criteria, the following legal families are also distinguished in a number of cases in the comparative law literature along with the previously mentioned legal families or within the framework of these legal families:

- Latin legal family;
- German law family;

- northern legal family (the first three proposals belong to C. Merrimen);
- African legal family;
- Slavic legal family (V.N. Sinyukov).

There are many views and approaches to defining the scope of the classification criteria of legal systems and the issue of differentiating different types of legal families. This is completely natural and legitimate, because the matter under consideration is extremely complex, multifaceted and to some extent contradictory.

For the above and other reasons, it is not possible to combine different points of view and approaches to the problem on a general level. On the other hand, there is no need for it. For example, M.N. Marchenko believes that the diversity of views and approaches to the solution of the problem under consideration are helpless in front of the two strong and widespread Anglo-Saxon and Romano-German legal systems of the legal family (italic is ours - H.Gurbanov). Both mentioned legal families are useful and constructive.

It is extremely important to take into account the fact that **in public life and in reality there is no legal or any other classification, and there can not be**. In the process of classifying legal systems, **the distinguishing legal family will inevitably be relative**.

Their relative nature manifests itself in various forms and relationships. This is expressed more accurately and consistently in the following.

Firstly, the fact that the whole legal institutions, branches of law, and even legal systems in legal arrays are the same legal families that belong to other legal families by their nature and character. That is, the commonalities or specifics that exist in the nature and character of one of the legal families can be observed in several legal families. An example is the

legal system of Louisiana (USA). In the territory of this former French colony, the basic features of the continent, or more precisely, French law have historically been formed, and these features are still preserved today. At the same time, as is well known, the US legal system, which Louisiana`s legal system is included into, is an important part of common law, not continental law.

The legal system of the province of Quebec (Canada) can be a similar example to the above. Quebec's legal system, which is inherently and genetically linked to the continental legal families, is formally and de facto an integral part of the common legal system (M. Bogdan).

References to the legal system of South Africa can be added to the given examples. The legal system of the Republic of South Africa, which was formed and operated under the influence of the Danish legal system, also draws on the example of other legal families.

Secondly, just as in legal families, the relative nature of the process of division of legal systems into legal families is the establishment and operation of one legal family in accordance with the norms, institutions and cultural traditions of other legal families. Such a formation is considered to be completely natural and especially objective when different legal families belong directly to or are involved in the same civilization. For example, this applies to common civil and socialist legal traditions. According to some researchers, such a legal tradition is "extremely close to each other" because it is "closely connected with the development of European civilization." All of them reflect the idea that "the context of Western history and culture is also formed" and the institutions that suit them (J. Merriman).

Finally, thirdly, the objective process of convergence or the approaching of two basic legal families, as well as the

reception of American law in Europe, are reflected in the relative nature of the classification process of legal systems and, accordingly, in the relative nature of legal families. It should be noted that the process of law reception has a particularly strong impact on this. Thus, Europe still felt this closely during the reception of Ancient Roman law in the XI-XII centuries.

When talking about the tradition of convergence or approcahing of Anglo-Saxon and Romano-Germanic legal families, researchers refer to the argument as a generality of their historical base. This means that in the period before the establishment of the national state, the whole civilized world, including the countries in the territories where these two basic legal families emerged, was "governed by the same legal system - the roman-canonical legal system" (P. Cruz).

The process of convergence of the general legal system and the continental legal system is also conditioned and stimulated by the fact that in accordance with the level of evolution of society between the countries where these legal families were established and developed, as well as various bilateral relations resulted in the establishment of the European Union in Western Europe, have been established and deepened.

And regarding the reception of American law in Western Europe, it should be noted that, according to the testimony of Western European scholars, in this case we are talking about the elemental Americanization of some branches and institutions of European law, the methodological transfer of some elements of American law to the core of Romano-Germanic and continental law. The reception of American law in Western European countries, and in part in other countries, can also be conditioned by the expansion of American industry, commerce, and finance. Of course, this was not due to intellectual expansion, that is, to the reception of American

law. It was, above all, a material expansion. Due to the deepening general crisis of capitalism and a number of other factors in that historical period, the United States still did not want to relinquish its world domination and made great efforts to keep a number of countries in its sphere of influence. In this respect, the law is no exception. Therefore, there are good grounds for drawing clear parallels between the reception of Roman law and the reception of American law in Western Europe (V. Vegang).

The **mixed** or "**hybrid**" legal systems that exist in the modern world also testify to the relative nature of the classification of legal systems and legal families themselves. These legal systems contain elements of general and civil law. Philippines, Japan, Scotland, Sri Lanka, Mauritius, Cameroon and other legal systems belong to the same legal system (P. Cruz).

The problem of typology of legal systems. Information was provided on various classifications of comparative law, reflecting the development of views on the specificity and versatility of the legal systems of modern organized state-societies (associations). However, any approach to the selection of criteria for differentiating systematic features is highly subjective. As researchers of legal systems themselves admit, "there is no exhaustive classification that reflects the legal reality, and there can not be" (M.N. Marchenko). This is primarily related to the selection of criteria for the classification of legal systems.

There have been many states in the history of mankind. Among them were the Eastern slave aristocracy, the ancient city-police (city-states), the ancient and medieval empires, the bourgeois republics, the socialist states and the national state institutions. Such a multifaceted and diverse organized state-public institution belongs only to the state, which has the

history of the formation of a general supreme power capable of exercising complete leadership of the population through the rule of law throughout the territory.

It should be borne in mind that not all the principal features of the state can be placed in an even dimensionally broad definition. However, among them there are so important and specific aspects of the state that it is impossible not to reflect them. These include the ability and capacity to publish and enforce legally binding judgments. The legal forms and means of the common organization of the supreme power are inherent in the state, because without legal beginnings, the legislature, creation of law, application of law and the law enforcement agencies cannot be as they seem and may not be able to perform their functions of governing society.

The traditional classifications of states can be distinguished on the most different bases as follows.

1. According to the method of formation of the organized state-society, attention is paid to the following states:

- states created by revolutionary or evolutionary means;
- states created as a result of the unification of states and the formation of a new unitary state;
- states created as a result of the division of states into several new states;
- states created as a result of merger with another state due to a change in the structure of the state.

2. **Due to the differences in the general characteristics of the states,** the following types of states can be contrasted with each other:

- stable and unstable states;
- states that are and do not accept social innovations;
- countries where public life is highly developed and slowed down;

- states that exist under normal circumstances and operate under a state of emergency;

- states that are able to maintain their integrity and are collapsing;

- states with an ancient tradition of young and independent statehood.

3. The following states are distinguished **according to the degree of legal protection of the individual in the society**:

- **Western-type** states. In such states, human individuality is constitutionalized, and the supremacy of human and civil rights and freedoms is ensured;

- **Eastern-type** states. In such states, on the basis of sacred (more religious teachings) teachings, above all, the tasks of collectivism are imposed on the individual, the requirement to be a worthy member of society as a whole, to put the interests of society and the state above personal interests, and not to spare anything in the way of society and the state, is a priority, and this ultimately reflects the superiority of the state over the individual (his rights and freedoms);

- **mixed-type** states that reflect the transition period of the state.

4. The following states are defined **according to the content of the forms of the state**:

- **monistic states** (these states are characterized by a lack of division of roles in the organization of public administration and the centralization of state power in one center);

- **pluralistic states** (these states are characterized by the separation of powers and the interaction of branches of government);

- **segmented** states (states that do not have a "balance" of control elements, which are manifested as an intermediate phenomenon within states).

5. The following states are distinguished by their **social characteristics**:

- polyethnic and identical ethnic states;
- states with politicized and apolitical populations;
- states whose normal and social structures have been deformed;
- states where there are no dominant social classes and certain classes or ethnic groups dominate.

6. Historically, the following two types of states have been distinguished by their **form of government**:

- monarchy as one of the classical types of supreme state authorities (unlimited or absolute monarchy);
- republic (presidential, parliamentary and mixed republic).

7. **According to the internal structure of the state,** there are the following states:

- unitary states (unitary states with a simple and complex structure);
- regional or federal states (territorial, national, mixed federations).

8. The following states are distinguished by the characteristics of the natural and economic environment:

- states that are in harmony with the natural environment or that cause irreversible damage to it;
- continental and island states;
- states with free access to enclaves and international communications;
- states with market economies and centralized management of non-market economy;
- states with large or small economic potential.

9. **According to the form of state-political regime,** there are the following states as a set of methods and techniques for the realization of state power:

- totalitarian states;

- authoritarian states;
- democratic states;
- states with transitional regime (liberal-democratic or liberal-authoritarian).

10. Depending on the content of the general government, **the religious origins and the degree of influence of the doctrines**, the following states exist:

- atheist states;
- secular states;
- clerical states;
- theist (theocratic) states.

The following states are distinguished when considering the predominant factors of a particular denomination and its normative postulates in society:

- Christian (Catholic, Orthodox, or Protestant) states;
- Islamic (Shia or Sunni, or secular, harmonic, or Qur'an-based) states;
- Hindu states;
- Buddhist states;
- Jewish states.

11. The following typology of states is proposed due to **the organization and specificity of government activities**:

- legal and non-legal states;
- legitimate and legal states;
- bureaucratized and non-bureaucratized states;
- centralized and decentralized states;
- confrontational and peace-loving states.

12. The following states are distinguished by the **degree of legal institutionalization of the modern state**:

- civil state;
- legal state;
- democratic-legal state;
- socio-legal state.

In addition to the typology presented above, there are also numerous barriers to this typology. Their distinction is indicated in the sources on state studies. Demonstration of the types of states and their diversity is necessary in connection with the consideration of the relevant legal structures.

The fact that each state has its own national rights reflects its socio-economic, political and cultural originality. This, in turn, results in the establishment of their national legal systems. In the context of national legal systems, there are features that are specific to both of the above-mentioned forms of government, as well as to a country with one or another type of law.

The national legal system has its own specificity, structure and goals. It is formed, operates and develops in a specific geographical area over a period of time, and is characterized by the ethnographic characteristics of the population. The national legal system is created in societies with different traditions and beliefs, and is distinguished by its diversity in the formation of legal sources.

A differentiated approach to the legal systems of different states has been formed in legal science during the XX-XXI centuries. Given the inability of the le**gal map of the world** to be one-sided, it can be seen that it reflects numerous and complex multifunctional processes. Therefore, the issue of classification of legal systems is one of the most important problems of both legal theory and comparative law. Today, there are dozens of classification criteria.

Legal family. Rankings based on the unification of the legal systems of states into certain classification groups have been more productive. Clearly, despite the differences that have been formed, many national legal systems have commonalities that allow them to be integrated. According to the comparative scholars, concepts such as "families of legal

systems" (R.David), "legal circles" (K.X.Ebert), "forms of legal systems" (I.Sabo), "structural unions" (S.S.Alekseyev), “System of Legal Systems” (M.Malistryom), "style of law ”(K.Svaykert) belong to common features.

First of all, the concept of "legal family" is used to unite the legal systems of states on a certain common feature.

Legal family – It is a system of national legal systems, which is distinguished on the basis of the generality of development traditions, as well as the characteristics and features of the sources of law, its structure, historical ways of formation and modern parameters of its activity.

Legal families are differentiated under the influence of a number of factors. Of these factors, the following are noteworthy:

1) generality of historical destinies (for example, Scandinavian law, Latin American legal family);

2) voluntary establishment of other legal systems in the country (freely joining the state, choosing a favorable structure of legislation, law enforcement systems) and basic schemes of activity;

3) in the past, as a result of colonial dependence, metropolitan countries called their legal ideologies and legal institutions (ie, the legal family) (for example, the former French colonies did not accept the basic institutions of legislative law, and the territories dependent on the British Empire did not accept the idea of the judicial law);

4) ideological dependence on the identification of certain regimes in the country (for example, the establishment of socialist law and its expansion into post-war Eastern Europe);

5) religious identity that determines the closeness of the region and individual countries to certain doctrines and canons (the spread of Islam in the world and the subsequent establishment of Muslim law).

Legal families can be stable (they can exist for centuries in this capacity) or they can be temporary, depending on the form of state-political regime in this or that country. The existence of legal families is the basis for their classification in any case. The following can be considered as **criteria**:

1) the generality of the legal ideology, according to which the general principles of the law of the united states are established in the legal family;

2) closeness of legal methodology as a set of methods and means of embodying law in life including, for example, the sources of law, its structure, legal techniques, legal terminology, and so on;

3) similarity of the legal education system and training of legal experts;

4) similarity of the structure of legal professions and the field of activity of legal experts working in practice;

5) legal traditions common to the member states of the legal family.

If we look at the history of the problem, it is clear that the criteria for the integration of legal systems at that time included the following:

1) features of the historical formation of legal systems (E. Glasson, 1880; C. Wigmore, 1928);

2) race and national criteria (Q. Sozer-Hall, 1913);

3) general structure and distinctive features (A. Esmen, 1905);

4) the role of different sources of law (Q. Levi-Ulman, 1922);

5) belonging to "great civilizations" or non-civilized nations (A.F. Schnitzer, 1961);

6) intra-system symptoms (R. Roder, 1946);

7) Influence of international legal customs, Roman law and canon law, as well as modern democratic traditions (E.

Martinez Paz, 1934);

8) degree of similarity to another law or its derivative (P. Armidjon, B. Nolde, M. Wolf, 1950).

At the end, the above-mentioned French legal experts proposed a classification of modern legal systems based on the principle of content, general and specific, independent of geographical, national and other specific factors. This documented division of modern legal systems by legal experts in the middle of the last century included seven types of law - English, French, German, Scandinavian, Russian, Islamic and Indian.

D. Rene's trichotomy of legal families. D.Rene criticized previous concepts for the lack of convincing criteria for distinguishing between legal families and proposed two principles for the classification of legal systems. The first of them is the **ideological** basis. It is a reflection of the religious and philosophical views of the relevant society, its social, economic and political structure. The second is the **legal** and **technical** basis. It plays the secondary role. Accordingly, he proposed a **trichotomy** of the legal family, which consists of the following:

1) Roman-German law, common law;

2) socialist law.

D. Rene united all other species under the name of a common concept - the concept of "other systems". He cited weakly related Islamic law, Jewish law, as well as the law of the Far East, Black Africa and Madagascar.

In the former Soviet law for many years the **internal-typical** classification was the first. According to this classification, legal systems were divided into socialist law, bourgeois law, and legal systems that "hesitated" between the two antipodes of law. The answer could only be given to one question: which social group can the law express? But, for

example, why was it not explained that common law and continental law could exist within the framework of the type of bourgeois law? This reflects the differences between North American and Latin American law, between German and Roman law, and between Indian and Japanese law.

Quantitative and qualitative criteria for the classification of legal systems. The analysis of these criteria leads to the conclusion that it is necessary to differentiate national legal systems on different grounds. In our opinion, the most favorable and appropriate basis in this direction are the **criteria** consisting of elements such as **quantity** and **quality**.

As already mentioned, the number of legal systems (including legal families) that currently exist in the modern world is in the tens, and in addition to their general similarities, the number of their special and specific aspects is the same. Therefore, in the quantitative approach, we can talk about the number of legal systems in a particular state and the level of their interaction with each other[1]. So, **quantitative characteristics** define the following division of national legal systems.

1. **One-level legal systems of a unitary state**. Such legal systems are understood as the sum of the law, legal culture and legal practice of a separate centralized state.

In such an organized state-society, the whole territory of the country is divided into administrative units (provinces, counties, departments, provinces, prefectures), the legal status of these administrative units is determined and regulated

[1] The level characterization of legal systems in the state is not defended by all specialists. It is argued that "in this approach, the whole structure of the legal system of society collapses, and the category itself becomes a category of life and nothing" (V.N. Kartashov). But, in this case, the word "collapses" proposed by the author cannot be taken as a concept that we will defend. Based on the previously differentiated notion of an "organized state-society", it is probable that such societies exist in different legal systems, and that this is in line with their reality.

entirely by the legal system of that state (for example, the legal systems of the Baltic countries of Poland and Belarus).

2. **Two-level legal systems of a complex unitary state.** Such legal systems are established in countries where the creation and operation of self-governing territories or national-territorial units that enjoy a certain degree of independence within a centralized state is permitted. In these legal systems, including in the absence of independence of all other parts of the state, the state-legal features of one or more autonomous bodies are taken into account (for example, the Danish Faroe Islands, Greenland).

3. **Two-level legal systems of regional states (semi-federations).** The transition to such legal systems is considered as the legal system of the countries that have consistently become federal states. Examples include the United Kingdom (Wales, Scotland, and Northern Ireland, which have broad independence), and the Republic of South Africa, which is enshrined in the constitution as a unitary state with elements of federation. Thus, the 9 provinces of the Republic of South Africa have autonomous state powers, including legislative powers; In Spain, where autonomy is called a state, the status of independence has been achieved not only by historically formed national minority regions (Basque Country, Catalonia, Galicia), but also by municipalities and provinces.

4. **Two-level legal systems of federal states.** "Powers to Powers ", that is, the rule of law and the supremacy of federation law in order to define and regulate its powersthrough constitutional innovations, the federal legal system, determined by its priority over the laws of the subjects of the federation, and have regional legal systems. The subjects of the Federation, such as the States (United Mexican States), the Provinces (Argentine Republic), the Territories (Federal Democratic Republic of Ethiopia), the lands (Federal Republic

of Germany) or the Cantonese (Swiss Confederation), have such legal systems.

5. **Three-level legal systems of federal states.** The Russian Federation is the only example. In addition to the federal and regional (there are 85 federation entities) legal systems in the country, provinces (for example, Tyumen), including a number of oblasts (Altai, Krasnoyarsk) and autonomous regions (Khanty-Mansiysk, Jamalo-Nenetsk, Ust-Ordynsk Buryatia) operate.

6. **Parallel (dualistic) legal systems of states.** A large (even giant) system has been formed, consisting of the legal systems of many countries located in different parts of the planet. Undoubtedly, this legal system belongs to individual states. In addition to the legal systems that are officially established and operating in these states as a result of historical, ideological, regional and other factors, there are religious beliefs, customs, traditions and national traditions and peoples. Such legal systems (in the Middle East, Tropical Africa, the Pacific and other countries in the region) mainly complement national law by regulating the special legal status of indigenous peoples.

7. **Competitive legal systems of states**. In such legal systems, historically established norms of duty or religious norms (mainly rules of behavior) are in conflict with the requirements of the legal system of the state. The secular states of the East are an example of this. Religious doctrines that have been in force in these countries for hundreds of years sometimes prevent the implementation of officially established legal instructions (for example, in India and Turkey).

When choosing this or that classification, it becomes clear that the **qualitative** characteristics of the legal systems of states are more widespread. When such states are united in legal families, the types of legal systems or the scope of the

legal family are taken into account.

As already mentioned, the number of such qualities is quite large. However, any approach to the selection of criteria for differentiating systematic features is highly subjective. As legal system researchers themselves admit, in real life it is impossible to come across any other classification at a truly perfect legal or desired level. This indicates that each of the differentiated legal systems is relative, and such relativity is inevitable. From this point of view, it is necessary to agree with the position of M.N. Marchenko. The author puts forward a number of requirements regarding the formation of common features of legal families, as well as the criteria for their classification. These requirements must meet the following conditions, including:

1) to have permanent, fundamental factors on its basis, not temporary and accidental;

2) to consist of more specific signs and criteria;

3) to conclude that only one of them is the basis, the superiority, in cases where not one, but several features are taken as the basis for the classification of legal systems;

4) when studying the general aspects of the classification of legal systems - criteria, it is necessary to take into account not only the objective, but also the subjective factors that directly affect the process of their formation.

Civil approach to the typology of legal systems. Taking into account the tradition formed in the general theory of law and comparative law, it is believed that it is more expedient to consider the basic legal systems of states from the point of view of the stability of their groups on the basis of civilized approaches to the **state-legal typology**.

When studying the characteristics of the types of states, as already mentioned, the theory of civilization allows us to distinguish the uniqueness and uniqueness of a particular

society. This is due to the establishment of a certain culture in that society. Civilization consisted of a certain type of human association. Each of the types of civilization "has reached the point of cultural self-identification" (A. Toynbee). Civilization is directly defined as a relative-closed state of society. It is distinguished both by the generality of the culture and by economic, geographical, psychological, religious and other factors.

A civilized approach to the problem under study allows us to imagine and compare the diversity of state and legal systems on the basis of **multinational criteria**. Of course, this classification cannot be considered generally known or unique, as it is quite conditional. Based on this, his critics are paying attention. Critics point out that the typology itself is not sufficiently developed, and that there are different grounds for distinguishing between civilizations and types of states and their legal systems. Efforts have also been made to present the universality of certain typologies, because the factors, principles, indicators or parameters discovered by researchers are also conditional and generally acceptable to all.

Swedish lawyer **M. Malmström** was one of the first comparativists to apply the provisions of the civilized approach to substantiate his classification of legal systems. In 1969, he proposed the separation of the Western legal family group, bringing together French, Scandinavian, Latin American legal families and the general legal family. The author rationally believed that Western civilization, in general, gave rise to Western law, which differed from the rest of the legal families. He also included socialist legal families, as well as Asian and African law, in a special group.

"Style of law". In the new historical context (late twentieth century), German legal experts K. Schweigert and H. Katsey, who distanced themselves from the classical

comparativists in an environment of "**trinity**" comparativists, can also be considered proponents of a civilized approach. The "style of law" is regarded as a distinctive feature of this or that legal family. Within the framework of the theory of legal families, the following factors determine the legal style are distinguished:

1) historical origin and development of the legal system;

2) the dominant doctrine of legal thought and its specificity;

3) distinguishing legal institutions from their originality;

4) sources of law and methods of their interpretation;

5) ideological factors.

Eight legal families are identified accordingly. The first four families of law (Roman, German, Scandinavian law, and common law) belong to Western law. The second four families of law (socialist law, Far Eastern law, Islamic law, Hindu law) have been defined by their interpreters as "non-Western law".

At present, comparative law is dominated by the legal families listed above. These classifications include types of sources of law, models of legislative procedure and other legal features, elements of general culture and legal culture, legal traditions, legal structure and legal infrastructure.

Based on the classifications of **Christopher Osakwe,** M. Malmström, **K. Swikert**, and H. Katz, American legal experts who have been productive in the field of comparative law teaching over the past decade, consider the following as the main types of law:

1) Western law (Romano-Germanic, Anglo-Saxon, Scandinavian law);

2) quasi-western law (socialist law, the law switching to Romano-Germanic law);

3) non-western law (religious legal systems, southeastern and African customary law).

The author distinguishes between Muslim (Islamic), Jewish, canonical (Catholic Church), and Hindu (Hindu) law within the boundaries of religious groups.

"Type of legal system". A number of modern researchers refer to the concept of "**type of legal system**" when compiling their classifications (N.N. Onishchenko, L.A. Luts, O.F. Skakun). In particular, they include "a set of the most important legal features inherent in a group of legal systems located at the boundaries of a particular time and place." The main typological factors are the features of the institutional and functional normative parts, which determine the important features of a particular type and the normative level of the mechanism of legal influence. The following are additional criteria:

- the nature of the legal norm;
- compatibility of methods and forms of objectification of legal norms;
- the mechanism of ensuring the implementation of legal norms.

Based on these criteria, L.A. Luts models, for example, the following basic types of modern legal systems in the world:

1) Roman-German (continental law) law;

2) Anglo-American (common law) law;

3) mixed (typologic: dualist - Scandinavian, Latin American law; religious community - Muslim, Hindu law; traditional-philosophical - Japanese, Chinese law; customary community law);

4) interstate - a type of legal law.

The above classification, based on a civilized approach, follows:

- **firstly,** the obvious discrimination of socialist law (the effect of this right is felt by almost a quarter of the world's population);

- **secondly,** Northern Europe and Latin America are in fact under the influence of the Asian-African law;
- **thirdly,** the typology of the legal systems of states includes the legal systems of interstate unions;
- **fourthly,** the post-Soviet states included the type of Roman-German legal systems "in their entirety" without taking into account the ongoing processes, and they remain in this legal system even after gaining independence.

The process of legal adaptation in the former republics of the former Soviet Union has not yet been completed. This, in its turn, provides them with the opportunity to unite in a separate legal family. This is because no such step has been taken by the former Soviet republics so far, and it is difficult to say whether this will happen in the near future. It should be noted that the Russian factor, which is part of the Romano-Germanic legal system, also plays an important role here.

Integration of legal systems. Is it possible to find conflicting alternatives in the groupings of the legal systems of states? In relation to the classification of the basic legal systems of the states, we formally establish the legal family in the modern world by formulating the following in a logical way:

1) **Western law (European and Anglo-American legal family group).** Continental legal traditions embodied in the ideas and personal approaches of teachings on natural law; the notion of justice and the notion of the expression of the will of the individual in society, the non-interference of the state in the affairs of the individual can serve as the criteria of this group;

2) **Oriental law (religious and traditional legal families and systems).** Sacrificing oneself (and one's own interests) to the interpersonal approach, the priority of debt and duties, the dependence of the individual on society, the individual's public interests and the interests of the state;

3) **ideological law (socialist and post-Soviet, post-socialist legal systems).** Revolutionary or artificially created legal systems are among the main types of law based on the advantages and principles of the ruling communist ideology to which the legal development of the country is subject.

Within the framework of these associations, groups of legal families and separate subgroups are distinguished. Such groups of legal families and subgroups consist of the original legal systems of states that are mixed for various reasons. For example, in the United Kingdom, a classical country of common law, Scotland, as an integral part of it, advocates the principles and institutions of continental law.

Such a situation exists in legal families, including many countries around the world. Thus, elements of Jewish, Muslim, Anglo-Saxon, and continental (European) law can be found in the Israeli legal system. Therefore, the mixed nature of the legal systems of such states is noted both in the scientific literature and in the teaching literature, as well as in separate research works.

Topic 5

CONTINENTAL (EUROPEAN) LAW

Within the framework of complex concepts such as Western law, continental (European) law is formed on the basis of and active use of the legal heritage of ancient Rome, the structure of law, its structure, sources and principles of the family of concepts and the apparatus of separation of concepts. In other words, continental law benefited from the most important concepts, terms and definitions of the Roman legal culture of ancient Roman law, the legal terminology of the time. This means that, like other legal families and systems, continental (European) law owes its contemporary achievements to Roman law.

It should be noted that the term "continental law" is conditional. It uses this term to describe its formation and development, its roots, its original embryos, its origin and its nuclear area. The historical traditions and developmental features of comparative law include its close connection, especially with the Romano-Germanic legal system. From the very beginning, the leading positions of the French and German comparativists in comparative law were prominent. As a result, comparative law is highly valued in a number of European regions. Public universities in Central European countries, in particular, have played an important role in the development of general European legal science. In the process of making such a joint effort, continental law was also referred to as the Romano-Germanic family or system of law, and it continues to be so today.

Thus, in addition to the Roman (Southern Europe) and German (Central European) legal families, the Scandinavian (Northern European) legal family and the Latin American legal

family located outside Europe also include the continent (Europe).

At the same time, English-speaking countries associate continental law with Roman and former European law, calling it a **system of civil law** (civil law countries). European law is now sometimes equated with the legal system of the European Union, which is incorrect in form and fact, because the European Union is an interstate union. Although it unites half of the states that make up a part of Europe (28 out of 50), it cannot replace pan-European institutions. Thus, European law, as one of the independent branches of modern jurisprudence, has its own subject of study and research, goals and objectives, as well as its own scientific methods. In order not to equate Aurora law with continental (European) law, we consider it expedient to dwell on some specific features of this field of law.

European law – it is one of the most dynamic legal systems of modern times. Most recently, European law has been associated with the deepening of integration on the continent, the development and entry into force of new necessary legal acts that form the legal basis for its activities and development. The solemn proclamation of the EU "Charter of Fundamental Rights" in December 2000 was a milestone in the democratization of European integration institutions. In 2001, a new "Constituent Agreement" was adopted, named Nittse, after the place where it was signed. With the Agreement, which entered into force in 2003, significant changes were made in the institutional structure of the European Union, in the process of formation of individual institutions and in their activities. From May 1, 2004, 10 more states will join the European Union and the number of member states will reach 25.

Sometimes there is no single terminology in the scientific

literature and in the documents on the European Union (EU). There are inconsistencies in the presentation of institutions in different writings. This is partly due to the fact that the official languages of all EU member states are used. It is important to know the abbreviation used in textbooks on European law. It must be taken into account that the abbreviation "EU" means the European Union ("EU" has nothing to do with the European Community). It is necessary to take into account the different aspects of the terms such as "European Law", "European Community Law" and "European Union Law". The term "European law" is officially used in the nomenclature of scientific specialties. This is a cumulative concept. Although there are fundamental differences, the whole of national legal systems is referred to by this term. The differences between Anglo-Saxon common law and Romano-Germanic law, which predominated in continental Europe, were particularly great.

Thus, European law means the special legal system of human rights protection that encompasses the legal provisions of the European system and **the European integration law** that regulates the relations formed in the process of European integration.

It is important to keep in mind that at the present stage, the law of the Union and the law of the EU are often overlapping, but not the same. The legal regimes of the Unions, which formed the first pillars of the Union, the general foreign policy and security policy which formed the second pillars of the Union, and the co-operation of the police and courts in the criminal-legal sphere, the third pillars of the Union, are very different. This includes important characteristics such as the origin of the rule of law, the scope of the objects and the jurisdiction.

In addition to the term "European law", other terms are used in the scientific literature to refer to the same course of

study. First of all, we are talking about the law of the European Communities or the law of the European Community. British professor T.K. Hartley, for example, does just that. The term "European Union law" is also widely used in the literature. In this case, we are talking mainly about the right of integration, which excludes the law of the Council of Europe. Also, the textbook prepared by the Moscow State Law Academy under the editorship of Professor SJ Kashkin is called so.

The term "EU law" is used in the EU Constitution. However, its introduction implies extremely serious changes in the nature of the legal system itself in its official use. It is based on the elimination of differences in the legal regime of the constituent parts of the Union and the replacement of all existing constituent treaties with a single EU Constitution.

Another point that needs to be made is that **European law** includes both EU law and the national law of member states. In any case, it is the part of EU law and the national law of the Member States that ensures the implementation of the norms and principles adopted and enacted at the EU level.

The formation of European law had its own historical background. The ideas of the European Union have a centuries-old history. In all cases where the ancient continent has become a site of bloody conflicts and clashes, numerous projects have been put forward for the restoration and confirmation of peace, all of which, as a rule, have been connected with the need for European states to come together. Prominent political and public figures, representatives of culture and art spoke in support of the establishment of the union in Europe.

After the First World War, the Pan-European movement became significantly more active. However, the projects for the establishment of the European Federation, the United States of Europe, remained the property of relatively limited eliter and did not gain any mass support. After World War II, however,

the situation changed dramatically. Only the unification of the efforts of the peoples of Europe could eliminate the grave damage inflicted on humanity by the war instigated by the forces of Nazism and fascism. It was necessary to recover and revive economy, to increase confidence in the rights and dignity of the individual, to revive democratic rights, freedoms and institutions, to improve the material well-being of the masses, to create an effective mechanism for mutual co-operation and efforts between countries and peoples, as well as peacefully settle the disputes that may arise.

The unification of the European states and the defense of the European Union movement were, in this context, truly massive. In the European Congress of Federalists held in May 1948 in The Hague, the Netherlands, with 713 delegates from 16 countries, calls were made for the establishment of a united Europe, for the adoption of the Universal Declaration of Human Rights, for the establishment of a European Court of Justice that ensured the implementation of the provisions of the European Parliamentary Assembly. To a certain extent, these calls were based on the provisions of the Council of Europe (CoE), established in 1949.

The establishment of the EU has played an important role in the **evolution of European law**. As a result of this evolution, the sphere of application of the integrated institutions of European law and the jurisdiction of the subject began to expand radically. At the same time, the scope of application of European law has expanded. Great Britain, Denmark and Ireland in 1972, Greece in 1981, Spain and Portugal in 1986, Austria, Sweden and Finland in 1995, Poland, Hungary, the Czech Republic, Slovakia, Slovenia, Lithuania in 2004. , Latvia and Estonia, Cyprus and Malta joined the Union. Thus, in 2005 the number of EU members reached 25. The total population of these member states is 450

million. The next expansion of the Union is expected in 2007.

The development of European law is a complex and multi-stage process. It reflects the changes and developments that have taken place in the building of a united Europe, as well as the specificity inherent in European law, and is conditioned by its formation as a system. Its main stages are the **creation** and **evolution of the Unions**, which is the first stage of integration, and the second, higher stage is the **organization and development of the EU**.

A new stage in the development of European integration was embodied and enshrined in the "Treaty on the European Union" (Treaty on the European Union). The Treaty was concluded in Maastricht (Netherlands) on February 7, 1992 and entered into force on November 1, 1993 (the place where it was signed is called the "Maastricht Treaty").

The Treaty on the EU is an extremely complex and controversial political and legal document. It is particularly noticeable in the legal regime of the Unions, in the sphere of general foreign policy and security policy, as well as in the field of cooperation between the police and the courts in the criminal-legal sphere. These differences relate to important points such as the sources of law applied within the framework of the three support systems, the subjects of law, and the procedure for the adoption and execution of resolutions. The result is the differentiation of the legal regime of EU law, not only vertically, but also horizontally. Differences in the content of the concepts of "law of the European Communities" and "law of the European Union" also stem from this. Over time, and with the adoption of the next constituent acts, these contradictions and differences, although somewhat slowed down, have not yet been eliminated.

The experience of implementing the Maastricht Treaty on the eve of the enlargement of the Union and the fact that the

need to improve the EU mechanism have become even greater created conditions for the development and entry into force of a new treaty amending and supplementing the Treaty on Unions and Communities. This Treaty became the "**Amsterdam Treaty**" (so-called "Amsterdam Treaty" for the place it was signed at) was signed on October 2, 1997 in Amsterdam (Netherlands).

One of the central points in the treaty is the establishment of a space of freedom, security and the rule of law. The Amsterdam Treaty does not contain generalized formulas that explain this concept. However, it contains a number of provisions that testify to the more or less decisive efforts of the founders to strengthen and expand the guarantee of freedom, democracy and the rule of law. In particular, the new formula for the foundations of the EU meets these goals. According to Article 6 of the Treaty, "the union is based on the principles of freedom, democracy, respect for human rights and fundamental freedoms, as well as the principle of the rule of law common to all member states." The development of democratic initiatives must serve the broad openness and transparency of resolutions adopted by EU institutions and bodies.

In the course of the work on the Amsterdam Treaty, serious disagreements arose among the member states on the question of the reorganization of institutions. It was decided to convene a new intergovernmental conference to eliminate them. Until a final decision on the entry of new forces was made, the instruction was given to prepare a treaty that would change the institutional structure.

The Treaty of Nice, which amended the treaties establishing the EU Treaty, the European Union and some related acts, was the final chord of the EU's preparations for enlargement. These acts were signed in Nice (France) on February 26, 2001 and entered into force on May 1, 2003. A

number of documents in the form of declarations and protocols were submitted to the Treaty. The most important of these are the Protocol on the Enlargement of the EU and the Protocol to the EU Court of Justice.

Decisions on the institutional structure of the EU are central to the Treaty of Nice. Virtually all EU institutions are being restructured to one degree or another. The composition and powers of the European Parliament are changing. The Council of the EU is reconsidering the calculation procedure used by each Member State and used in the adoption of resolutions by a majority of votes.

The experience of developments in the EU since the signing and entry into force of the Treaty of Nice confirms that the excitement and fears about the expansion of the Union are not unfounded. The events around Iraq also testify to this. These developments have led to significant differences in the positions of individual member states and candidate countries for accession to the Union. Serious disagreements were also found on certain key provisions of the EU Constitution. Thus, disagreements over the violation of the observation of stability by a number of leading EU member states have intensified. In a word, the US military invasion of Iraq (such a military intervention was not agreed with the UN Security Council and was a serious violation of international military law) has been sharply condemned by a number of leading members of the Union.

The **EU Constitution** plays a promising role in the development of European law. At the December 2001 session of the Council of Europe in Belgium, a resolution was adopted to convene the Convention on the Future of Europe, annexed to the Treaty of Nice, for the implementation of Declaration No. 23. The Council of Europe Declaration raised the question of whether the relevant work of the Convention would ultimately

lead to the "preparation of a draft EU Constitution". It is safe to expect that the new Convention will address such a large-scale task as the preparation of the draft Constitution. The results were not so optimistic.

Nevertheless, and in contrast to some pessimistic forecasts, the work of the Convention has been quite effective. The Treaty establishing a Constitution for Europe was signed in Rome on October 29, 2004.

About 30 protocols and declarations were attached to the text of the EU Constitution. These protocols and declarations include:

- Protocol on the Role of National Parliaments in the EU;
- Protocol containing the Statute of the EU Court;
- Protocol on the Principles of Subsidiarity and Proportionality;
- Protocol on the Representation in the European Parliament and the distribution of counted voices of the countries of the EU Member States;
- Protocol containing the Charter of the European Central Banking System and the European Central Bank;
- The Protocol governing the formation and status of the European Group;
- Protocol on Amendments to the Treaty on the Establishment of Euroatom, etc.

The final declaration attached to the text provides that if one or more States do not ratify the text for internal reasons, within two years of the signing of the Treaty, the Council of Europe returns to the consideration of this issue.

The EU Constitution is a document that is extremely complex and not easy to understand. The general provisions set forth in the first part of the Constitution are not always sufficiently clear in the decisions governing the activities of the

Union and in the implementation of the general policies set forth in the following articles. For example, in addition to the general legislative procedure, rules reminiscent to some extent of the special procedures previously applied have been retained.

The third part of the EU Constitution contains a large number of decisions. These decisions are more specific to the Administrative Code or other special, regulatory acts.

The EU Constitution enters into force upon completion of the ratification process at the national level.

Thus, it became clear from the above considerations that European law (EU law) is not a duplication of continental (European) law, but an independent branch of law.

European law then crossed the continent's borders and became widespread throughout the world thanks to a number of factors (support from the Catholic Church, military occupation, colonial policy, as well as the idea, structure and voluntary understanding of institutions).

Distinctive aspects of continental law. If the existing characteristics of the group of legal families are summarized, the following can be considered as its principal aspects.

1. **General historical basics.** These basics were accepted as European or Western traditions of law (G. Berman) with the legacy of ancient Roman law and the reception (doctrinal and factual appropriation) of this legal heritage in Europe, the canonical (church) law of Catholicism, the philosophy of natural law and the system of historical jurisprudence, jurisprudence and jurisprudencece of historical jurisprudence, jurisprudence and jurisprudence.

2. **Similarity of basic legal concepts**. According to the French legal expert Pierre Sandewuar, this similarity is manifested, above all, in the same generalized view of the notion of the rule of law, which is regarded here primarily as a

rule of behavior. The same legal dogmatism, that is, the concept-category apparatus, determines the study of Roman legal heritage in European universities, the works of doctoral scholars, and the legal policy of the countries that determine the legal policy of individual legal experts.

3. **General beginning of professional education**. It is a general beginning of professional education for legal experts and a training methodology that provides for two stages of their legal professional training - **general** and **specialized**. In particular, the following subsystems of legal education have emerged in Germany:

- university subsystem which is engaged in the scientific study of law and ends with a state examination, the purpose of which is to test knowledge of important legal disciplines, does not complete the training, but gives certain rights;

- a paid internship in a law-related enterprise that ends with a second state exam within two years, completing the training of a legal expert. In France, to become a lawyer, you need to graduate from the university's law faculty, work in a law firm, graduate from a law school, have an annual internship, continue your education, and finally, it is necessary to get a lawyer's diploma.

4. **Recognition of law as a statutory right (written right).** This is the result of the creation of law on behalf of the state, and the legislature (in the broadest sense) is defined as the de facto creator of law. It should be noted that it is difficult to agree with the statement that "the legislator is the actual creator of the law." As already mentioned, law is a product of society. It is established in such a hot, hot and at the same time turbulent environment of public life that the process of such establishment can only be assessed as an integral part of intellectual activity. In short, the law is the product of the mind and intellect of the educated strata of society, the logical result

of intense mental labor (of course, in the legal sphere, the logic of labor directly related to the law). This means that the legislature is not and cannot be able to create law. The bright results of the legislator's activity are the given laws.

5. **Dualism of law.** This is due to the connection between the general law, which protects the interests of the state in law, and the special law, which protects the interests of individuals and their associations and the interests of civil society.

6. **The supremacy of substantive law**. It is well known that procedural law is usually distinguished by its corrective role in legal regulation. Procedural law has always and at all points given life to substantive law. In particular, it would be very difficult and meaningless to live for criminal law if there were no criminal proceedings. However, the advantage of substantive law over procedural law in regulation is obvious. Because in this process, the solution of common problems falls on the substantive law.

7. **An overlapping approach to the hierarchy of sources of law.** In this regard, there are mandatory normative sources (laws, legislative acts of the executive authorities; within such acts, the constitution has the highest legal authority as the basic law of the country), as well as international treaties and agreements.

8. **Increasing the role of norms and principles of modern international law** in the domestic legal system. In almost all the states of the modern world that have a constitution, the priority of the universally accepted norms and principles of international law has been established in comparison with national law. Therefore, in the event of a conflict between international law and domestic law, international law is preferred. It should be noted that this was initiated by the Constitution of the Federal Republic of

Germany of 1949 and the processes of integration (unifying processes) in Europe as a whole (Council of Europe, European Union.

9. **The special role of legal doctrine (jurisprudence).** The political and legal thought of the world is a witness to a number of legal doctrines (concepts of state and law), large and small. According to the historical evidence of legal practice, it is with the help of legal doctrine (jurisprudence) that the principles of the structure of the legal system are developed and regulated, the foundations and stages of the law-making process are defined. Thus, the legal doctrine serves as a kind of guide to the regulation of the above-mentioned components of the legal system.

10. **Attitude to court precedent as a non-compulsory source of law.** Judicial precedent is a source of law inherent in the Anglo-Saxon (Anglo-American) legal system. In the United Kingdom in particular, court practice not only applies law, but also creates the rule of law itself. In this context, naturally, court practice has a different meaning than that of continental Europe. The precedent of the court has its own nature and limit of power. The rule of precedent is revealed by the doctrine through the following three sufficiently simple provisions:

1) Decisions of the House of Lords constitute a mandatory precedent for all courts except the Chamber itself;

2) Decisions made by the appeal court are binding on all lower courts, except the criminal court (including the appeal court itself);

3) Decisions made by the Supreme Court are binding on the lower courts and are of paramount importance, usually various departments of the Supreme Court and the Crown Court (although the decision is not binding on them) use them as guidelines.

French legal theorist J.L. Bergel writes that court

decisions are "not rules that are binding on anyone in the process." At the same time, in the continental legal system, "in fact, there is a similarity of court practice, which is formed mainly in the process of the activities of higher courts" (A.E. Chernokov).

It is known that in the Romano-Germanic legal system, the principles of law can always be found in a set of predetermined norms. For the first time, the role of such a source was played by the Code of Justinian. At present, in the Romano-Germanic legal systems, this task is performed by a number of articles. In countries with written law, case law usually plays a secondary role. Here, the laws have legal force, not specific cases. Judicial decisions can be distinguished by their known reputation, but they are not made as sources of law that create new legal norms. In England, the situation is quite different. Roman law has never been as influential here as it was in countries with continental law. In England, common law was created by royal courts. That was the law of court practice. In the UK, precedent rules also apply to the interpretation of laws, and the fact is that such a practice has been criticized by many scholars.

11. **Existence of a system of judicial control over the constitutionality of legal norms.** Such a system of supervision is reflected in the establishment and operation of a special constitutional court, the decisions of which are binding on the subjects of law (it was in Europe that a constitutional court was established in Austria in the 1920s, and **Hans Kelsen**, the founder of the normative law school, played an important role in its formation and operation).

12. **Similar traditions in the process of legalization of law.** These traditions require that in the main areas of law they be classified and systematized on all parameters (this process was initiated by French jurisprudence. Thus, thanks to the

patronage and insistence of the French emperor Napoleon, the first five articles were compiled and adopted in 1804-1810).

13. Unified scheme of the legal system. This scheme puts the legal norm at the center of the structure, and determines legal institutions and sub-institutions joined by subordinate legal families with the following elements (substantive and procedural law, general and special law), sub-areas and areas of law (constitutional law is the main field, civil law, criminal law and administrative law are the guiding fields, and the procedural areas that correspond to them).

14. **The existence of historically formed legal families**, reflecting the development characteristics of the law of the main regions where the ideas and institutions of continental law are widespread.

Tpoic 6
ENGLISH-SAXON (ENGLISH-AMERICAN) LAW

The Anglo-Saxon legal family is one of the most widespread and oldest influential legal systems in the modern world. It is sometimes called the general legal system (family). Geographical (coverage of national legal systems in different regions and parts of the world), culture (spread in countries with different political structures and legal cultures), historical, English-American influence on other legal systems (English-American and others) can only be compared with the Romano-Germanic legal system, which is one of the oldest legal systems. This is the general position of researchers (P. Cruz).

Some features of the concept and content of common law. Currently, one third of the planet's population is under the regulatory and other influence of common legal norms, doctrines, branches and institutions of law (M. Gilendon, M. Gordon). The common law has long been in force in the United Kingdom, the United States, Canada, Australia, New Zealand, India and a number of other countries. Moreover, as a result of the development of the world community and the expansion of economic, political and other relations between different states, the sphere of influence of common law, especially in the last century, has not only decreased, but also expanded. Undoubtedly, the secular expansion of the British Empire also contributed to this. It was in the territory of the British Empire that the common law, originally accompanied by legal expansion, emerged and developed.

In order to avoid terminological errors in considering the history of the origin and development of common law, it is necessary to distinguish the term "**common law**" from other terms related to it, including "**English law**" or "**Anglo-Saxon law".**

In this textbook, "common law" and "Anglo-Saxon" and "Anglo-American" law are used as synonyms. The similarity of these terms is constantly observed in the numerous works of foreign legal experts, philosophers, sociologists and in the research of other representatives of the social sciences on the problems of comparative law. Even the original tradition of using these terms has been formed.

However, experts in the field of state and legal history of foreign countries and, first of all, England, do not accept such an approach. Based on the study of documents and other materials relating to the early and later periods of the history of state and law in England, experts conclude that the term "Anglo-Saxon law" in the strict sense of the word is the law of the Anglo-Saxon law. It was during this period that the later legal system of England was called "common law" (E. Cenix, E. Anners).

Based on the accuracy of terminological differentiation in the teaching process and in scientific research, the term “common law” cannot be equated with the term “English” or “British” law.

The general legal system was established in England after the Norman occupation, mainly in the process of the functioning of the royal courts. The basis of general law was English law. However, the general family of law includes the legal systems of all English-speaking countries, with some exceptions, except for English law. Although not in all countries with which Britain has political ties, the influence of common law is significant in the British Union (their number is now 54). Although the state retained the specificity of its national rights in a number of areas of its historical traditions, legal institutions and concepts, the English influence of common law has left its deep imprint. For example, in these countries, administrative bodies and courts refer to national legal norms in their activities, and the judicial process and the system of evidence are regulated by the English

model of law.

Not to be outdone, D. Rene and K. Joffre-Spinozi write that the study of general law must begin with the study of English law. Common law is a system that bears its historical traces. This date is the history of English law exclusively until the eighteenth century.

In the historical context in which English law was formed, its geographical boundaries were also known to some extent. In this connection, D. Rene also shows in a somewhat figurative sense that English law was limited to England and Wales. It was not the law of the United Kingdom, Great Britain or Northern Ireland. Because Northern Ireland, Scotland, as well as Le Mans Islands and the Maine Islands were not subject to English law. That is why the author proposes to abandon the term "British law". At the same time, he notes that English law has a really high place in the common law family. It continues to be a model, not only in Britain itself, but in all countries where common law has historically been established.

One of the issues of concern is the basic elements of common law. These elements illuminate the early period in the development of common law. According to Leje Raymond, common law, from its inception, has manifested itself not as a legal system, but as a circulation of speech. Because the common law in the process of its formation simply did not yet exist.

English law has been covered in numerous documents in the first centuries. These documents include, first of all, court documents, or more precisely, documents kept in the archives of the courts. Some of them are very old, such as the archives of normal courts, collections of court decisions, documents compiled by lawyers, and so on.

Common law begins to exist in the process of its development as a set of procedural provisions. This, in turn,

creates the conditions for the consolidation of decisions, in essence. All this, together with some technical means, forms a system of common law. The following concise formula of D. Rene can be considered as a definition in this sense.

“...General law, like the law established by the courts from decision to decision, expresses a sense of justice and the favorable political conditions in the thirteenth century in which it was created”.

From the point of view of the relation of common law to English law, implementation of the following may also be important:

Firstly, common law should be distinguished from English law, international law (the main subjects of which are states of law) and canonical (from the sphere of law created by the church and enforced by its courts).

Secondly, it is necessary to take into account the fact that "common law", with all its longevity, indisputable importance and wide distribution, is not an eternally formed, ambiguous term, which is obvious to many comparativists.

The term "common law" is sometimes used to mean "broad" or "limited." In the broadest sense, "common law" means full coverage, "comprehensive coverage of all national legal systems belonging to the Anglo-Saxon legal family." In this case, the "common law" is considered not only as a family of law that does not coincide with the continental law of the modern world and the Romano-Germanic family of law, but also to some extent opposes these influential families of law.

In the narrow sense of the word, "common law" is historically considered to be part of the Anglo-Saxon legal family of law, which was formed on the basis of the decisions of the royal courts in Great Britain. In its original sense, "common law" is a form of law against the norms and judicial practice granted by the country's parliament and called "statutory law", as

well as those born of the English "courts of justice".

In addition to the meanings mentioned above, the term "common law" is also used in other intellectual senses. In particular, "common law" is sometimes referred to as the whole legal system of the United Kingdom, and it is a fact that it is not about individual normative legal acts or local norms and customs, but about the "common" legal system of the whole country.

In the process of analyzing problems of comparative law, it is considered expedient to avoid mistakes in the use of the term "common law" only as a synonym for the term "Anglo-Saxon legal family".

Now it is necessary to consider the **main features of common law**, because these basic features distinguish the common law, which acts as a legal family, from other legal families.

Here we are talking about the special features of common law that relate to it, for example, to the sources or forms of law, to its individual principles or traditions, to its structure, or to certain aspects of its content. In this process, only the main features are considered, which belong to the Anglo-Saxon (Anglo-American) legal family as a whole. In this case, the **specific nature** of this legal family and the principal aspects that distinguish this legal family from other legal systems of the world are considered.

Undoubtedly, we are talking first of all about the distinctive features and peculiarities which, on the one hand, create conditions for differentiation between the Anglo-Saxon legal family and the other legal family which is closest to it and which is related to it by a number of parameters, on the other hand, for differentiation between the Romano-Germanic legal families and the specifics that do not coincide in some respects.

It is not always possible to make such a differentiations

from the point of view of the similarity of the types, other features and aspects of the legal families under consideration. However, there are fundamental differences between legal families and this cannot be denied or isolated from the scope of the meeting.

In the modern world, it is impossible to consider the similarities and differences between the two legal families with their special priorities, first of all, without noticing the following number of similarities:

1) **the generality of "cultural development"**, so that for many centuries both the system of common law and the system of Romano-Germanic law "have had and still have a common Ingredient - civilized life," and this continues to this day;

2) **a certain generality of religious principles**, Christianity has long been a common religion for England, the birthplace of common law, and for continental Europe, the center of the development of Romano-Germanic law.

It is known that in the Middle Ages, England was under the religious authority of the Roman Catholic Church and its strong influence. In the following centuries, the country recognized Protestantism as its official religion. Protestantism at that time covered a large part of the population of Western Europe. Finally, "religious pluralism" is now established in Britain. It has been established in almost all of Western Europe.

One more specificity can be added to the similarities mentioned above. This is reflected in the level of similarity of **science, technology, art, a number of socio-political and legal doctrines, ideas and principles**, both in England and in continental Europe.

These and many other factors inevitably give rise to fundamental similarities between the two dominant legal families in the world. At the same time, these similarities are accompanied by the national, historical, political, psychological

and other characteristics of the countries and peoples that perceive these legal families. Because such factors do not mean that there are many differences between the two legal families.

Each of these legal families is subject to the formation of a number of individual characteristics as a result of the existence of its own natural and other characteristics. Both the Anglo-Saxon and the Romano-Germanic legal families have already acquired their individuality.

Of course, this does not preclude the renaming of each of the legal systems of norms, institutions, ideas and other "traditional aspects" inherent in another legal system, but rather in every way. Otherwise, neither the Anglo-Saxon nor the Romano-Germanic legal family would have been able to enrich their legal base to the level seen today. However, this should not mean that the legal systems in question have not changed their original nature, basic parameters and "fundamental aspects" and remain the same as before. Although not all authors currently defend this view, we believe that any legal family or system can benefit from the positive traditions that have emerged in the relevant periods of historical development. In this respect, neither the Anglo-Saxon nor the Romano-Germanic legal family is an exception.

But what "fundamental aspects" and features make it as specific as a legal family of common law? What is the fundamental difference between common law and Anglo-Saxon law, continental law and Romano-Germanic law?

In answering such questions, many scholars of common law distinguish the following features of common law.

Firstly, it touches on the fact that common law, by its very nature and content, is **"the law of the court"**. This means that the basis of common law was originally the decisions of the Royal Courts of Justice in England (this tradition continues to this day), the decisions of the Supreme Court on the

constitutionality of ordinary ("current") laws (in the United States), and decisions of high court on similar issues (in Canada, Australia and other English-speaking countries).

The "judicial" nature of common law is recognized by practically all researchers-cooperatives and judges - employees who have common affairs with various institutions of common law (MN Marchenko).

In the United Kingdom, the United States, and any other country in which this law operates, this right has traditionally been established by the courts and is still being established. Judicial decisions on the most diverse issues are still the basis of common law today (R.Sim).

Undoubtedly, the laws passed by the parliaments play an important role in the legal system of these countries, first of all, in England. However, it should not be forgotten that in the process of drafting and adopting parliamentary acts, existing court decisions are always taken into account, and in the process of enforcing the law, it is the judges, not the authorities, who are the authorities. As a result, “the nature of the judge's activity and the judge's meetings and doctrines have always been and remain an important factor in the development of common law (R.Sim).

According to E. Warren, former chairman of the US Supreme Court, in this country, "while the court confirms that it does not create law, no one will have grounds to remain honest." The law-making activity of the court is not its main purpose and function. The court creates law in the course of its main judicial activity. He does not intentionally change or change Congress, nor does he intend to seize power in Congress. Because, "we (the judges) create the law, it can not be otherwise" (Ch. Sheldon).

It should be noted that, according to a number of American authors, the "judicial" nature of common law in the United States is more important here than the "judicial" nature of

common law in England and other countries. According to the observations of these authors, "the law created by American judges plays a greater role in the process of regulating and governing society than the law created by British judges." (A.Cox).

The "judicial" nature of common law and its great practical importance are recognized not only by American and British lawyers, but also by legal theorists and practitioners in other countries. Thus, some Canadian researchers even believe that the right of a "judge" can be "characterized" in some respects as "a constitutional right that has no independence from the statutory law or the constitution itself".

An example is the prerogatives of the Crown (practically the executive authority). These prerogatives derive their "legitimate beginning" not from the statutes of parliament, but from the relevant "court decisions." In support of this thesis, attention is paid to the fact that the status of Canadian civil servants is determined more with the help of the judiciary. It is through the right of "court" that the constitutional guarantee of the rights and freedoms of citizens is realized, and the activities of "government officials" and "administrative agencies" are ensured within the framework of the law (P. Hogg).

It should be noted that the widespread opinion about the "judicial" nature of common law, as well as the priority of "judicial" norms over statutory and constitutional norms, is shared by many authors (S.V. Filippov, O.A. Jidkov). In our opinion, there is reason for such suspicion. At least because any judicial act can never and under no circumstances be above the law, let alone the constitutional norm. Researchers who support such a characteristic of common law also forget that the legal norms created by “judges” can never act as a source of law at the legislative level. Because the norm of "judge" created in accordance with the common law is first of all a procedural act,

and it can be a carrier of error in terms of its content. The source of the law does not accept such a mistake.

Secondly, attention is drawn to the fact that, in comparison with other legal families, common law has a more **pronounced "casual" character, a system that prefers "precedent" law, in which "specialized" law is completely or partially excluded.** This also means that the common law does not use the specialized legislation at all.

This feature of common law is due to the fact that it has historically had a long history of supremacy over the right of a "judge" over a statutory right or a parliamentary right. The establishment of the principle of strict precedent in the functioning of the judicial system of the United Kingdom and other countries, the unequivocal supremacy of the law of precedence over other parts of the common law, the unification of this process and the object of this unification.

Because, this from the point of view of purely practical purposes, created all conditions to regulate and announce precedents that are constantly created and repeatedly applied by the courts (F.M. Reshetnikov).

For these reasons, special "Collections" of court reports were regularly collected and published in England from the end of the thirteenth century to the first half of the sixteenth century (including this period). In the 16th century, they were replaced by special reports. These reports were, as a rule, compiled and published by the most qualified English legal experts.

In the second half of the 19th century, "Court Reports" began to be published in Great Britain. These publications published the decisions of the higher courts, which acted as precedents for the courts in similar cases. In addition, the " Collection of Court Reports", "All-English Court Reports", "Northern Ireland Court Reports", and other such publications have been published.

The immediate intensification of the legislative activity of the English Parliament at the beginning of the nineteenth century (such an increase was due to the rapid growth of industrial production and trade, as well as the reform of the electoral system in 1832), undoubtedly, has helped to increase the role of statutory law, to increase the number of acts adopted by the parliament and to understand the need for their systematization and unification.

As a result, at the beginning of the 19th century, unifying acts began to be published in Great Britain. These acts contained various norms and institutions that had previously been applied to parliamentary acts. Examples of these acts, published in the second half of the 19th century, are as follows:

- the 1857 Law on Family Relations;
- the Partnership Law of 1890;
- the Law of 1893 on the Sale of Goods, and etc.

These acts were, in fact, acts combined with some elements of codification.

At the end of the nineteenth century and throughout the twentieth century (when the demand for the systematization of numerous parliamentary acts was particularly high), consolidation was, as before, the main form of regulation of British law and still remains the main form.

This form of systematization of legislation, such as codification, has not been practiced in the UK. Efforts to nationalize various branches of English law have repeatedly failed. Attempts to draft and adopt the Criminal Code in the second half of the 19th century also failed. Attempts to codify other areas of law have also yielded no results. In 1866, a special commission was set up in England by the Parliament to codify the law, but this did not end in a positive way.

The process of codification of legislation creates a slightly different picture in other countries of the common law family,

including the United States. This process can be explained by the example of the United States:

- the existence of specific conditions for the development of common law in this country;
- activity of legislative bodies at the level of federations and individual states;
- adoption of a large number of normative legal acts;
- unlike in England, where the legal system is not deeply connected with the judiciary and other public authorities;
- lack of commitment to the historically established traditions of common law in the United Kingdom, etc.

All this and many other factors have significantly increased the tendency in the United States, unlike in the United Kingdom, not only to unify the legislation, but also to codify it.

From the end of the 18th century to the second half of the 20th century (including this period), "field" articles were developed and adopted at the state level in the United States (F.M. Reshetnikov). During the nineteenth century, special activity in the field of codification was observed in New York. In this state, drafts of the Civil Code, the Criminal Code, the Civil Procedure Code and the Criminal Procedure Code have been prepared and partially adopted. This process later served as an original example of the preparation and adoption of relevant articles in other states.

In the United States, codification was carried out at the level of individual states, which are the subjects of the federation, as well as at the level of the federation itself. This process reached its peak in the twentieth century.

As a result of this work, in 1909 the Federal Criminal Code was prepared and adopted. In 1926, a Federal Code of Laws was developed, consisting of 50 "field" sections (for example, "War and National Defense", "Patents", "Agriculture", etc.). The Cofe of Laws was renewed every six years. In the

aftermath of World War II, the Unified Commercial Code was drafted and adopted in 1952 in the United States to bring the laws of individual states closer together and unify them. There are so-called "typical articles" on criminal law, criminal procedure law and other areas of law (G. Berman, S.V. Bobotov, S.V. Jigachyov).

However, despite the long history of codification in this country, codification itself has always been an alien phenomenon in the minds of the American Jurisprudence Association. In this country, codification has been seen as an external function. The existence of the legal system in the United States was determined from the very beginning not by laws or articles, but by the principled decisions of the country's highest courts.

Besides that, as D. Rene noted, when talking about American articles, it should always be borne in mind that they "did not have the same identity as European articles." "Their interpretation is different." In addition, in these articles, “they simply see the fruits of unification. In these articles, as in the countries of the Romano-Germanic legal families, there is no basis for the development and development of a new law".

Thirdly, an **important feature of common law** in comparison with the Romano-Germanic legal family and other legal families is that in the process of its creation and development it was subjected to **only insignificant influence of Roman law**. In fact, this cannot be considered an effect at all, as common law almost did not recognize Roman law. Roman law was a foreign law to common law (italic is ours - H.Gurbanov).

In this relation, English scholars write that if the law of our European partners, together with the Scottish legal system, was subjected to the most remarkable influence of Roman law due to its profound scale and consequences, it would have been affected by the English.

The reasons for the weak influence of Roman law on common law, and especially on English law in particular, are approached from a considerable number of points of view. The most important of them are the following:

1) **Mainly the special nature** of Roman law. This meant that Roman law could not be used in this way by the royal courts of England, which settled general legal disputes, but on the other hand, not within its own jurisdiction;

2) Local customs and traditions that existed in England and were incompatible with Roman law were obstacles to the solution of the norms and institutions, doctrines and principles of Roman law;

3) The peculiarities of the evolution of England and its legal system did not necessitate a departure from the framework of common law.

Thus, there was no no need for norms, institutions, doctrines and principles of common law, which was formed in ancient times and developed on its socio-economic, political, ideological and conceptual basis, and norms, institutions, doctrines and principles of Roman law which has been repeatedly asserted by the legal practice of many countries tobe accepted and adapted to the new historical conditions. To be more precise, the existing legal environment of England and the existing realities of general law did not want this.

This is the view of many scholars dealing with the interrelationship problems of the various legal systems of the world, as well as with the reception of Roman law in Europe. As one of the features of common law, they have traditionally shown a weak influence of Roman law on common law in comparison with the Romano-Germanic legal families. In our opinion, such a weak influence cannot be attributed to Roman law. Roman law was not directly the law itself, but the law of the various countries of the world considered the reception of

Roman law necessary, and Roman law not only did not object to it, but encouraged the further expansion of such reception.

Fourthly, the emphasis on the role of procedural law over substantive law is a distinguishing feature of **common law**.

This feature of common law had already appeared in the earliest stages of its formation and development. The point is that this feature is still relevant today. One of the reasons for its emergence and preservation for such a long time is the permanent superiority of the right of "judge" in the system of common law. The relatively weak development of statutory law in England, and later the apparent weakness of common law in some other countries, allowed judges to not only formulate substantive, but also procedural law in the course of their day-to-day activities. (M.Gilendon, M.Qordon). According to some researchers, in such a situation, the judges have to "pay more attention to the traditions, rules, and procedures for making that decision, which are more developed than the court decisions they have made" (P.Archer, R.Walker, S.V.Filippov).

British judges do not recognize the tradition of "putting the law above the process." The supremacy of law was one of the most important legal traditions in antiquity and was later developed in many countries of the European continent. This was achieved through the "university training of lawyers". British judges do not support the view that law is "like a moral theology." They are unfamiliar with the notion of a man, a lawyer who "studied the example of mind - Roman law" (D. Rene).

In the opinion of a French researcher, English jurisprudence differs fundamentally from legal practice. It "recognizes the rules of procedure, local acts, but does not have a culture of common law" (D. Renek). However, very few people on the continent hate the British "because they do not

have a diploma and do not know the principles" (D. Rene). In England and other countries of the common law family, the situation is quite different.

According to Rene, English law, by its very nature, is “not a law studied at university, but a law of principles. On the contrary, it is the right of proceduralists and practitioners. In England, a practicing judge is not a university professor, but a great lawyer. The study of substantive law and the principles of law in universities "did not give anything new to these lawyers".

Scientific research has shown that by the end of the nineteenth century, the most important aspect for an English lawyer was to be able to find the formula for a claim to the Royal Court. The British lawyer has always tried to avoid the procedural obstacles he may encounter along the way. The biggest challenge was to start the trial itself. It has not been easy for a lawyer to develop "strict rules on evidence". Such rules were necessary in order for "the superstitious jurors involved in the process to be mindful" (D. Rene).

Thus, for all English, and later for all lawyers of common law, procedural issues concerning the logic of the development of state and legal life in England and other countries came to the fore.

At present, there have been some changes in the state of affairs in common law and in English law in particular. Thus, according to researchers, the court procedure has been significantly simplified (T.V. Aparova). British substantive law became richer and more operational as the legal system of continental Europe. British legal experts began to pay more attention not only to the decision of a particular court, which became a precedent, but also to the specific norms and institutions of English law, as well as its principles.

However, despite all these changes, according to D. Rene, "the style of thinking born of centuries of tradition is still

preserved." From a psychological point of view, and in other respects, this again leads to a lack of proper assessment of the role and importance of substantive law in the system of general law, the court procedure, procedural law.

As noted in the scientific literature, if the lawyer of continental Europe sees in law the principles of "social order", political freedom, speaks of the constitutional rights and freedoms of man, the sanctity and inviolability of private property and at the same time entrusts the practitioners with the task of "taking care of the realization of these principles, rights and freedoms in life", the legal expert of common law, and especially the modern English legal expert, the "successor of some kind of practitioner," approaches them all from a different point of view, with great skepticism and mistrust (C. Bell).

Fifthly, an important feature of common law with all its originality and a full range of aspects **is its sufficiently high level in relation to all other state authorities, the independence of the judiciary, its realities, as well as in the organization of its internal life, and in the administration of justice and in the resolution of "foreign" matters within its competence.**

Undoubtedly, every modern state, which calls itself civilized and at the same time tries to differ from "uncivilized" states by any means, in its constitutional acts and other laws or current legislation, not only declares the independence of the judiciary and, at the same time, of judges who administer justice, but also guarantees it legally.

However, it is well known from the practice of a number of states that declaring the independence of the judiciary and formally and legally guaranteeing it is one side of the issue, and the other is to make it happen.

In the countries of the common law family, and especially in the United Kingdom, there is practically no disagreement

between word and work. D. Rene is confident that the courts in England are “the real authority. It is to them that Britain owes the creation of the common law and the law of justice. They were the ones who shaped the current English law, as the legislature and the executive authority played a secondary role in this regard until the twentieth century”.

In the United Kingdom and in other countries of the family of common law, the judiciary, its efficiency and independence are manifested in other ways. In particular, this authority has an indisputable prerogative not only in the process of establishing substantive law, but also in the process of establishing judicial procedures - an important part of procedural law. Courts have an indisputable right (as well as a constitutional duty) to administer justice. In accordance with established customs and traditions, the courts of England have a routine appeal to the "legal" disputes between the various subjects of legal relations - legal entities and individuals.

Finally, the judges of the family of common law are, by their very nature, endowed with a wide range of powers. These powers allow the judiciary to influence not only the development of the legal system, but also the development of society and the state itself. These powers are also related to the interpretation of legislative acts and the solution of the issue of their constitutionality (P. Cruz).

The important role of the courts of the family of common law in society and their high level of independence are also reflected in other areas. The real nature of the functions performed by the courts has traditionally been ensured by many means and factors - material, legal, moral and other.

Sixthly, another feature of common law, above all in the United Kingdom, is the **prosecution nature of the judicial process**.

The process of collecting and evaluating evidence against

the courts in contrast to other legal systems in which the task of an "inquisition" is defined in Western terminology, in countries belonging to the family of common law, the trial process is accusatory. The task of gathering evidence in accordance with the rules of criminal procedure and civil procedure falls on the parties - the participants in the process. The court (judge) then "remains neutral, listens to and evaluates the arguments of both parties" (R.Sim).

The prosecution nature of the process, which has been in place in England for many centuries, has had certain consequences for both the court itself and the country's judicial system. In particular, "As a result of the prosecution nature of the process in the United Kingdom, the institution of public prosecution represented by special officials has not developed". Instead, the Institute of Professional Legal Defenders was established and operated in the country in the 13th century. Legal defenders are divided into the following two categories:

1) **barristers**;

2) **solicitors** (attorneys).

Unlike a number of countries in the Romano-Germanic legal family, none of this category of lawyers is a civil servant and "is not guided by any political considerations in its legal activity" (R. Sim).

In addition to the above-mentioned features of the general legal system, there are other features in the special legal literature.

In particular, the expansion of the British Empire's colonial territories shows that violent ("expansionist") methods are widespread in the system of common law (M. Clendon, M. Gordon). Attention is drawn to the fact that legal materials published in the form of parliamentary acts, court decisions, books, magazines, etc. legal products are in private hands (R.Sim). In addition, the uninterrupted nature of the historical

development and improvement of the system of common law is also mentioned (R. Sim). This means that common law, along with some of its positive traditions, has also developed and perfected some of the negative, undesirable legal traditions that are alien to humanity (in any case, this is only our opinion).

Formation and development of common law. An in-depth and comprehensive study of the general legal system makes it necessary and imperative to look at its history, at least briefly.

The historical approach to the system of common law allows us to deeply understand the main reasons and conditions of its origin and development traditions, the nature and characteristics of its application. Consideration of common law from its historical point of view creates an opportunity to study this family of law not only in statics but also in dynamics, to follow the evolutionary changes of general law, both in the past and in the present.

Undoubtedly, a historical approach is important in the process of studying any national legal system and legal family. Because it is especially necessary for the study of the legal family as a common law, rich in its history, national, legal, and other customs and traditions. In this connection, D. Rene wrote that when studying English law, which is the original model of common law, let's say that "it is more important to know history" than to study French law.

It is the historical approach to common law that allows it to be thought-provoking at a glance and to study the whole process of its creation and development as a natural and holistic process (M. Gilendon, M. Gordon). The historical approach identifies the driving forces, objective and subjective factors that form the basis of the evolution of common law, as well as the various events and processes that have had a decisive impact on its formation and development.

Finally, the historical approach allows us to identify the most important, most distinctive features and aspects that have contributed to the centuries-old development and improvement of common law.

The scientific literature states that "the following characteristics have ensured the centuries-old expansion and development of the system of common law":

1) **"Common law's ability to withstand significant changes"** and adaptation to a changing environment;

2) **"pragmatism and quality"** of the system of common law, provided by the day-to-day law-making and law-enforcement activities of the courts;

3) **Inextricable link** of norms of common law with moral norms, its **support for the development and application** of moral imperatives (H. Abraham).

In addition to the information, there are, of course, a number of other features that have ensured the continuous development and improvement of common law over the centuries. Such features are perceived more deeply and comprehensively in the historical aspect.

As already mentioned, the history of common law is, and remains, the history of the emergence and development of English law. The problem is not only that common law developed within the United Kingdom by the end of the 18th century, but was later "transferred" to the United States, Canada, Austria and other countries. The essence of the matter is also that even after such an expansion of common law, English law has dominated the system of common law as a historical model, as an "example".

Accordingly, the whole history of common law must be regarded to a large extent as the history of English law, and then as the history of the common law of other countries with the periodic spread of common law to other countries.

In the scientific literature, the whole history of the development of common law is divided into four main periods (D. Rene, K. Joffre-Spinozi). These periods are characterized by their content as follows.

First period – the period of formation of the grounds for the emergence of common law. This period is chronologically calculated until the end of 1066.

Second period – the period from 1066 when common law was formed and established. At that time, England was occupied by the Normans, and by 1485 the Tudor dynasty had settled in the country.

Third period – prosperity of common law in England. This period covers the period from 1485 to 1832.

Fourth period – a period in which common law coexists and develops rapidly with statutory law, as well as when it adapts radically to a changing formal (state environment) environment (the role of parliament increases, the state administration strengthens). This period is a chronological period from 1832 to the present.

1. **First period** – "Is the period of the establishment and development of common law, a period that preceded the British occupation of Britain in 1066 by the Normans. This period is also called the **Anglo-Saxon period**. It is characterized by the existence of numerous laws and customs of barbarian tribes of German descent (Saxons, English, Juts, Danes) inhabiting the territory of England during this period. There was no common law in the country. Only purely local acts (customs) with no interconnected, unified system were in force in the society.

Although Roman law ruled the country for nearly four centuries, it did not leave such a deep imprint on Britain.

It is indisputable that Roman culture had a certain influence on the development of English culture during the period under review (C. Baker). England inherited from the

Romans "a golden rose (as a state symbol), a well-developed road system, a Latin language and a central heating system." However, the Romans did not "reward" the people of this country with their legal system, nor could they "reward" them (M. Glendon, M. Gordon).

On the one hand, the general culture of the Romans, and on the other hand, the main reason for such a disagreement between their legal heritage is that the during all their reigns in England, the Romans never assimilated the indigenous population, which was more developed and civilized than the tribes and peoples who settled here. The Romans were always aggressive towards the British. Accordingly, the law of the Romans was also considered an attribute of the mechanism of the occupying power. In addition, with the help of Roman law, the relations between the Romans were mainly regulated (M. Glendon, M. Gordon).

The departure of the Roman legions from the territory of England at the beginning of the 5th century, of course, meant that Roman law also left the territory of this country. However, the indirect influence of Rome's rich general and legal culture has undoubtedly been preserved both during the period under consideration and for centuries to come. This manifested itself, including in the establishment and development of various principles of English law, as well as in its various legal institutions.

At the end of the sixth century (in 696), with the conversion of England to Christianity and the gradual transformation of the royal government into a "high source of justice and justice", church acts, as well as "court decisions" and "royal laws," became increasingly important for Anglo-Saxon law.

After Britain became a Christian country, “laws were drafted in the same way as in continental Europe. The only

difference was that the laws were written not in Latin, but in Anglo-Saxon. These laws, like other barbaric laws, regulated only the limited aspects of public relations that apply to modern law.

For example, King Ethelbert's Laws, written in 600, consist of only 90 short sentences. These laws, along with local customs and traditions of the time, reflected the tribal nature of society and the characteristics of a decentralized state.

In a later period, the laws of King Cnut (1017-1035) were relatively high in content and level, but at the same time, they were marked by the fact that they reflected the transition from a tribal to a feudal state.

With the help of such laws, the relations of sovereignty and subordination were established and developed in the society, the foundations of local self-government were established and established, the authority of the royal government in the country was increased and became even stronger (F. Lawson).

The Anglo-Saxon state, created in the ninth century under the name of England, included seven kingdoms (for example, Kent, Sussex, Wessex, etc.) that had existed since the twelfth century. The Anglo-Saxon state had the right to choose the laws, customs, and traditions which had previously been formed and were in force in those territories.

Despite the occasional expansion of Christianity, the bishop's verdict was higher than the king's verdict. However, the king had extremely extensive and, moreover, gradually increasing prerogatives of power.

The monarch of the Anglo-Saxon state at that time gradually established his right over the following:

- the right of supreme ownership over land;
- monopoly on the minting of coins;
- the right to collect natural taxes from the entire free population;

- the right of free citizens to be called up for military service;
- the right to appoint to positions in each county;
- supreme law in the field of carrying out fair trial.

Thus, during the Anglo-Saxon period of England, the royal palace gradually became the center of government of the whole country. The king's closest people held high positions in the state. Objective grounds have been created for the establishment of a single centralized state in the country. At the same time, the grounds for the formation of a law common to the entire territory of the country were ready.

However, according to sources, this did not happen until the British invasion of England in 1066. In this regard, neither the establishment of centralized governance as a vital necessity for the whole country, nor the formation of a law common to all throughout the country has failed (H. Richardson, G. Keyles).

2. **Second period.** The second period in the history of common law is characterized by the completion of the formation of the ground, as well as the beginning of the process of formation and establishment of common law.

This period, which began with the Norman occupation (11th century) and the coming to power of the Tudor dynasty (15th century), is considered by some authors to be the beginning of a "purely English history of law." All this has happened before in the legal sphere of public life in the territory of England. Anglo-Saxon - a period of court decisions in which "some parts even exist in written form" was the only predecessor of English law (K. Zwigert, H. Keta).

However, such a position is considered controversial by other authors. According to these authors, the era of "purely English law" began long before the Norman occupation of England during the Anglo-Saxon period. As for the second period, there was only succession in the development of "purely

English (Anglo-Saxon) law".

The above provision is confirmed by the following.

Firstly, King William the Conqueror of Normandy, by virtue of his right of inheritance, claimed dominion in England, and after 1066 paid special attention to the preservation and operation of Anglo-Saxon law in the country. In this regard, D. Rene's opinion is interesting that English lawyers and judges not only remember, but even apply some of the customs or laws of the Anglo-Saxon period.

Secondly, both in the Anglo-Saxon period and in the later stages of the development of English society, local rulers used the same customs and other local acts by their nature. In the first period they consisted of the courts of the counties, and later - the courts of the barons, the courts of the landlords, and other courts, which suppressed the courts of the counties after the British occupation by the Normans.

In addition to secular courts, church courts, which exist exclusively on the basis of canon law, played an extremely important role in the life of society at that time, especially in the period after the Norman occupation.

This led some scholars of common law to even assert that after the Norman invasion of England - as a law that came to power during the coming to power of King Edward I (1272-1307), the "concept of common law itself" was taken from "the canonical law of the Christian Church, which acts as a general law in relation to all of Christianity" (H. Abraham).

Although this law was not even challenged, it was very different from the canonical law in force in England at the time of the review (H. Abraham). It also differed in its specific features and aspects from the later statutory law, the "law of justice" and the "local law" on which local customs and traditions have always been based.

This is why common law is considered "common"

because, unlike all local customs and other acts like its own, it covers not only individual parts of England, but its entire territory. According to H. Abraham, in this sense, the common law is opposed to the local, "special" law, like the law equal to other "specific" acts.

According to a number of researchers, there is no doubt that such a confrontation is quite conventional, especially in relation to local customs and traditions, because these customs and traditions have a common origin in the early stages of creation (H.Abraham).

English feudalism had extremely specific features compared to the "continental" feudalism of Europe. Feudal retail practically did not exist in England due to the establishment of a centralized state by the invader Wilhelm and the introduction of a policy of strengthening the foundations of royal power.

After the English occupation, the confiscated lands of the Anglo-Saxon nobility became part of the royal domain. A similar rule applied to forest massifs, which were declared royal reserves under Norman law. Among the English and Normandy feudal lords the lands were divided not by massifs, but by retail plots. This, to a certain extent, prevented the local feudal lords from uniting their efforts against the royal government.

Unlike continental Europe, the medieval principle of **"my vassal`s vassal is not my vassal"** was not established in England. All the feudal lords of the country were divided into the following two main groups:

1) direct vassals of the king (large landowners - earls, barons);

2) semi-vassals (medium and small landowners).

All vassals and semi-vassals were to serve the king and obey all his instructions without negotiation.

Thus, in comparison with the continent, the feudal lords in England did not have the independence and privileges enjoyed

by the feudal lords in France, Germany and other European countries. The English king, who was considered the supreme owner of the land, not only interfered in relations with the landowners, but also exercised the right to redistribute the land allotted to them for use. This, in turn, served to strengthen the foundations of royal power and to establish the principle of the supremacy of royal justice in relation to feudal courts of all ranks.

However, the process of establishing a strong royal government in England and establishing the supremacy of the royal court of justice did not go smoothly. The revolt of the barons in the XI-XII centuries testifies to this. The barons were accused of abusing the crown's "senior rights." This indicated that the strengthening of the monarchy was a slow process.

Suffice it to say that until the middle of the twelfth century, most court cases were decided within the framework of local justice. When it came to the royal court, however, it was of an exceptional nature, and in cases where the local courts refused to administer justice, or in particular he could intervene in the solution of the problem when a special appeal was made to the "royal mercy".

In addition, the "high" royal court can administer justice if there is a threat to peace and security of the country, as well as the existence of special circumstances that cannot be resolved in a normal manner.

Since there were still no professional-administrative-judicial bodies in England at that time, the "high" court was also held by the king himself, or through the Royal Curia (Council), composed of the most influential nobles and persons close to the king.

Among the political reasons which necessitated the establishment of a system of common law in the period in question in England, above all, it is necessary to pay attention to

the reasons directly connected with the strengthening and consolidation of the royal power, ensuring its dominant role in the state-legal mechanism of the country and the protection of the interests of the British crown.

3. **Third period.** The third period of the development of common law is chronologically from 1485 (from the coming to power of the Tudor dynasty) to 1832 - the period of judicial reform in England. During this period, the flourishing of common law in England, in which it competed and "collaborated" with the so-called "right to justice", was also seen as the beginning of the expansion of common law beyond the borders of the country.

A number of authors characterize this period as the period of emergence of crisis traditions in the development of common law at the same time (K. Eddie). Excessive expansion of the powers of the royal courts, as well as the excessive complexity of the judicial procedure itself, are among the reasons for the emergence of crisis traditions.

In order to appeal to the royal court in accordance with the rules of procedure in force at that time, it was necessary to obtain the prior consent of his high-ranking official, the chancellor, in the form of a crown. This was done with a special instruction. In a formal-legal sense, such an order is considered a privilege granted by the king and is granted only if there are sufficient grounds for it and the chancellor is required to pay all court costs in advance.

According to the researchers, such an instruction was technically "not just a punishment for action", "the king's order not to infringe on the rights of his officials and to satisfy the plaintiff's claim." If the defendant refused to obey, the plaintiff could only then file a lawsuit against him. The case was being considered by the royal courts. This rule was due to the fact that "the defendant's objection to the plaintiff's claims was

considered as his disobedience to the order of the authorities" (D. Rene).

The extreme complexity and complexity of the court procedure, which is based on the king's instructions, greatly complicates the work of the royal courts, which are considered to be the creators of common law, and makes it difficult for anyone to object.

According to a number of researchers, including historians and lawyers, the general law itself, which is heavily dependent on the formal procedure at this stage, has undergone many tests. Under such circumstances, he was in double danger. Common law, on the one hand, has not been able to keep pace with the requirements of the time in its development, and on the other hand, it has endangered the old-fashionedness and conservatism of the judiciary. The common law, after its brilliant development in the twelfth century, could not escape any of the dangers mentioned. He stood as a rival to the establishment of a new legal system of Roman law. Under these circumstances, the "law of justice" stood as a rival to Roman law.

The law of justice was formed by the decisions of the acting Lord-Chancellor, acting on behalf of the king and the Council. The Lord Chancellor had the power to hear appeals against decisions of ordinary royal courts. In such cases, the petitions were presented directly to the king as "the source of all grace and justice." He was asked to intervene in the case or dispute "out of compassion for his conscience and substance".

The rulers of England at that time preferred the jurisdiction of the Lord Chancellor, taking care of the administration of justice and its fair administration. This was facilitated, on the one hand, by the principles adopted by the Lord-Chancellor's Court and, on the other hand, by "political order considerations".

The use of Roman law and canonic law, which did not

recognize the institution of juries by the Lord-Chancellor, was more pleasing to the rulers than general common, which had its own procedure of generality and transparency. The British rulers preferred the written secret of the Lord Chancellor and the Inquisition procedure. According to D. Rene, at that time there was an opinion that Roman law was in line with the spirit and instructions of royal sovereignty with its formula "taken from the power of the ruling law".

Initially, the general political and legal system of England at that time was considered as a set of decisions of the Lord Chancellor's Court that complemented the common law and stimulated its development (K. Eddie). However, the political situation has changed over time (the strengthening of autonomy in the country and the fact that, unlike the parliament and the general courts, the chancellor's court has acted as its advocate) and as a result of other factors situation has changed rapidly. The contradictions between the law of justice and the common law, which already exist, have deepened.

The first open conflict between the two judicial systems in England took place in 1616. On the one hand, the hidden contradictions between the law of justice and, on the other hand, the common law, were immediately exposed. At that time, the Chief Justice of the General Court and the leader of the liberal opposition wing of the parliament, E. Coke, were able to settle the cases of the Chancellor's Court in lieu of any royal court. It is also questionable whether the Lord Chancellor has the authority to issue instructions or decisions that impede the execution of certain decisions of the royal courts.

The dispute was settled in favor of the Lord Chancellor's Court. Absolute monarch James I soon issued a decree formally establishing the priority of the law of justice in case of a conflict between the law of justice and the norms of common law. Thus, the potential reasons and conditions for the establishment of two

judicial systems have been fully preserved in the future.

As a result of the parallel activity of different judicial bodies over the centuries, the British legal system has not only acquired this dual character, but also preserved it to this day. In addition to the legal norms created by the activities of the supreme royal courts, these norms also included the norms of "law of justice" that complemented or corrected the norms of common law.

4. **Fourth period**. The fourth period of development of English law began in 1832 and continues to this day. This period is marked by a significant transformation of both the state mechanism and the legal system of England. At the beginning of this period, a number of radical legal reforms and judicial reforms were carried out. As a result, lawyers shifted the center of gravity from procedural law to substantive law. Great work has been done to clean up the country's legislation, to free it from archaism and long-overdue acts. A whole range of existing legal acts in a number of areas of English law has been subject to systematization. As a result of the implementation of judicial reform, all English courts were legally equalized. Unlike in all previous periods, the courts have been able to apply both common law and the "law of justice" in their work.

As a result of legal reforms and judicial reforms carried out during the period under review, legal experts in the field of comparative law that evaluate the nature of the changes that have taken place in English law, note that the reforms of the nineteenth century "did not deprive English law of its traditional aspects" (D. Rene). These reforms were not adequate to similar reforms carried out in other countries at the time, including the nationalization of France. English law continued to develop with the help of judicial practice, as in the past. The legislature opened new opportunities only for the courts and gave new directions to their activities. However, the legislator himself did

not create a new law.

However, during this period, as the role of parliament and state administration strengthened, the importance of legislation and administrative acts increased immediately, and the British legal system developed rapidly as it approached the continental legal system. At present, especially after the accession of the United Kingdom to the European Union (1972), this process has not only not slowed down, but has intensified.

Prior to the outbreak of World War II, the expansion of common law to other countries - the former British colonies, semi-colonies and dominions - did not stop. Simultaneously with the occupation of the territories of other countries and peoples, the legal system continued to adapt to the new conditions of the law in the Middle Ages until the middle of the twentieth century. This has happened in various forms (C. Potter).

The largest regions that adopted British common law were Australia, the United States and Canada (M. Glendon, M. Gordon). Undoubtedly, the common law, as in the beginning, applied mainly to the words "civil". The Aborigines, on the other hand, continued to live by their own customs.

However, due to the degree of "assimilation" of the local population, different norms and institutions of common law also apply to them.

The peculiarities of the process of the spread of common law outside the borders of England, and the fact that it has inevitably changed in the course of adaptation to the new conditions, **can be easily seen in the example of the formation of the US legal system.**

The main features of the American legal system began to take shape in the seventeenth and eighteenth centuries under colonial rule, and many of its original features have been preserved to this day.

Traditional English law has played a major role in the

formation and development of the US legal system (P. Hay). Traditional English law was brought to North America by immigrants from England. English laws (statutes) and common law were applied simultaneously in each of the 13 British colonies on the North American continent.

But their power was not unlimited. The application of English law was limited to acts of local authorities, as well as acts of the legislatures of a number of British colonies that emerged in the late seventeenth and eighteenth centuries.

The differences between these legal systems and the British law applied in the British colonies were sometimes so great that researchers have linked the colonial legal system, including the legal system of the northeastern Massachusetts, to the fact that the colonial legal system should be generally considered as a kind of "general family of English law".

The American author L. Friedman wrote in this regard that such an idea "seems quite meaningless" because "despite some strangeness in practice and language, it is safe to say that the law of this colony (Massachusetts – H.Gurbanov) has its roots in English law and English practice." The first colonizers were not lawyers. The law they brought with them was "not the law of the royal court," only the local law was the custom of their union. It can be called "people's law". Naturally, it differs from the old official law. However, English elements occupied a central place in it.

Colonial law was like a legal system created by people affected by a shipwreck. This legal system consisted of the following parts:

- part of the memorized laws of the elements of ancient law;
- part of the new laws created as a result of the urgent needs of life in a new country;
- a section consisting of legal elements formalized under

the influence of the religious views of the refugees (L. Friedman).

Given the diversity of the legal systems of the Spanish, Dutch, French, and other colonies that existed in the United States, it is even more obvious that the legal system of this country would later gain strength. All of them had not only local political and social color, but also different legislation of mother country.

For example, in present-day Louisiana, a former Spanish and French colony that was annexed to the United States in 1803, there is a clear influence of legislation enacted by the Spanish and French legal systems. This is especially true of civil law, which arose under the strong influence of the ideas and provisions contained in the Napoleonic Code (French Civil Code).

Legislation in Texas, Nevada, New Mexico, and other states that were once forcibly evicted from Mexico clearly shows the influence of the Spanish legal system (F.M. Reshetnikov).

This does not mean that the legal systems of the United States, as well as the legal systems of individual states, have an advantage over the legal systems of foreign countries. After the declaration of independence of the former British colonies, the US legal system, American legal theory and practice, which struggled with its "British past", was able to achieve its main postulates in the first years of Americanization (P. Cruise).

An important event in this direction was the US Constitution. The Constitution, adopted in 1787, not only established the state structure and socio-political structure of the new country, but also created the conditions for its development. The American Constitution is more of a political, social, and ideological document than a legal one. It establishes the system of state bodies, political institutions of society, the set of

constitutional rights and freedoms of citizens, the principle of separation of powers and other state-legal principles. The US Constitution lays the foundation for the structure and operation of all state institutions and socio-political institutions, and serves as the legal basis on which the US legal system and the legal systems of all 50 states are established.

The American Constitution, on the basis of the ideas of natural law and social contract, is of the utmost importance to define the limits of the powers of the federal authorities and their relations with both the states and the citizens (this is its most important distinguishing feature). The limits of these powers are specified in the 10th Amendment, known as the Bill of Rights, adopted two years after the entry into force of the Constitution.

Significant amendments to the Constitution of the Council of Europe (Amendments XIII, XIV and XV) were also adopted during the Civil War. The amendments stated that the constitutional rights of citizens could not be violated or revoked by the state legislatures, executive bodies, or other bodies. For example, Amendment XIV to the Constitution provides that "all persons born or adopted in the United States and subject to its jurisdiction are citizens of the United States and the State in which they reside. No state shall enact or enforce laws restricting the privileges and privileges of citizens of the United States; Similarly, no state can deprive a person of life, liberty or property, or provide equal legal assistance to any person within the limits of its jurisdiction, without due process of law" (part 1).

Compared to the British legal system, **the existence of a written Constitution on rights, which includes Bill of Rights**, is an extremely important distinguishing feature of the US legal system. As it is known, in the legal system of the United Kingdom there is no written text on the constitutional act, and there is no analogue of American Bill of Rights. However, this does not prove that there is no constitution in England in

general. In England, the constitution is not a separate constitutional act, but a set of such acts. The following acts are examples of this:

- Act of 1911 on Parliament;
- Act of 1937 on the Crown of Ministers;
- the 1964 and 1975 acts on crowns;
- 1969 Act on People's Representation;
- the 1972 Act on Local Government.

Among the features that distinguish the US legal system from the British legal system, it should be noted that written legislation in the United States is more important than the statutes in English law. Thus, there is a great "commitment" in the United States to the codification of American law. In the English legal system, as already mentioned, it was impossible to observe. Judicial practice also has a small role in the US legal system compared to the British legal system.

Basic sources of Anglo-Saxon law: types of concepts. I. The term "source of law" used in the English legal system to a large extent coincides with a similar concept used in a number of other legal systems, including the Romano-Germanic legal system.

the ways", means or methods of formation of this or that national legal system "recognized and used" by the courts within the relevant legal family (K.E.).

The "source of law" is understood in a more detailed version, **firstly**, as "an official document, record (act) containing a legal norm". Court reports and statutes in the United Kingdom are an example of this. In general, they are called "literary sources" (R.Sim).

Secondly, "the source of the law" refers to "the government in which the principle of the rule of law comes into being and complements it with real content." The state, or more precisely, the parliament, acts as such a government. This is

considered a **"formal source"** of law.

Thirdly, various events, institutions and institutions that sometimes create the conditions for the process of law formation and thus "stimulate" it are considered as a "source of law". Because these events themselves are not directly involved in this process.

Undoubtedly, the reasons and conditions for the formation of law are not the same at every historical stage of the development of society, the state and law. So, according to the logic that follows from this view, the "sources of law" cannot be the same. In the case we are talking about, the sources of law are called "**historical sources**" of law.

Fourthly, "sources of law" refers to specific procedures, forms, and processes through which "aw acquires its reality. These procedures, forms and processes include:

- legislative process;
- the "rule-making" process of judges;
- the process of formation of customs and traditions, etc.

These types of "sources of law" are called "**legal sources**". There are different ideas about the "sources" of Anglo-Saxon law, so there is a difference of opinion about the concept of "sources of law". This is because these ideas and opinions are less different from the above positions and therefore do not attract the attention of researchers (C. Bell).

Within the Anglo-Saxon legal family, "all notions of the sources of law are generally brought into scientific circulation only when disputes concerning the content, ways of formation, role and purpose of the whole system of Anglo-Saxon law are resolved, or a comparative analysis of all the sources of that legal system with the sources that make up the other legal systems is carried out".

In this sense, it is highly commendable to make a fairly typical comparison of the sources of English law that form the

basis of Anglo-Saxon law in Western literature with the system of common law and the sources of French law. In this respect, the comparative analysis of the sources of the Anglo-Saxon family of law, as well as the sources of law belonging to the Romano-Germanic and continental legal families in general, is an important part of this process.

Relying on the similarity of the different meanings of the "sources of law" and the notions formed within the relevant legal families, the authors conclude that, on the one hand, there are “radical differences” between English and French law in terms of the role and importance of the sources of law. On the other hand, the current level of development of these legal systems increases their similarity (C. Bell).

"Radical differences" include the imposition of "special legal force" by French law on the constitution and "duly ratified or declared treaties and agreements", which is "forceful and expands the force of domestic law". English law does not mean any of this. J. Bell, one of the Western comparativists, considers English law to be a "dualist" law in this respect.

In addition, if in the French legal system the position of the court precedent as a source of law does not change, "sometimes recognized, sometimes not", and in English law, the precedent of the court is a source of law that has traditionally been established (M. Fander).

As a legal doctrine, there are similar cases of the attitude of different legal systems to such a source of law. If the doctrine of law has a special meaning as a source of law for lawyers working in the field of application of French law, or if a legal doctrine may contain one or another norm of law, for English jurists legal doctrine sometimes loses its meaning and legal essence completely.

2. Without going into more details of the various manifestations of the general and specific aspects of the legal

systems we consider it expedient to focus on another important issue - the identification of the main sources of Anglo-Saxon law.

What are the sources of Anglo-Saxon law? What do those sources include? What is their content and what role do they play in the Anglo-Saxon legal family?

In answering such questions, researchers have traditionally based their view on the fact that the Anglo-Saxon legal family is a typical ruling family, or more precisely, a family of precedent law. Historically, the main role in this family of law has belonged to the source of law as **a case law** or **precedent**. Precedent law is the backbone of the Anglo-Saxon legal system.

Of course, we are not talking about administrative or any other precedent, but only about the court precedent.

In accordance with the existing rules, when a court resolves any issue, it is formally connected with the resolution of a similar issue raised by a higher court or a court of the same instance. However, whether the decision is made on the basis of the actual selection of the relevant precedent in the process, its interpretation, and the fact that the circumstances of the new case are significantly different from the circumstances of the previous case, the court as a whole and the individual judge (P.Smith, S.Barley). Recognition of the precedent as a source of law allows, in fact, to create law.

It should be noted that the practice of recognizing precedent as a source of law also exists outside Anglo-Saxon law. However, it cannot be called the main source of law. The precedent in this capacity is unique to common law. Because such a precedent is created by judges when **considering specific cases** and resolving various disputes between citizens. As a result, common law is sometimes called the law of the judge. This feature of the common law is inherent in it from the time of its creation and is still preserved today.

Along with case law as one of the main sources of law, the **law** (statute) as a source in the Anglo-Saxon family of law. According to the English legal tradition, it was previously given only a secondary role. It was limited to the fact that, with the help of laws (statutes), the law created by the court was regularly amended or supplemented.

Currently, the situation has changed significantly. In today's England, "laws and legislative acts cannot be considered secondary acts." In fact, they play the same role as "similar sources on the European continent" (D. Rene, K. Joffre-Spinozi).

In the United States and other countries in the common law family, the precedent has not been given as much importance as in the past, and the law has always played a prominent role.

In the twentieth century, the role of the **sending legislator** in the sources of English law, especially in the field of education, health care and social insurance, has increased significantly. The highest form of sending legislation is the "Order of the Council" - a government act issued on behalf of the Crown and the Secret Council. Many acts of the sending legislation are issued by ministries and other governing bodies on behalf of the parliament. Like the development of statutory law, their development is conditioned not only by the domestic needs of the country, but also by external factors related to international economic and other cooperation. In this regard, the development of Britain's relations with the countries of the British Commonwealth, as well as with its role in the European Economic Union (EEU), is of great importance.

At present, the sending legislation plays an important role not only in the United Kingdom, but also in all other countries belonging to the common law family.

In addition to the above-named sources of Anglo-Saxon

law, the following play an important role in the development of this legal family:

- **customs**;
- **legal doctrines**;
- **legal traditions;**
- **rational resolution of mental disputes**.

3. **Formation and distinctive features of the precedent law.** As already mentioned, the Anglo-Saxon (Anglo-American) legal family is the second group of Western legal families.

Thus, **Anglo-Saxon law**[11] unites the precedent of the court with the English doctrine, which can also be formulated as follows: "A one-time court decision is binding on all lower courts, both in the court itself and in similar legal situations". At present, the following can be attributed to the **scope of precedent law**:

1) **Countries of the European common law family** (Great Britain, Ireland, Malta, Cyprus, Gibraltar);

2) **The former Dominican states called the quasi-monarchy of the British Empire** (Canada, Austria, New Zealand and about a dozen other countries). Many English constitutional traditions, judicial precedents and legislative acts (starting with the Charter of Great Freedoms of 1215) are considered to be acts in force in the territory of these countries;

3) **Member States of the Union** (Interstate Union countries - former British colonies or territories dependent on it). In these states, the precedent of the court is considered a source

[1] Special terminology ("common law","Anglo-Saxon law", "English law ","British law","precedent law","Anglo-American law") is used by comparativists seeking to analyze the law of the United Kingdom and other English-speaking countries.This terminology reflects the properties of the history, politics, geography, and etc. of Anglo-Saxon law. In modern comparative literature, **Anglo-Saxon law** is accepted as the legal family of the countries belonging to the family of precedent law.

of law, and judges are given a wide range of powers, including the power to legislate;

4) **British coastal areas** (A name that replaced the notion of "British-dependent territories" in 2002). The influence of English legal procedures and legal institutions is evident in these areas (including the Falkland Islands, the British Birgin Islands, and the Southern Sandwich Islands);

5) **United States**. The former United States colonies (Federated States of Micronesia, the Republic of the Marshall Islands, the Union of Northern Mariansk Islands and the Republic of Palau) and their **dependent** territories (Puerto Rico, Guam, Eastern Samoa, the Birgin Islands and Micronesia with the status of "free states". These are "states with the right of free association with the United States"). Their legal systems are considered together with the state as an independent wing with specificity, including the application of the principle of judicial precedent.

The Anglo-American group of legal systems, which is a direct result of the peculiar formation of common law, differs significantly from the law of the continental countries, which is determined by the following characteristics:

1) **Historical originality in the formation of law.** It also led to Britain's refusal to accept Roman law, even though it had been part of the Roman Empire for 400 years;

2) **Succession** in the application of political and legal documents and legislative acts that remain in force for several hundred years after their adoption;

3) **The same approach to understanding the law**. Based on this, a special concept of law based on the principle of "supremacy of law" was developed. According to the principle of "supremacy of law", to the extent that the law is not the only (or) main source of legal norms, all are equal before the law. Legal norms, on the other hand, are seen as a means of resolving

the law rather than general abstract rules of behavior;

4) **original legal terminology**. This terminology differs significantly from the European (continental) legal language in a number of respects. In England, the language of law was originally formed in Latin and French, and only in the fourteenth century did the parliamentary statute require that all court proceedings be conducted in English. However, it was in the Middle Ages in England that a number of specific categories of meanings and terms were created. These concepts and terms are derived from concepts that existed at the time and need to be clarified for European lawyers (eg, barristers and solicitors in litigation; misdiminors, felons, cohorts, a coroner as a special person conducting a preliminary investigation into a death case);

5) **the special role of courts** in the formation and development of law. In England, courts (judges) have the function of making laws, and the results of such law-making are considered the source of law;

6) **distinction of law as statutory** (legislative) **and precedent (**court**) law**. It is considered as the law, which consists of norms and principles created and applied by judges in the process of making court decisions, and as a culture used by judges as a method of setting a precedent and a culture of private court law(also known in modern terminology as **judicial ethics**);

7) **originality of the sources of law**. When the Constitution and laws are prioritized, the precedent of the court is in the leading positions;

8) **the casuistic (individual) nature of the court precedent.** As a result, a precedent can only be applied if similar situations are resolved. If the facts of the case heard by the court are sufficiently similar, as well as if the previous decision was made by a higher court or (exceptionally) by a court of the same jurisdiction, the court is obliged to comply with the decision of the previous court;

9) **recognition of the "persuasiveness" of foreign court precedents**. Such recognition applies to the judicial precedents of the countries of the common law family. Thus, half of New Zealand's case law came from the United Kingdom, 10 percent from Australia, and a certain part from Canada. In Australia, three-quarters of the precedent is based on British court decisions, and about 1 percent is based on New Zealand court decisions. The Queen of England herself sets a number of precedents in Australia, Canada and New Zealand (only about 1%);

10) **Recognition of dualism in law**. In the legal system of the countries of the common law family, dualism manifests itself in the division of law into general and special law. The state acts as one of the subjects of law in the legal field, along with private individuals. Because the state is the largest, highest subject from the legal point of view. In the civil-legal sense, it is the number one entity. However, both the state, which is supposed to protect the general interests, and the individuals, who are to serve the special interests, must always prove themselves in court. Moreover, in the Anglo-Saxon legal system, the burden of proof falls on the parties - the plaintiff and the defendant, the defendant and the victim, as already noted, in contrast to the Romano-Germanic legal system. This occurs when both the state and individuals apply for justice, which is a purely judicial procedure in the Anglo-Saxon legal family;

11) the priority of **procedural law over substantive law.** This is reflected in the fact that the systems are more procedural and pragmatic in nature than the systemic nature of the legislation. That is, the system is "not deductive, but rather inductive, and above all, it is experienced in comparison with logic" (P. Sandevuar). On the other hand, the high level of independence and security of the judiciary, the special role of the procedure distinguishes the prestige of the legal profession;

12) **Features of the legal education system**. In the Anglo-Saxon (Anglo-American) law countries, this system favors first-year students' training and legal professions, as well as excellent specialization. There is a tradition of widespread application of professional structures in the training of lawyers in the law faculties of higher education institutions of the countries belonging to this legal family. Thus, in the United Kingdom, the structure of vocational training in law includes the co-existence of the following:

- scholars-lawyers (this structure includes teachers of all levels and ranks);
- lawyers (barristers and solicitors) consisting of special practitioners;
- lawyers working in government agencies;
- judges (this structure also includes assistant judges);
- Masters and notaries (having law-related education and not) working in municipalities.

In our opinion, it would not be correct to consider such a structure, which includes the training and professional training of legal personnel, as successful as the British. That is, such a structure is not so much to be proud of. The only advantage of the proposed structure is that in the countries of the Anglo-Saxon (Anglo-American) legal system, legal personnel are trained in a specific specialty within this structure. Undoubtedly, such professional training creates favorable conditions for the realization of the theoretical knowledge acquired by a young lawyer in practice.

In other countries, including the states of the Romano-Germanic legal family, especially in the former USSR republics under the guise of comprehensive training of lawyers, in fact, students are loaded with unnecessary subjects, which are considered to be close to public policy, rather than the basic and necessary legal sciences. This not only does not help the young

lawyer to be thoroughly trained, but also prevents him/her from developing as a specialist with perfect knowledge. The structure of the Anglo-Saxon legal system's legal training is to be applauded only in this respect.

Tpoic 7

EASTERN LAW (RELIGIOUS-TRADITIONAL LAW)

Families and systems of religious-traditional law. The term "dualism" is also used in the characterization of the legal systems of **Eastern law** countries. However, its normative-legal influence on public relations and the behavior of members of society in these states is understood as a dual property. They are also referred to as Muslim, Jewish, Hindu, Confucian, and Southeast Asian, Tropical Africa, and Pacific religious countries with strong tribal and communal customs and traditions.

In such states, in addition to the **law in force** (sometimes the mastered external forms of Western law - the apparatus of concepts, the system of legal institutions and institutions, the sources of law, the differentiation of legal functions on the principle of separation of powers, the process of external legislation) **private social regulators** are used extensively, sometimes with great advantage.

Private social regulators include both legal norms and religious and traditional rules of behavior determined by the lifestyles and customs of the majority of the population. As noted in special sources, such legal systems, in essence, “continue and maintain their existence at the level of mononorms (A.E.Chernokov), regardless of the significant differences in law, religion and morality. For example, in the Muslim (Islamic) legal system, the **Shari'a**, which has been in force with jurisprudence from the very beginning, permeates almost all spheres of Muslim life and plays a role in the regulation of relations.

For example, the Shari'ah (an Arabic word meaning the right path to a goal) is a set of legal norms, principles, and rules of Muslim behavior, religious life, and actions. Adherence to

this complex means living a righteous life that is pleasing to God, that makes the Muslim happy, and that leads to Paradise. The Shari'a is the "**Divine Law**" conveyed to people through the Qur'an, hadiths, and the works and quotations of theologians. Sharia is embodied in works dedicated to figh (Islamic law) and in the practice of Muslim (Sharia) courts. It is in the Shari'ah that special attention is paid to the varying degrees of halal and haram of this or that action or behavior.

Along with the legal family of Islamic law, the legal systems of the Eastern countries do not form a single group, but this does not prevent the following general aspects from being present in dualistic legal systems:

1) **the existence of sacred (momin) teachings or beliefs.** These indicate the priority of the duties of momin and the citizen. The fundamental point in the sense of the Eastern concept of human rights is that religious and traditional law is oriented to collective principles, to the formation of all rights by the individual's own duties or by the duties of other persons. Thus, the leading position in the hierarchy of rights and responsibilities belongs to both positions and collective positions. There was no concept of subjective rights in religious and traditional law, but only as a result of the legal westernization of the East;

2) **syncretism of law, religion and morality in the normative system of society**. This has had a profound effect on the behavior of members of society;

3) the perception of a large part of the **law** as a means of prohibition and punishment in relation to the **positive regulation** of public relations;

4) the division of rights into the rights of **momins** and **non-momins**, if the rights of momins are not given priority. Thus, "the Islamic position on human rights is based on the belief that the protection of the rights of Muslims as a result of

the division of subjects into Muslims and non-Muslims is the exclusive duty of the Islamic community" (Kh. Bahruz);

5) the principle of caste-hierarchical structure of the rights of **indigenous peoples** of the same faith and the division between the ruling and subordinate castes. For example, in Hinduism, as in Confucianism, people are divided into innate castes (varnas), and each of these castes has its own system of rights and duties. According to the requirements of the Varnas system (for example, the Brahmins, who were considered the highest caste, should not be engaged in any physical work, or the Kshatriyas, who are considered to be in the military, could only engage in military activities and trade with the Vaishyas). In other words, it was strictly forbidden for a person belonging to the relevant varna to interfere in the affairs of another caste, so that the kshatrini was engaged in trade);

6) **subsidiary nature of positive** (defined and ensured by the state) **law**. This, in its turn, is conditioned by the same perceptions of the state and law that have developed in the regions mentioned.

It is known from the theory of state and law that the concept of theocratic society and state is widespread in Muslim countries. In India and the countries of Southeast Asia, the role of views on the state and society from the point of view of Brahmanism is great.

The ideology of **Brahmanism**, the system of religious and political-legal ideas in ancient India, was based on the idea of a rigid caste structure and the deification of the caste system of society. This ideology was formed on the basis of **Vedic literature** in the first centuries of the first millennium BC.

Brahmanism had acquired polytheism before the Vedic literature, its time, and above all else. The God **Brahma** was considered the supreme God, the creator of the world, as well as the creator of the entire universe. **Vishna**, the God-protector of

the universe and the defender of its rules, and **Shiva** was presented as God-destroyer. Brahman's early mythology contained all three functions. All living things, all the material world, all history, are controlled by Brahma, their existence is directed and ultimately created by Brahma.

In China, Japan and other countries of the Far East, the daocentric idea of state-law building prevails. In this regard, it would be appropriate to refer to the opinion of American legal historian Harold Berman. Reviewing the reception of Western law in Japan and China in the late nineteenth and early twentieth centuries, the author affirmed that this law regulated some relations in official and higher circles, but practice had a general effect on the traditional law-making of nations. It should be noted that in these countries, past and modern state-legal modeling were far from abandoning millennial traditions. The structure and institutions of Western law applied in the East often remained a simple facade. The regulation of public relations took place in accordance with traditional models. The leaders of these states also had to reckon with the stereotypes of public consciousness (D. Rene).

The traditional concept of social structure for China, which developed without any external influence until the 19th century, is completely different from the analogous concept of the West. For example, in contrast to the theocratic ideas of the East, China's fundamental idea is far from religion and does not recognize religious doctrines. This idea is a postulate about the existence of a **cosmological structure**. In this postulate, the earth, the sky and the people interact. The earth and the sky are subject to immutable laws, and human beings are the masters of their own deeds. Therefore, how people behave depends on whether there is order in the world or, conversely, lawlessness.

Until 1853, Japan had nothing to do with the Western world. In Japan's history, relations with China have played an

important role. The traditional image of political and legal thought in this country is far removed from European thought, and these ideas have been influenced by China at various times. However, Japan's image of ideas differs from that of China. Thus, the image of Japanese thought has retained its obvious originality, which is associated with the national character of the Japanese. In this sense, the fact that the Japanese rulers kept the country in isolation for 350 years, until 1853, did not pass unnoticed to the country and its legal system.

State models of perception of religious law. If in the East an attempt is made to standardize the approaches of Islamic law to the perception of the state, then it can be determined that there are three modern models of its manifestation in the national legal systems. These models are as follows:

1) **secularization** model. This model is typical of countries that constitutionally separate religion from the state (Turkey, as well as the CIS countries, where the majority of the population is Muslim). The declared secular nature of the state requires all citizens to abide by the rules of official conduct. If the actions and behavior of the believers do not contradict the secular laws, then they can follow the rules of Islamic law in their private lives;

2) **the model of harmony**. Under this model, countries declare Islam to be the official state religion, and incorporate Sharia into the legal system as one of the sources of law, following the constitution, laws, and legal practices (for example, as in Egypt, Syria and Tunisia). In general, in the vast majority of theocratic countries (including Muslim states), Sharia law is the source of law. Furthermore, the Shari'ah regulates the outward forms of human attitudes towards God (rules of worship), the outward forms of human attitudes (dealings) and the punishment for their violation. The Shari'ah stands as a path that draws people closer to God through

mystical fantasy, ecstasy and ecstasy, as a way to love God through one's actions and behavior;

3) **Quranic** model. Under this model, the state declares Sharia law as official legal requirements and guidelines and applies it to everyone living in the country (for example, in Saudi Arabia and Iran).

Quranization is not an ordinary model. The sanctity of the Qur'an is undeniable in the Islamic world. According to the Qur'an, all people believe in Allah, regardless of their religion. It was Allah who sent His messengers to spread His word to the people. But over time, people have distorted or forgotten what those apostles (Moses, Jesus) taught. That is why Allah sent His last messenger, the Prophet Muhammad. From this point of view, the essence of the Qur'an was the last effort, the last warning, to call people to the right path, to turn them into momins.

The Qur'an is a collection of "Divine Revelations" revealed to the Prophet Muhammad. There was no compiled form of the Qur'an during Muhammad's lifetime. After the death of Muhammad, there was a danger that the sacred text would be gradually forgotten, and it was necessary to collect all the "Revelations". Zayd ibn Sabit did this during the reign of Caliph Abu Bakr. He collected the available written texts and the rest of the texts in oral form. During the reign of the third caliph, Osman, the text of the Qur'an was first compiled in the form of a handwritten book, and this was the first edition of the Qur'an. It was after this that the Qur'anization became widespread. During the first century of the Islamic period, the caliphate developed several versions of the Qur'an that differed in part from each other. It is believed that the legitimate text of the Qur'an was firmly established during the Umayyad period and has not undergone significant changes since then.

The Qur'anization model is also important for Eastern law

(especially Islamic law) because the Qur'an contains religious, ethical, legal, and economic teachings, rules, prohibitions, and instructions. It is narrated that during the time of Osman caliph, a young community member who had committed petty theft in the community market should be brought to the caliph and caliph was asked to punish him. Caliph Osman replied categorically: "We have always punished in the past with Islamic customs. Because now we have the Qur'an and we have to judge through it". It is true that these young momins are not completely satisfied, but they can be considered as one of the most valuable words in the history of Islamic socio-political and legal thought.

Traditionalism in Eastern legal systems. Such models emerge, **including in countries with a system of traditional law** (law of justice). For example, the American lawyer G. Woodman, summarizing the practice of factual relations between parallel legal systems, distinguishes the following positions of formal law in relation to law of justice:

1) denial of **conflict policy** or law of justice. It is aimed at ending the exercise of law of justice, and thus at ending its existence. It is typical of Latin American countries, which seek to affirm the unlimited authority of official law in their relations with law of justice between Hindu tribes and ethnic groups;

2) secession policy aimed at eliminating the situation of legal pluralism by establishing differences between groups of people in the country (such a policy is typical of polytheistic countries in Africa);

3) an **agglomeration** policy that allows for the erratic existence of different types of law (cases in which the state legal instruments do not prohibit certain norms of worship, are indifferent to their observance, and do not require or prohibit the institutions of law of justice from achieving or refraining from such behavior);

4) a policy of **association** that serves the purpose of making the law of justice (or part thereof) part of formal law. The result of a normative association is usually the creation of a multi-component law. In multi-component law, a new set of norms derived from law of justice co-exists with the previously established state law (for example, Article 66 of the 1990 Constitution of Namibia states: "As a common law, law of justice existing at the time of the declaration of Namibia's independence shall remain in force, provided that the norms of customary law do not contradict this Constitution or any other legislative act");

5) **integration** policy (such a policy is practiced in Tanzania and Senegal) that achieves the orderly coexistence of different legal systems in the country in order to ensure a legal complex implemented by the entire population.

Islamic legal system. It is important to emphasize once again that it is extremely important to know the basics of Islam, which is a religious system, and its legal system, a systematized set of Muslim laws, in a deep and comprehensive understanding.

It is known that in different periods of history (up to the first half of the XIX century) the combination of legal norms and state laws with religious teachings was to some extent common. From this point of view, Islamic jurisprudence is no exception. However, as correctly stated in the scientific literature, none of the other religious legal systems has a system similar to the Sharia (G.M. Kerimov).

Some scholars have mistakenly equated Sharia with Muslim law. In fact, the Shari'ah covers more issues. In the Shari'a, both secular and religious issues are interpreted from an Islamic point of view. Here ... the laws governing Muslim ceremonies and holidays, as well as other provisions governing the behavior of religious people and the way of life of the entire Muslim community, are integrated into a single system.

According to Muslim jurists, Sharia and its norms should cover the entire life and activity of a Muslim from the cradle to the grave (G.M. Kerimov). Thus, the Shari'ah is a single set of instructions contained in the Qur'an and Sunnah, defined once and for all, and is a general characteristic of the vast majority of instructions. Islamic law (figh) is an integral part of the Shari'ah, as it is formed in the heart of the Shari'ah. The point is that the Shari'ah, with a slight difference from figh, interprets worldly problems from the standpoint of Islam.

This means that it is impossible to master jurisprudence and Shari'ah in detail without properly understanding the historical development of Islamic law. Terminologically, jurisprudence is freely translated as "Islamic rule", "Islamic law". The Shari'ah is translated in the same way, because these terms are neither synonymous in Arabic nor in the eyes of a Muslim scholar.

The scientific literature states that Muslim law is not an independent field of science, unlike the legal systems considered in the future. It is only one aspect of Islam. One of the authors rightly said: "Islam no longer exists where Muslim law is not applied" (D. Rene, K. Joffre-Spinozi). Thus, the basis of Islamic law is Islam. Islamic law is a pillar in the heart of the Muslim state, and Islam is at the heart of this pillar.

The structure of Islamic law. The foundations of Islamic law are not only divine (Qur'an and Sunnah). Theologians and lawyers of the Muslim world have developed its extensive doctrine over the centuries, and theologians have developed various concepts. One noteworthy aspect is that Islamic law applies only to the regulation of relations between Muslims.

The concept of theocratic society prevails in Islam. The state, on the other hand, acts only as a servant of an established religion in such a society. Religious and moral principles are not simply proclaimed, society is obliged to agree with such

principles and other doctrines and to follow them unconditionally.

Islamic law is scientific, or more precisely, the doctrinal expression of Muslim law, which consists of two sections. The first section examines the "roots" of the set of rules that make up the divine law and explains where they came from and how they came about. The second section examines the "content", i.e. the decisions, that contain the norms of substantive Islamic law.

Islamic law differs from the legal systems we have been talking about in terms of its content, structure, categories and concepts, as it is extremely original. We will suffice to dwell consistently on the theory of the sources of Islamic law, without dwelling on the issues of these distinctive features. It is these sources that serve the foundations of Islamic law.

Sources of Islamic law. Islamic law has the following four sources, two of which are considered to be the main ones.

1. **Quran** (the main source).
2. **Sunnah** (the main source).
3. **Ijma'**.
4. **Qiyas**.

As already mentioned, the Qur'an is the holy book of Islam, in addition to being the main source of law, it is also the main source of religious instruction for all Muslims. The Qur'an is supplemented by a second major source for Muslims, the Sunnah. The Sunnah, on the other hand, is established in the hadiths, that is, in the narrations about the Prophet and his companions.

Ijma (from the Arabic word ajmaa, which means to reach a general opinion on any issue) is the general opinion of the whole religious community of the most authoritative scholars of religious sciences, concerning various matters of religion, law, and social life. Ijma is a permissible way in Islamic law to decide on issues that are not answered in the Qur'an and Sunnah.

It is the ijma qiyas that embodies the opinion of the ijma (ummah) that must ensure the correctness of the analogy and the correctness of the opinion.

Qiyas (Arabic, meaning measurement) is one of the sources of Islamic law. It means to judge on the basis of analogy. If the Qur'an and the Sunnah do not answer the question as authoritative references, a third source is used - the ijma, that is, the general opinion of scholars and scholars on the subject. Then a qiyas is made. Qiyas allows you to solve the problem of analogy by comparing it with the provisions of the Qur'an and the Sunnah.

Ijtihad. Ijtihad (Arabic, from the word ijtahaad, means to make an independent decision) - is the right and ability of the authoritative jurist (theologian-jurist) to make independent decisions on important issues of religious and social life on the basis of the Qur'an and Sunnah and guided by the basic methods of jurisprudence (qiyas, opinion, etc.). Ijtihad, which is the decision of the entire Muslim ijma, is in principle the correct ijtihad. In practice, influential lawyers were considered representatives of Ijtihad. The faqih is considered by the whole Muslim ijma or a large group of Muslims and is called mujtahid for his perfect mind and thought.

The founders of the Muslim (Sunni) schools of law - Ibn Hanbal, Ibn Hanafi, Malik ibn Anas and al-Shafi'i - are known as the greatest mujtahids of the Islamic world. At the same time, they became the last mujtahids, because after the establishment of these schools of law, the Sunnis refused to recognize that anyone had the right to ijtihad. In the tenth century, “the door to ijtihad was closed once and for all”.

Taqlid. Taqlid is the adherence to the rulings of the mujtahid in the performance of the duties of the religion and in matters of jurisprudence, and in their implementation.

According to taqlid, if ijtihad allows the development of

the legal doctrine of Islam, then the Muslim is obliged to follow the principle of authority.

As a doctrinal system based on the observance of the sacred sources and their strict application, Islamic law, including the "mechanism" of its formation and development, was formed between the seventh and tenth centuries. Fiqh is considered invariable. Closing the "doors of ijtihad" made it the duty of every Muslim to follow the instructions of the doctors of the previous generations. It was the duty of every Muslim to agree with the views of the founders of Muslim law schools. Any new original interpretation seemed to be banned forever. If imitation neglected any new intellectual thought processes or even legal doctrines in relation to taqlid, fiqh would be suspicious of every new theoretical action.

Theory of Islamic law (fiqh). The theory of Islamic law (fiqh) consists of a plurality of traditions and arguments in the interpretation of the "Divine Law" and some of the differences that arise from them. This is because the founders of theological schools and Muslim law schools are not considered the founders of fiqh. Fiqh existed as a collection of Muslim rules and regulations until the founding of those schools. The persistent efforts of these banis (ijtihad) were mainly aimed at understanding and explaining this collection within the framework of the Islamic principles enshrined in the Qur'an and the hadiths of the Prophet. In every Islamic region of the world, they have become distinguished teachers in the field of fiqh with their ideas, donating their own elements of custom or culture to that collection.

In the Islamic world, it is the Shari'ah that is the means by which religion intervenes in the most diverse areas of the momins' daily lives. I.Petrushevsky, a former Soviet orientalist, noted this aspect of Islam and wrote: "In Muslim countries, there are even agreements on trade, land and house rent, money debt,

and so on. are made with presence of judges, who were spiritual rulers. As a result of such agreements, the influence of religion on public, private and even domestic life in Muslim countries has been strong since the Far East, where state, criminal and civil law are independent of religion and laws are passed by secular authorities".

Four Muslim law schools – The Hanafi, Hanbali, Maliki, and Shafi'i schools originated in the eighth century. Rules and forms of property, inheritance, criminal law, institution of representation, oath, instructions on guarantee and surety issues, foundations were prepared on the basis of four schools of law of the Sunni sect and Shiite law (G.M. Kerimov).

The first Muslim school of law was the **Hanafi** school, founded by Abu Hanifa (699-767) in the Iraqi city of Kufa. Abu Hanifa's lectures, opinions, and answers to questions were recorded by his students and followers. These materials were later converted into independent books and published in the name of the author. The most famous works published in the name of Abu Hanifa are the books "Al-Fiqh al-Akbar" and "Al-Musnad".

The Hanafi school is characterized by its relative rationality in the methods of researching individual instructions and its great care in the use of hadiths. Hanafiism spread beyond Iraq to Egypt, Syria, Iran, India, China, and Central Asia.

Second, Maliki school is considered to be founded by **Malik Ibn Anas** (708-715-795). He is also known as the "Imam of Medina" and the author of "Al-Muwatta", one of the most authoritative collections of hadith.

Malikism is regarded as a religious-legal school with the utmost respect for the customs of Medina. In the ninth century, the Maliki sect spread not only in the west of the Muslim world, but also in the West (Tunisia, Algeria, Morocco), as well as in other regions of Africa, where the population is Muslim.

Malikism was accepted as the official state religion in Arab Spain. The Malikis still dominate Tunisia, Morocco, Algeria and West Africa. The Maliki School of Law currently operates in Sudan and Upper Egypt. What characterizes this school of law is that it denies that narrations can be changed, and demands that they be taken seriously. The Maliki sect considers the abstract interpretation of the Qur'an unacceptable. The Malikis consider it possible to apply judgment (qiyas) according to logic and analogy, but they are in favor of applying it to a more limited extent than the Hanafis.

Al-Shafi'i Muslim School of Law was founded by Al-Shafi'i (873-935). He is one of the most famous Muslim theologians, one of the founders of theoretical theology - kelam. Al-Shafi'i was a staunch supporter of the Mu'tazil theologian al-Jubba'i until the age of 40. In one of the disputes, he cut ties with his teacher because of disagreements with him and joined the Shafi'is, thinking that the fundamentals of Islam were incompatible with the teachings of the Mu'tazils. After that he founded his own law school.

In addition to the Qur'an and hadiths, al-Shafi'i used the methodology of philosophy and logic more extensively than the earlier theologians in establishing the religious-philosophical system that opposed the Mu'tazils. Al-Shafi'i's theory of the sources of law is based on a religious ideal. This theory does not recognize the creative study of practice. Thus, this theory is also indifferent to the concepts necessary for the analysis of legal realities, which does not allow the development of an independent legal science. Shafi'i has supporters in Palestine, Adana and the south of the Arabian Peninsula. Such supporters can be found in Pakistan, Egypt, Indonesia, Malaysia, the Philippines, India and East Africa.

The fourth is the Hanbali Muslim school of law founded by **Ahmad ibn Hanbal** (780-855). The spread of the Hanbali

sect was facilitated by the radical change of ideas that arose after the rejection of the Mu'tazils who held the position of interim ruler in the caliphate. At the age of 19, Ibn Hanbal embarked on a long journey from his hometown of Baghdad to collect hadith, and learned the basics of jurisprudence from al-Shafi'i. He personally did not create a system of fiqh. However, during his lifetime, Ibn Hanbali's "Answers" were collected and systematized, and later used as a basis for the establishment of Hanbali law.

Until the fourteenth century, the Hanbali sect, which was widespread throughout the Islamic world, played a major role in social life. In the 10th century, Iran (Isfahan, Rey, Shahrizur, etc.) was the country with the largest number of Hanbalis. From the 11th century to the 15th century, there were many Hanbalis in Syria and Palestine. The decline of the Hanbali sect began during the reign of the Ottoman Empire. At present, members of the Hanbali sect can only be found in the Hijaz and Najd.

The legal system of Hanbalism is characterized by limited literacy and intolerance of any "innovation", the denial of freedom of opinion (private opinion), and the fanatical seriousness of the observance of Sharia ceremonies and legal norms. The Hanbalis rejected attempts to interpret the Qur'an and the hadiths freely in any form. Only later did they accept the very limited application of qiyas (the analogy-based judgment and the ijma (consent opinion)).When the Hanbalis spoke of ijma, they accepted only the unanimous opinion of Muhammad's mujahideen, denying the ijma of their disciples and the authoritative religious leaders of later generations. The Hanbalis are considered the most fanatical of all Muslims.

The "Ikhwan as-Safa" Union. "Ikhwan as-Safa" ("Brotherhood of Purity") secret society was one of the great movements of the Middle Ages as an authoritative alliance. This union was formed at the end of the tenth century amid an open

struggle between orthodox Islam and heretics. Although its central body was located in Basra (Iraq), its socio-political and legal ideas were widespread in all Muslim Eastern countries, including Azerbaijan. Research on the history of Islamic political and legal thought testifies to the fact that this union also played a certain positive role in the formation of Muslim law and jurisprudence.

The political and legal teachings of the "Ikhwan as-Safa" Union are described in 52 treatises entitled "Risaleler". The author of one of these treatises was **Abulhasan Ali ibn Harun az-Zanjani**, originally from Azerbaijan, an active and prominent member of the union. The teachings of the Union, as well as the works of its representatives, were included in the list of books banned in the Middle Ages because they brilliantly promoted freedom of thought.

Although the political and legal doctrine of the Union does not deny secular authority, its ideas on governance, including the opinions of its members, touch on the question of the divine origin of power. This is due, firstly, to the fact that the union also interprets governance as a type of theological element. Second, in the concept of union, the first step on the ladder of power is the rule of the prophet. This, in its turn, has a purely theological content and has a direct impact on Islam.

In accordance with the idea put forward in the "Ikhwan as-Safa", the science of governance, which is one of the independent types of theological sciences, in turn, is divided into the following types:

1) **the governance of the prophet**;
2) **the governance of the shah**;
3) **the governance of human associations**;
4) **special governance**;
5) **personal governance**.

According to the logic expressed in the doctrine of the

union, the governance of the prophet is to tell how the good rules and pure customs, which are achieved by means of laws, that is, persuasive speeches (probably communication), came into being.

According to the position of the members of the Union shah`s governance consists of knowing how to preserve the law of living and working customs for the people, applying the basic principles, how to get rid of evil by limiting the decisions determined by law, how to overcome the pressure and how to prevent the enemies, how to exclude the oppressors and how to protect the benefactors. Even the best of the prophets and righteous rulers are distinguished by their management and are fair in the performance of something.

The teachings of the "Ikhwan al-Safa" are based on the management of human units in a limited sense, that is, in a specific place, for example, in the country, in a city, in a village, or even in a military unit. The subjects of such governance are commanders, two entrepreneurs, and military commanders (sarkarders).

Special governance is the right of every person to control the leadership of his house (family), to supervise the affairs of his servants and slaves, children and other subordinates (close relatives, acquaintances), to control their work, respect their rights, meet their needs, and achieve their right behavior for the sake of the worldly and future life.

The doctrine of union is that personal governance is the realization of each person's self-awareness, his or her moral qualities, and his or her control of his or her actions and behavior in a state of passion, anger, and contentment.

The treatises drafted by the members of the "Ikhwan as-Safa" Union are not so easy to assess the positive role of the principles propagated in the development of the Islamic region, including the political and social philosophy of Azerbaijan. One

of the distinctive features of the political and legal education of the Union was that it was an association of different strata of the existing society. We will not be mistaken if we evaluate the teachings developed and prepared by this union as the concept of brave, courageous and determined people in the true sense of the word. The legal ideas of society are the product of a firm and unwavering will. These ideas could not but influence the formation and development of Islamic law, as they embody democracy and humanism.

Mixed legal systems (on the example of Israel). The identification of a particular state on the legal map of the world is sometimes difficult and controversial, as it depends on many factors that determine the nature and direction of national law.

Within the framework of the above models, the legal systems of states that are of a mixed nature for historical, religious and political reasons are not considered original. The same applies to the Israeli legal system. Israel is a country with a historically complex and controversial state, so it is not judged from the same positions in modern conditions.

The components of various legal traditions in Israeli law, as well as the religious and secular foundations of both European (continental law and common law) law and Eastern law, are reflected. There are practically two systems of religious law in the country - Jewish and Islamic. The norms of these two legal systems apply within the Jewish and Arab communities. Gradually replacing the original national law for the Israeli legal system by the end of the twentieth century, Franco-Osman, English and mandated law were partially preserved (the territory of modern Israel became part of the Osman Empire until 1918, became part of Great Britain in 1922-1948).

When studying the legal system of Israel, first of all, attention is paid to the analysis of its Jewish foundations. It is clear that in the titles of special editions or articles devoted to the

sources of the law of the State of Israel, "Jewish law", "judaist law", "hebrew law", "yahudi law", or generic names such as the combined "Jewish (Iudey) law" that characterize the entire national law of the country have the superiority. This is also legal, but it does not fully characterize the modern law of the country. As part of the historical law of the Jewish people, the **Jewish** (judaist) **religious law** is distinguished from **Israeli national law** as a comprehensive system of official state mechanisms of normative provisions and instructions in force in the country.

The system of **sources** of Israeli national law shall include, as appropriate:

1) basic (constitutional) and ordinary legislative acts;

2) acts of executive power adopted by the government, ministries and other government agencies;

3) acts of the Judiciary (Israeli precedent law);

4) traditions, legal customs that have become legal as a result of many years of practice or by direct instruction of the law;

5) **norms** of international law recognized internationally, enshrined in international treaties and not inconsistent with Israeli law;

6) Jewish (judaist) doctrines and norms.

"Jewish law" as a concept and term originated in the not-too-distant past - in the early twentieth century in an environment where "Jewish intellectuals have embarked on a path of national revival" and is used as "a system of national self-consciousness " for interpretation of **Halakha**, the book of Jewish law. It has its own system of sources in the first place, and according to the great scholar of Jewish law, Menahem Elon, this system of sources includes the following:

- **official** norms based on legal materials that complement the Written Torah;

- **historical** norms that affected the rights of the Jewish people during the long period of statehood;
- legal norms that gain moral legitimacy and rely on the authority of the Torah (through which every norm of Halakha is binding on all).

The legal sources of Jewish law have a classification that has developed over the centuries and includes the following:

1) **Kabbalah** – judaist-mystical doctrine, viewed as the first source of law from the point of view of time and in relation to other sources. This source is permanent, and its provisions in Jewish law are statistical, because it is by nature not subject to development or change;

2) **Midrash** – interpretation and commentary of the Torah;

3) **Takana and kzera** – Legislation of Halakha authorities (influential representatives of Halakha) with relevant powers;

4) **customs** that exist in all their forms and manifestations (these customs contain certain rules and procedures);

5) **Work**, which manifests itself as a court decision, as well as an image of the behavior and actions of the Halakha connoisseur in a particular situation;

6) **Understanding** as the legal and universal logic of the sages of Halakha.

The state of Israel, revived in 1948, felt the effects of traditional beliefs. The country's "Declaration of Independence" states: "A Jewish people were born in Eres-Israel. Here its moral, religious and political image was formed. It lived here in its sovereign state, created national and cultural values here, and bequeathed the Literary Book of Books (the Bible) to the world".

Note. The above statement of Israel's "Declaration of Independence" is an exaggeration. Thus, there has never been an Israeli state in the territory where the country is now located. According to international documents, "The State of Israel was

established on May 14, 1948 by the UN General Assembly resolution of November 29, 1947 on the abolition of the British mandate over Palestine and the establishment of independent Arab and Jewish states in the Palestinian territories". Both states had to adopt a democratic constitution that would ensure the rights of minorities in their respective countries. The Jewish state was allocated 14.1 thousand square kilometers (about 56 percent of the Palestinian territory) with a mixed population (498 thousand Jews, 497 thousand Arabs).

As a result, the city of Jerusalem was granted administrative status with a special international regime under the auspices of the United Nations. The Provisional Government of Israel, formed in May 1948, included only representatives from Zionist parties. The first act of the government, the "Declaration of Independence", proclaimed the "doctrine of Zionism" as the official ideology and policy of the state of Israel. From the day of its establishment, the State of Israel, with the help of the imperialist powers (USA, Great Britain) and international Zionism, has waged a war of aggression against neighboring Arab countries. During the Arab-Israeli war of 1948-1949, Israel occupied most of the territory (6,700 square kilometers) and the western part of Jerusalem, displaced by the United Nations, and expelled more than 1.2 million Arabs. The problem of Palestinian refugees has arisen. Israel declared Jerusalem its capital in 1950, in defiance of a UN resolution of November 29, 1947.

The imperialist states, first of all the United States and their affiliated Zionist circles, began to use Israel as a tool in the struggle against the Arab states and as a stronghold of imperialism in the Middle East (are now used – H.Gurbanov). In 1956, Israel, along with Britain and France, invaded Egypt, joined the **Eisenhower Doctrine** in May 1957, and aided the US and British intervention in Lebanon and Jordan in 1958.

Implementing a program of annexation, Israel, on June 5, 1967, with the help of imperialism and international Zionism, launched a new aggression against the Arab countries ”(ASE, vol. IV, Baku, 1980, pp. 563-564). This means that the state of Israel has never existed in the geographical area where modern Israel is located today - in West Asia, on the southeastern shores of the Mediterranean. This also means that the Jewish people were not born in Eres-Israel. The moral, religious and political image of the Jewish people was not formed in this historical territory, and there was no sovereign state of the Jews. It is impossible to call it anything other than historical falsification. At the same time, we would like to emphasize that the author's position is not to show disrespect for the Jewish people, we are only for the historical truth and we never hide our sympathy for the Jewish people. We have only a deep hatred for the crimes committed by German fascism against the Jewish people during World War II.

It is also clear from historical materials that Israel is notable for being a very religious state compared to other countries in the world. In this country, there is an unbreakable unity and a strong synthesis of religion and secularism. It is believed that Judaism, which does not have the status of a state religion in the country, has risen to the level of a civil religion. Jewish law itself was considered by the state to be the official source of secular law, and its components were reflected in the following:

1) in the official symbol of the country; here the coat of arms consists of a heraldic shield and depicts the menora in the Temple of Jerusalem, while the white-blue flag reflects the color of the prayer cover with the hexagonal star of David, the ancient Jewish national symbol of the Old Testament;

2) in the legal force of special acts concerning the relationship between religion and the state (these acts include the Sabbath, the Passover, the Chief Rabbi of Israel, the courts of

rabbis, etc.);

3) in the field of activity of th court of rabbis compiling documents such as, registration of acts of citizenship of Jews, including birth, death, marriage, divorce, alimony, guardianship, adoption, etc.

It should be noted that in other religious communities in Israel, issues of personal status are considered by special courts. There are special Sharia courts for Muslims in the country. For Christians, there are specially organized Druze religious courts and church courts. The Christian courts belong to the ten officially recognized Christian communities in the country.

The influence of Jewish law in Israel was due to the lack of a constitution, which defined itself as the original special legal act, defining the primary acts of the state. Such a gap is explained by the ongoing struggle between the secular and theocratic approach to the new problem of Judaism in the country and its legal system in Israel. It is known that when the modern state of Israel was created, religious orthodoxy denied the necessity of a constitutional act. They motivated their position with the following affirmation: "The Jewish state must be created and governed on the basis of the Jewish religious principle, the Torah" (Israel's "Declaration of Independence").

However, the further development of the Israeli legal system necessitated the adoption of secular laws in the form of legal provisions and nationalized acts, including a full range of constitutional laws known as the Basic Law. The situation of the head of state, the government, the state control, the Knesset (parliament), Jerusalem as the capital of Israel, is regulated by these acts. The basic laws were also adopted in relation to the defense of the army and Israel, to the rule of law, to civil courts, to the freedom of the profession, to the protection of human dignity and the freedom of the individual, and so on. The primacy of constitutional law is affirmed by the powers of the

Supreme Court of Israel. The Supreme Court also examines the content of acts adopted by the Knesset and their compliance with the basic laws of the state.

The decision of the country's Supreme Court (the "Supreme Court of Justice") itself is a full-fledged source of Israeli law. The decision of the Supreme Court is assessed as a court precedent that is binding on all lower courts. Article 20 of the Basic Law of 1984 “On Judicial Proceedings” (“Approval of Legal Norms of Judicial Proceedings”) states: “(A) The legal norms approved by the Supreme Court are binding guidelines for lower courts; b) the legal norms of judicial proceedings approved by the Supreme Court are general and binding for enforcement by all other courts ”(M. Elon). Based on the decisions of the Supreme Court, Israeli precedent law bears traces of the traditions and features of English common law and English legal culture as a whole.

Israeli society is a conglomerate of historical, national, ethnic, confessional, and cultural ties that have developed against the backdrop of intense domestic and international socio-economic and political relations. The country's legal system, as a political and legal phenomenon, reflects the uniqueness and specificity of Israel in the modern world, requiring substantial research.

Topic 8

LEGAL SYSTEMS OF STATE ORGANIZATIONAL SOCIETIES

Legal systems of intrastate institutions (regions). As shown in the previous topics, due to their universality, legal systems are not only at the level of the whole state, but also in other state-organizational bodies, i.e. in autonomies, in the form of subjects of federal states, in the form of states and dependent territories.

There are more than 300 regional structures in the world that reflect the reality of the administrative-territorial structure of modern countries. These consist of units (republics, regions, states, provinces, territories, districts) that are part of a unitary, regional, or federal state with the right of self-government.

All of these institutions have their own legislative, executive, and judicial bodies that adopt and (or) implement legal acts on the territory of the institution, are somewhat independent within the region, and at the same time coordinate with the central government.

Intrastate institution include certain constructive elements of the regional legal system, consisting of the following:

1) a set of legal values reflecting the cultural-historical, religious, national, domestic and other features of this or that region;

2) regional law-making as the process of establishing, amending or repealing normatively regulated legal acts that take into account the characteristics of the above-mentioned institution;

3) hierarchical organization of the normative-legal mass of acts of regional significance, valid in the territory;

4) a regional legal enterprises based on the principle of

separation of powers (legislative, executive, judicial, supervisory), taking into account the traditions of this or that part of the country and the relations that are actually formed;

5) the real process of enforcement of the law in the territory of the region, its implementation, use and application of the law;

6) the law enforcement system as a set of legal and social means, methods and techniques used by the self-governing entity to protect the rule of law and the implementation of legal acts.

The specifics of the regional legal system are as follows:

1) to take into account when forming cultural-historical, religious, national, household and other features that differentiate the population from a certain region;

2) taking into account the geographical and natural specifics of the respective areas;

3) independence and dynamism of development;

4) execution of legislative powers together with the center;

5) independent implementation of legislative powers in the sphere of exclusive powers of the region, expansion and deepening of legal regulation;

6) implementation of its own legal regulation prior to the adoption of state legislative acts on issues related to the subject of joint management of the center and the regions;

7) establishment and operation of a mechanism for resolving conflicts between central and regional legislation.

The following legal systems can be mentioned in the intrastate institutions formed in modern state-organizational societies.

Legal systems within a centralized unitary state of territorial self-government units. They are granted independence governed by the country's constitution and state laws.

Within such states, it is possible to distinguish the countries in which their separate territories are given self-government. Such

territories, as a rule, consist of separate island or peninsula parts, thus remaining a centralized form of state-building.

In Denmark, the Faroe Islands and Greenland are self-governing territorial units that enjoy extensive internal autonomy. Azorsk and Madeira, as the autonomous regions of Portugal are self-governing territorial units and have political-administrative status and its own legislation, government agencies, etc.

Such territorial bodies are not considered a solution to national-ethnic problems in a unitary state. Their autonomy is the result of the historical, cultural and linguistic characteristics of the traditions that have developed in many regions and of the people who have lived together in a compact form for a long time.

In other simple unitary states, there are separate parts of the state that recognize the right of national territorial autonomy, reflecting the national composition of the region (the Republic of Karakalpakstan in Uzbekistan, the Nakhchivan Autonomous Republic in Azerbaijan, the Gagauz region in Moldova).

The practice of the interaction of national and regional national-territorial legal systems in the example of a simple unitary state is of interest. An example of this is **Finland** and its member state, the **Aland Islands**. The status of the Aland Islands has its own specificity. This specificity is not determined by the characteristics of historical development and the struggle for ownership of the islands by neighboring states.

The Constitution of Finland of 2000 is enshrined in a special chapter on the autonomy of the Aland Islands, referring to a special law on this autonomy. Decisions affecting the interests of the autonomy of the islands are limited to decisions taken by the Finnish authorities. Draft such decisions must be agreed in advance with the Aland Islands legislature and executive powers. They consist of formal provinces (Ahvenanma province), but in addition to governing the province, there is also a council with an executive function. The direct governor of the islands is appointed

by the President of Finland from local ministers at the suggestion of the Landstintig (parliament of autonomy). The governor formally represents the interests of the center in the autonomy, observing the implementation of Finnish regulations (laws, presidential decrees, decisions of the Council of State) on the islands. As long as he is a resident of the Aland Islands, he cannot, of course, isolate himself from the protection of local interests.

Landsting has the right to initiate legislation on matters within its jurisdiction and autonomy, as well as to initiate legislation in relation to the Eduskunta (Finnish Parliament) when it comes to the interests of autonomy. In addition to legislative rights, both Landsting and the Aland Islands have the right to adopt and execute the budget, as the autonomy decides on matters within its own budget. Local taxes, which form the basis of autonomy's finances, are determined by the local parliament.

The local government consists of a local minister who heads one or another local administration. The legal system created in this way for the islands serves the interests of the indigenous population living in them in a compact way - the Swedes, who have full political and economic rights (A. Mogunova). Other persons cannot own land without obtaining permanent resident status on the islands and without the special permission of the autonomous legislature. This also applies to suffrage. In order to obtain permanent resident status, it is necessary to live on the islands for at least five years, to be a Finnish citizen and to be fluent in Swedish. Unlike in Finland itself, all clerical and court proceedings in the autonomy are conducted only in Swedish. The same rule applies to suffrage at the local level.

Legal systems of autonomous regional states. These countries are considered to be federal elements, transitional, semi-federations, and unitary states that gradually became federal unions.

For example, **Spain** is called an autonomous - highly centralized unitary state. The model of national-territorial autonomy has been applied here. According to this model, not only 17 autonomous, indigenous peoples (Catalans, Basques, Galicians) are historically formed in the region, but also their provinces and municipalities have independent legal systems (Article 137, 2 of the Spanish Constitution). The provinces with common historical, cultural and economic aspects, as well as the territories and provinces of the island, are united by a common history, and they have the right to self-government and to form such associations in accordance with Article 3 of the Spanish Constitution, entitled "On Autonomous Unions" (Article 143). An important law of autonomous union, the statute, is recognized and protected by the state as a fundamental part of national legislation (Article 147). The management of an autonomous union, on the other hand, has a wide range of powers (Article 228, paragraph 22). These powers range from the creation of self-governing bodies to "the economic development of autonomous communities in accordance with the objectives set by the national economic policy".

Unitary states with an element of federalism also include the **Republic of South Africa**. According to the 1996 Constitution, the nine provinces in the republic have broad powers, including legislative independence. The National Assembly (the country's parliament) consists of a 90-member upper house with 10 members elected in each regional legislature.

The United Kingdom is also mentioned among the countries that have gradually passed to other forms of intrastate construction. The country was founded 300 years ago, in 1707, and at that time included England, Scotland and Wales. Later, Northern Ireland also joined the country. In recent years, there have been significant changes in the relationship between the constituent parts of the United Kingdom. The constituent parts of

the United Kingdom have full jurisdiction over a number of powers, including legislation and other law-making powers. These changes are called **devolution**, which is a process of federalization of the country.

The People's Republic of China is also one of the countries with a complex structure. It includes, on the one hand, 23 provinces governed entirely by Beijing and territorial units such as four cities under the central authority. On the other hand, China widely uses the administrative form of autonomy. Compact national minorities can create different types of autonomous entities, which has led to the formation of five autonomous regions, 30 autonomous provinces, 124 autonomous uyezd, and more than a thousand autonomous volosts.

This is because the legal systems of the special administrative districts of **Siangan (Hong Kong)** and **Aomin (Macao)**, which are relatively close to this background, are especially distinguished. As a result of the "one country - two political systems" line implemented in the PRC, the British and Portuguese colonies became part of China (Hong Kong - July 1, 1997, Macao - December 31, 1999) and they have acquired a status incomparable to any autonomous territory both in the country itself and outside its borders. For example, the 1990 Constitution of Hong Kong (Siangan) sets out the following principles that must remain unchanged for 50 years:

1) high level of self-government, excluding foreign relations and defense;

2) the right to own a judicial system with the right to legislate, enforce, as well as to make final court decisions;

3) Approval (localization) by China of about 140 British laws applied to Hong Kong until mid-1977;

4) introduction of independent immigration and tax policies;

5) ensuring the inviolability of the socio-economic system

and the "local way of life";

6) maintaining the status of Hong Kong as an international financial center with its monetary and financial system;

7) protection of the status of a free port (French port) and the status of the allocated customs territory;

8) maintaining territorial membership with more than 1,000 international organizations and establishing economic and cultural ties with the rest of the world with the right to conclude bilateral international agreements with third countries in the fields of economic and cultural cooperation.

The PRC has repeatedly reaffirmed its support for these principles, while maintaining the high level of the independent legal system of the special administrative region.

It should also be taken into account that on the Taiwan island of Taiwan, which belongs to the PRC, for more than 65 years, a better legal system, in principle, different from socialist law, has remained in force.

Legal systems of the subjects of federations. As a form of territorial organization given to individual state structures, the subjects of federations as a whole form a single union state.

Federations are not organized according to any specific pattern. Their emergence and collapse are conditioned by a complex interrelated complex of external and internal causes. The first federal states were formed as a result of the union of future subjects (states, provinces, territories, cantons). They should be referred to the territorial federations formed on the basis of the merger of historically formed stable associations. When establishing territorial federations, it was necessary to take into account the economic relations, historical and cultural traditions of the peoples that make up the parts, the climatic conditions and relief of the earth, and even the density of the population and its scattering over the territory. It was the territorial federations that were long-lived, and the legal systems established on the basis of

the principle of legal equality of their subjects and the relations of the federal legal system were an example of stability.

Federations are also created on the basis of national or territorial-national characteristics. The creation of such federal states was conditioned by the need to take into account the multinational composition of the population of individual state bodies, which initially sought a single union. Over time, various centrifugal forces have manifested themselves in such formations.

More than two centuries of experience in the development of federal associations, consisting of special administrative-territorial units, or national bodies, or mergers on the basis of one principle or another, if such an adequate model of federalism is chosen, gives such a structure. Modern federalism, as it is represented in many countries of Europe, America, Asia and other continents, is the product of long-term development, the realization of the "trial and error" method, including the formation of regional legal systems.

For example, it is believed that unfavorable socialist doctrines and two concepts of state form along with the desire of the southern Slavs to create a unified state, -the rivalry between the Serbian concept of decentralization and the Croatian concept of decentralization lead to the collapse of the Yugoslav Federation. The extreme centralization of the Yugoslav state apparatus, which led to significant economic, political, and legal independence by the republics and autonomous regions, made the collapse of the federation possible and inevitable.

Although the creation, formalization, and functioning of regional legal systems, as well as their relationship with the federal government and the federal legal system, are somewhat different, some common patterns have been established. At the very least, they constitute a set of characteristics that define the legal systems of the regions within the federation and their relationship with the federal authorities. The following can be

attributed to these characteristics:

1) giving the subjects of the federation the power to establish their own power, that is, to adopt their own legislation, the regional constitution, and other basic laws (charter, statute) of the intrastate institution;

2) the right of the subjects to be monitored by the federation in accordance with the basic laws and the constitution of the country. The conformity of the subjects of this or that regional law or other legal acts with the constitution of the country is determined by the federal constitutional court in case of dispute;

3) the right to establish its own legislative, executive and judicial bodies;

4) powers of the federation, ie the right to determine and regulate the nation-wide powers of the federation by amending the constitution;

5) between the federal constitution and the federation and its subjects, including the subjects of the administration of the federation, as well as determination of the legal regulation of the subjects themselves;

6) the supremacy of the legislation of the federation, its priority over the laws of the subjects of the federation. In the event of a collision of regional or federal law, the term of the federal law shall remain in force;

7) the right of the federation to represent its subjects in international relations. Such a right is not considered exclusive, because a number of foreign federations have the opportunity to speak on many issues in their relations with other states, such as signing treaties, agreements, exchanging views with competent representatives, as well as the right to a proper legal relationship (for example, Austria, Australia, Belgium, Canada, Germany were such federations);

8) the force of federal law on regional law (both stimulating and determinative). As a result, the legislation of the subjects of

the federation can be dynamically developed by ensuring the achievement of socially useful goals of legal regulation in the region, or it can be stagnant (regressed) by interfering with its normal life;

9) legal equality of the subjects of the federation among themselves and in relations with the federal government (as a rule);

10) granting to every citizen of the federation the same rights as the citizens of each individual subject of the federation in the territory of all subjects of the federation;

11) establishment of a special (upper) chamber in the legislative body (in parliament) of the federation representing the interests of the members of the federation.

Inter-subjective legal systems of the Federation. The phenomenon of inter-subjective legal systems has developed in a number of modern federations. For example, in the **Russian Federation**, in addition to the federal and regional legal systems, there is a dual system of some provinces (**Irkutsk, Tyumen, Arkhangelsk provinces**). These provinces also include autonomous districts. The legal powers piled up in such structures and between them, their subordination and interrelationships create some difficulties for the new Russian statehood. As a result, the tradition of unifying processes is now being established, including in the relations of interregional legal systems. For example, in the Perm region, the Komi-Perm Autonomous District was formed on the basis of the Perm province.

At the end of the last century, the states of **Bosnia** and **Herzegovina** were established on the Balkan Peninsula. The constitution of this state establishes a special form of state-territorial structure - "**light federation**". The country is a combination of two institutions - the Federation of Bosnia and Herzegovina (Muslims and Croats) and the Republic of Serbia.

Both institutions have a high degree of economic, political and military independence. They have formed independent state-legal systems based on the declaration of individual sovereignty established in their forms of government, constitutions, legislation, executive and judicial bodies. At the same time, the Federation of Bosnia and Herzegovina co-exists with two separate state and legal structures. They consist of regional associations that live in compact form.

Legal systems of dependent territories. Since 1945, during the existence of the United Nations, the peoples have become sovereign states with about 100 territorial structures, formerly under the colonial system, and have become members of the United Nations. Many other territories have been able to determine their own destiny through political alliances or integration into independent states.

At the same time, despite the significant progress made in the process of disintegration of the colonial system, there are about 40 territories in the world under the foreign control of some states. These are also called transitional territories or temporary territories, because we are talking about the "inevitability of the suspension of the pre-existing status" by the legal regime "(S.V. Baburin).

Most of their territories do not have their own state structure and are classified as **non-self-governing** according to the UN classification. American Samoa, New Caledonia, Gibraltar, the Falkland Islands (Malvinas), Guam, the Kaymanov Islands, the Virgin Islands, the Bermuda Islands, and others. These are exercised by the so-called states that govern the general government. Currently, the United Kingdom, New Zealand, the United States and France are among such countries.

This is because there are **subordinate** territorial bodies with their own representative governing bodies, including legislative and judicial bodies, which make normative decisions and

implement them throughout the territory of the institution and in relation to the entire population. Puerto Rico and Palestine can be shown as examples.

Puerto Rico, a former Spanish colony, became a US province in the late 19th century. As a result, the island de facto lost its regime of being a self-governing territory in the Caribbean, gaining the status of a "free state of the United States" from the metropolis. This provision is enshrined in the Constitution of Puerto Rico, adopted on July 25, 1952. In accordance with this provision, foreign policy, defense, enactment of laws, etc. are at its disposal. The issue belongs to the US Congress, which also includes the supreme legislative power. Within the autonomy, the regional government is exercised by a bicameral Legislative Assembly elected by direct suffrage for a term of four years. The Puerto Rican parliament was represented by a resident commissioner in the US House of Representatives. Although the resident commissioner had the right to initiate legislation, he did not have the right to vote. Executive power has been exercised since 1948 by a governor elected by the Puerto Ricans for a four-year term. The governor is the supreme commander-in-chief of the armed forces and heads the Consultative Council, a government made up of 15 ministers appointed by him.

The people of Puerto Rico have been given a wide range of self-government. Self-government is exercised by its own legislature and the judiciary. This means that it has its own legal system in place. In addition, this territorial structure differs in many respects from the legal systems of the countries belonging to the common law family law belonging to the United States. The norms of civil law in force in the "acceding state" are based on the Spanish model. Much of the procedural and other legal norms are in line with Latin American models.

A special presidential commission on the status of Puerto Rico in the United States has recommended that the island's

residents be given the right to self-determination. However, a referendum in 2012 found that between 4 percent and 6 percent of Puerto Ricans supported the requirement for independence, 30 percent agreed to maintain the current situation, and two-thirds of citizens voted to change the island's political status by fully annexing it to the United States under the 51st state law.

A typical example of a transitional area is the **Palestinian National Autonomy**. Palestine has been in the process of gaining independence for a long time. After the First World War, it was considered the territory of Great Britain, which was governed on the basis of a Palestinian mandate. This mandate was obtained from the League of Nations (1922-1948). On November 29, 1947, the UN General Assembly adopted a resolution establishing two states in the Palestinian territories, one Jewish and the other Arab. For a number of reasons, the Arab state was not created.

In 1988, the Palestinian National Council announced the creation of a **Palestinian state** in the Israeli-controlled territories - in the West Bank of Jordan river and Gaza region. The UN General Assembly recognized this statement and decided to rename "Palestine" the Palestine Liberation Organization without losing its UN-monitored status. Five years later, Israel and the Palestine Liberation Organization signed a Declaration on the Principles of Intermediate Regulation in Washington, DC. The declaration called for the establishment of an interim Palestinian self-government. However, in the following years, this began to be realized with inconsistent and large barriers within the Palestinian National Authority. In 2012, the UN General Assembly granted Palestine the status of "an observer state under the auspices of the United Nations".

In that autonomous body president as the head of the self-governing territory, a government post as an executive body, and the establishment of the parliament (as a body with certain legislative powers in areas under Palestinian control) as the

Palestinian Legislative Council (Palestinian Autonomy Council) testifies to the formation of autonomy's own governing bodies, and hence the legal system. It is based on the concept of Islam and the classical institutions of modern Islamic law.

Recent events (supposedly the uprising of Muslim fundamentalists in the summer of 2007 and the seizure of power in Gaza) members of the League of Arab States (LAS) called the extraordinary meeting of foreign ministers a "coup d'etat" and it was believed that this could jeopardize the separation of the remaining territories of the region from the Palestinian Authority and the indefinite postponement of the possibility of establishing a sovereign Palestinian state (if not permanently). In addition, it is considered to be possible to have two self-governing territorial units (together with their state and legal systems) in the Middle East Hamas (Islamic Resistance Movement) and Fatah (Movement for the National Liberation of Palestine), controlled by ideologically irreconcilable groups. Although rapprochement between the two sides was observed in 2014, no practical steps have been taken yet.

Legal systems of unrecognized government institutions. Such state-like institutions have virtually all the attributes of state power, including representative legislative and law enforcement institutions. Such state institutions include Kosovo, South Ossetia, Abkhazia, North Somalia and others. The legal systems of these institutions sometimes differ qualitatively from the legal systems of the states to which they are formally included, and this difference continues to grow.

For example, before the **Transnistrian province** was effectively governed by the **Republic of Moldova** (through the MRD), the legislation of the Moldavian SSR and then the Moldavian SSR was in force in the territory of the MRD. Since September 2, 1990 (the day when the independence of the Transnistrian region was unilaterally declared), their legislative

system began to develop separately from each other, and the differences between their "mother" legal systems became even greater. If the new law of the Republic of Moldova is based on the traditions of the Romano-Germanic family of continental (European) law, the legislation of the Transnistrian region has been an example of the Russian legal system as a whole since the declaration of state independence. It is determined that “the peculiarity of the legal regime of the MRD territory" is that the influence of the Moldovan legal system and the MRD and the USSR laws in the Left Bank of the Transnistrian region, along with the MRD and USSR laws, are significantly limited (almost non-existent).

In November 1983, the **Turkish Republic of Northern Cyprus** was proclaimed in the northeastern part of the island of Cyprus under the control of the Turkish armed forces. Despite international isolation, the area is able to pursue its own state and legal policy, creating its own legislative, executive and judicial structures within a closed legal system focused on Turkish legal principles and institutions. In addition, maps released in Turkey also refer to this part of the island in Northern Cyprus as the state. Southern Cyprus (a member state of the United Nations and the European Union) is considered only the "Southern Cyprus of the Greek administration".

Such unrecognized states can exist for decades with their own law-making and legislatures. In particular, the current legal system of **Taiwan** - the island whose government is officially called the government of the "**People's Republic of China**" - has been the "successor" of China's continental legal system for 65 years. Taiwan's legal system is based on the principles and institutions of the Romano-Germanic legal family of continental (European) law, incorporating some elements of Anglo-American law. The historically formed legal thinking and legal culture of the population are to some extent influenced by the Confucian

traditions of the Chinese.

In continental China, it is believed that the PRC should also be recognized under the formula of "peaceful unification in one state - two structures", with a special administrative region under the jurisdiction of a single government, with the right to high-level self-government while maintaining its social system. However, modern scholars of the political system and law of the People's Republic of China note that Taiwan remained a legal province of China, "gaining its name, the Constitution of the People's Republic of China and the attributes of state power in 1913-1949, and became a de facto sovereign state". In its turn, emphasizing in the negotiations between the "two equal partners" that the "government of the Republic of China has effective control over the respective territories", it proposes its own formula of unification - "one country, two governments".

Based on the ideas of Mao Zedong and Deng Xiaoping, the PRC is building a "socialist-type state with Chinese specifics", and the 1946 Constitution of the Republic of China is still in force in Taiwan. According to the Constitution, the supreme representative body is the Milli Majlis, which resolves constitutional issues and elects its president and vice-president. The Legislative and Judicial Chambers, the Executive Chamber, ie the government, which deals with the adoption of new laws and amendments to the constitution, operate separately. Many of the articles were written under the strong influence of Romano-Germanic, Swiss, and Japanese law, and came into force in the 1920s and 1930s. As a result, these systematized legislative acts were modified and included in Lufa Quanshu - the "Complete Book of the Six Laws." The Complete Book includes legislative norms grouped into the following areas:

- constitutional legal norms;
- norms of civil law;
- norms of civil procedural law;

- criminal law norms;
- norms of criminal procedure law;
- norms of administrative law.

Both the constitution and the main articles of Taiwan have undergone certain changes at the end of the last century. These changes were a continuation of the changes that took place in the country after the isolation of the organization in the international arena. From the mid-1980s, "a military-authoritarian regime was established, and parties opposed to the ruling Kuomintang began to emerge. At present, Taiwan's political and legal system is more democratic. In particular, the function of overseeing the activities of the government has been achieved. At the same time, the powers of the president have increased as a result of the increasing role of the Legislative Chamber.

Topic 9

INTERNATIONAL LEGAL SYSTEMS

International organizations. The post-World War II period was marked by a significant increase in the number of international organizations. This reflects the objective legitimacy of the progress of world civilization. There are about 7,000 international organizations at the present stage. 300 of them are intergovernmental organizations. In the relations between states, there are numerous associations, societies, councils, unions and organizations, which are formed on the basis of different principles and goals, taking into account the scope of global, interregional, regional and particular tasks.

Within international organizations, it is agreed to distinguish the following:

1) **universal** organizations open to all countries of the world (United Nations - UN);

2) **specialized** organizations (World Health Organization - WHO);

3) **interregional** organizations (Shanghai Cooperation Organization - SCO; Asia-Pacific Cooperation Organization (APEC);

4) **regional** organizations (African Union, MERCOSUR in South America);

5) **local** organizations (Customs Union);

6) **trade and economic** organizations (Organization of Petroleum Exporting Countries - OPEC);

7) **military-political** organizations (North Atlantic Treaty Organization - NATO);

8) **ethnic** organizations (League of Arab States - AL);

9) **religious** organizations (Organization of Islamic Cooperation - OIC);

10) **linguistic** organizations (Association of Spanish-speaking States - ASS);

11) **human rights** organizations (Council of Europe) and similar bodies.

In scientific research, within the type category of "international organizations", specific concepts of states related to modern associations are used, for example: **"international-legal union", "state-legal union", "interstate alliances", "intergovernmental organizations", "regional organizations", "interstate organizations", "union of states"**. Controversies in international law over the interpretation, interrelationships, and differences of these concepts are already well-established and reflect the relationship to the influence of a particular school of thought or direction.

Forms of interstate alliances have been the subject of theoretical generalizations and have existed in the practice of international communication in the past. K. Ellinek, a prominent German lawyer and sociologist, drew attention to this when characterizing the unions known to him as **state associations** between states. Their legal forms conditioned by treaties create multifaceted, protracted relations between states that are always of an international legal nature. They are, in principle, based on either the equality of the united states (this union is not subject to the supreme authority of any other state), or the political determination of one state's restrictions on this type of treaty in favor of another state, unless it is legal.

Interstate union and its features. Without taking into account the specific features of the terminology (by giving the same field of activity to experts in the field of international law and comparative jurisdiction, respectively), we give preference to the concept of "**interstate unions**". In our opinion, this concept corresponds to its modern purpose as a permanent institution established in agreements between states.

In such unions, member states develop and establish a set of rules of law in their relations. This rule of law, by its nature, forms a certain law within the framework of an interstate structure established as a system of general compulsory instructions. They are established both in the field of international relations and in the relations of these countries on behalf of the member states on the basis of an agreement granting the relevant powers to the organization.

Thus, **interstate unions** are member states that respect the sovereignty of each other, established by states on the basis of an international treaty, with permanent bodies, in order to achieve common goals.

Such interstate structures have the following features:

1) the interstate **constituent agreement** defining and establishing the basic rights and duties of the member states of the union;

2) the interstate union to act in accordance with the universally recognized **norms and principles of international law**;

3) voluntary and permanent ("**extended**") **membership** of sovereign states;

4) as the right to be free from the membership of member states - **secession**;

5) the **existence of specific** economic, military, social and other **goals** within the framework of interstate rapprochement;

6) **to have a subjectivity of international law**;

7) the existence of **permanent bodies** established within the framework of interstate union;

8) **the existence of courts** for the settlement of disputes and conflicts, the unification of conflict procedures;

9) existence of an **interstate legal system** as a practice of agreed legal policy and member states and their unions**.**

At present, interstate integration is an important external

function of the modern state. The content of this is to ensure that the interstate cooperation of the state is subject to a single principle, goals and objectives, the establishment of various forms, their development, strengthening and improvement. The following traditions are revealed in the framework of interstate integration:

1) increase in the scale of participation of countries in interstate unions;

2) efforts to harmonize the interests of states in integration processes;

3) expansion of the framework of federalization in intra-state relations as a means of solving their problems in the so-called complex unitary or regional states;

4) emergence of new, including mixed forms of interstate unions;

5) strengthening regionalization while establishing interstate unions;

6) to focus on strengthening bilateral relations between states at the deeper level than at the level of local interstate unions;

7) deepening of the internationalization of law as a whole, reflecting the closer interaction of international and national law;

8) strengthening the role and importance of legal policy in the field of union of states;

9) efforts to more accurately determine the legal status of the interstate union;

10) supranational processes that predetermine the granting of exclusive powers to delegate to interstate member states the task of enforcing their decisions;

11) Efforts to create a single legal space based on the rapprochement, unification and harmonization of member states' legislation.

Interstate legal system: features and structure.

Interstate law is a whole structure created on the basis of norms and principles determined by the union in order to establish an appropriate rule of law between the member states of the interstate union, limiting the sovereignty of national law in certain areas (with their initial consent expressed in the memorandum of association).

This permanent body has supranational elements and specific powers. These powers are acquired on a legal basis through the voluntary integration of independent states or the application of other agreed methods to achieve the goals of interstate union.

The main **features** of interstate legal systems (the presence or absence of which determines the scope and scope of activities) are as follows:

1) the **contractual-legal** nature of the interstate union, which determines the principles of the rule of law formed between the member states;

2) **permanent nature** of the activity of interstate unions and the normative-legal mass created by them;

3) **legal equality** of relations between member states and each other and the institutions they create;

4) development of common legal bases, goals and objectives, forecasting of legal processes, implementation of a **unified legal policy** aimed at establishing mechanisms of legal regulation within the framework of interstate union;

5) the existence of a **common legal space** as a result of the interaction of the interstate legal system between the national legal systems of the member states;

6) **supranational nature** of the powers (as a rule) of interstate bodies with the power to make mandatory decisions for all members of the union with the right to apply compulsory measures;

7) **increase of the number of self-executed decisions** of

the law enforcement agencies of interstate unions that do not require additional transformation in domestic legislation.

Like any legal system, the interstate legal system consists of institutional, functional and normative parts.

The **institutional part** of the legal system includes subjects that are elements of international law. The subjectivity of international law, that is, the ability and capacity to be the bearer of sovereign rights and responsibilities, is an important feature that allows us to determine whether this or that subject is an element of the interstate legal system. However, the state can be a natural owner of the subjectivity of international law, because sovereignty is an inalienable quality that arises together with the state. The subjectivity of states in international law is universal. This means that they are widely involved in the establishment of a common international system, in its activities and in the achievement of international law, in the acquisition and exercise of rights, and in the fulfillment of their obligations under international agreements. All other subjects of interstate legal systems can have the subjectivity of international law only through the formal expression of states and the established will.

A **functional part** of the interstate legal system is the interaction between the subjects of international law. The realization of the legal status of the international community is carried out through the bodies created by it. These bodies perform the functions of law-making, law-enforcement, law-interpretation and law-enforcement. These types of legal activity of the relevant bodies of interstate associations are a means of achieving the goal as a rule of law and at the same time a way of reflecting the links between the elements of the interstate legal system. The relations between the elements are based on the principles of unambiguous cooperation, coordination and integration in the practice of interstate unions.

The role of mediator in the establishment of relations

between the subjects is played by the **normative part**, which is the third part of the interstate legal system. This part is based on the universally recognized norms and principles of international law, international treaties and other rules governing the process of unification of states and their subsequent activities. The complexity of the functions that serve to implement interstate unions contributes to the increase in the number of norms of international law, which leads to different classifications of them in the doctrine of international law.

Classification of interstate legal systems. There are many criteria in this area. However, the following two different norms, which reflect this classification, can be considered as the most fundamental basis for the activity of interstate unions:

1) **foreign law**. The law reflected in the constituent acts of the union, international treaties and conventions with the participation of member states, agreements concluded by the union with other states and international organizations, and constituting a set of rules agreed upon by the Member States and the union is considered to be foreign law of interstate union;

2) **domestic law**. The domestic law of interstate unions is a set of norms that regulates the structure, organization, powers of the bodies of the unions, the subordination relations of the structural units, the whole status of the staff and the regulation of relations at the interstate level.

Modern interstate legal systems are considered the legal system of the **confederation**. The confederation, in its turn, is a union of sovereign states. These sovereign states unite on the basis of a treaty for certain purposes and establish general legislative bodies to carry out the tasks (tasks of defense, foreign policy, state security, financing, integration of armed forces, general communication systems, etc.) provided for in the treaty.

At present, there are no confederations as a type of union of states. However, modern interstate unions - state unions and

organizations - are characterized by confederate features, and the main ones are as follows:

- **contractual-legal basis** of the union;

- maintaining the general framework of the **sovereignty** of the member states;

- as the right to freely join and leave the union - the right of cessation;

- such as the inability of the union authorities to enforce their decisions - the presence or absence of the **right to nullify**.

Interstate legal system of the Union - a union of sovereign states, which focuses its activities in certain areas. The basis for the union of sovereign states is their historical union, closeness of culture and language, religious ties, similarity of integrated economy, legal closeness (that is, belonging to the same group of any legal system), and so on. Such bodies serve to preserve historically established goals among themselves in various fields. The legal system of the Union can only perform essentially a coordinating function in union structures, as well as in the absence of non-governmental powers that serve the right of nullification of its Member States, has the limited nature in its influence on the Member States.

An example of such a union is the **Commonwealth** (1931-1947), which unites more than 50 former British dominions and colonies, now independent states. The Union recognizes the English monarch (king, queen) as the nominal head of the union and has a permanent secretariat in London to organize and coordinate its activities.

Much later, in December 1991, the **Commonwealth of Independent States** (CIS) was established as an interstate union of the former USSR republics (with the exception of the Baltic republics and Georgia, which left the CIS in 2008). Each of the CIS member states retains its state sovereignty and full international legal personality. In accordance with the CIS

Charter, the following are included in the joint activities of the participating states:

1) ensuring fundamental human rights and freedoms;

2) coordination of foreign policy activities;

3) cooperation in the formation of pan-European and pan-Asian markets, transport and communication systems, customs policy of the common economic space;

4) protection of public health and the environment;

5) social issues and migration policy issues;

6) fight against organized crime;

7) cooperation in the field of defense policy and protection of foreign borders.

Model acts of the Interparliamentary Assembly are considered by the parliaments of the participating States, so that the model acts are adopted with the consent of the heads of national parliaments and the active participation of parliamentary representatives in IPA committees and commissions. There is no legal basis for these acts to be part of national legislation. They may be adopted and reviewed, but may simply be debated or postponed indefinitely without discussion, returned to the IPA, or sent to the parliamentary archives or library. It is estimated that during the practice of the interstate legal system for more than 20 years, only 4-5% of the decisions made at the leadership level of the Union have been implemented by the participating states.

It is no longer a secret that disagreements under the influence of the legal force of acts of the supreme bodies of the CIS, existing in the interpretation of the force of these acts rooted in the nature of the Union itself and its legal system, in the uncertainty of its legal status at the level of its constituent documents, and in the different attitudes of the participating States towards its legal personality. In order to give the CIS big systemic right it is unequivocally proposed at the level of the

founding documents or a special international agreement to formalize the conclusion of relevant international agreements aimed at the decisions which define any obligations of the Council of Heads of State and the Council of Heads of Government (as well as other CIS bodies) or directed to the unification of the legislation, or the relevant acts of the CIS bodies by forcible transformation into national legal acts. These acts, in turn, should have a name that differs from the names of the decisions of these bodies, which are of a recommendatory nature, and the decisions taken on internal issues of the CIS as an interstate union. Such a division still allows to determine the status and legal force of the act of this or that CIS body on the basis of its own name at the moment of its adoption. According to the subjective analysis of the content of the act, it is not allowed after its adoption. As the most principled way out of the situation in the legal system of the Union, it is proposed to transform the CIS into a more integrated interstate structure of such unions.

The low potential of the CIS countries in combining the efforts of the participating states in solving the initial tasks is the search for political and legal interaction of the countries at a certain level of regionalization and fragmentation. This process is reflected, for example, in the establishment of the Customs Union and the Eurasian Economic Union.

Despite all this, the CIS is still weak in fulfilling its responsibilities as an interstate union. One of the obligations of the member states of the CIS Charter is the protection of foreign borders. But what kind of union is it that one of its member states has been occupying the territory of another member-state for many years? Doesn't the aggressive foreign policy of separatist Armenia (if this country is really able to pursue an independent foreign policy) bother the CIS? Apparently, it doesn't. If it did, Armenia, ruled by a military junta, would

renounce the occupation of the ancient historical territories of neighboring Azerbaijan, which is in the same Union. The most unpleasant aspect of the issue is that such a fascist aggressor is sometimes even supported, and in some cases, in general, no economic and political sanctions have been imposed on it. It is this impunity and the Union's indifference that makes fascist Armenia even more self-assured.

The interstate legal system of the Union State is a local (bilateral) system based on the historical, political, economic, socio-cultural and ethnographic proximity of the member states of the Union. **The Union State of Serbia and Montenegro (2002-2006)** and the **Union State of Belarus and Russia** are examples of such unions. Belarus and Russia have not yet formed an interstate union. In both cases, the indefinite obstacles to the establishment of a unified state-legal system are obvious and latent political contradictions, which do not explicitly subordinate structures to the imperative powers or subordinate them to the established national authorities.

In the first case, the Treaty on the Reconstruction of Relations between Serbia and Montenegro, dated March 14, 2002, provided for a "soft federation" consisting of a single government with common airspace and armed forces at the United Nations. At the same time, member states were recognized as having the right to a separate economic and legal space, including the existence of fully independent supreme authorities, representative legislative and judicial structures, and their own customs, monetary, and tax systems. Despite the fact that the nature of the innovations, the four-year term of the Union State, was extremely liberal in relation to Montenegro, the decisive division of the former Yugoslavia into separate, nation-states was, by its very nature, a transitional stage.

The Treaty between the Russian Federation and Belarus on the Establishment of the Union State of January 26, 2000, on

the contrary, was aimed at restoring a single economic, political and social space based on the formation of a unified legal system of the two peoples and states. Specific measures and deadlines for their implementation had to be determined to the extent to which the Constitution of the Union State of Belarus and the Russian Federation was adopted in the All-Union Referendum and by their decisions of the Bodies of the Union State (Of the Supreme State Council, Parliament, Council of Ministers, Court, Chamber of Accounts). It was the constitutional act that was to have binding legal and direct force on all citizens and organizations of the interstate union, and to serve to establish its structure and form of the legal system from the legal point of view.

However, the Union State, as mentioned above, remained only on paper. Neither the Russian nor the Belarusian constitutions have made any necessary changes regarding the formation and operation of the Belarus and Russian Union States` mechanisms. Without exclusive powers and without binding legal acts, the Union State is reminiscent of the Union of Russia and Belarus in 1996-1999, as the Union has the right to pursue a unified legal policy and achieve the goals of the union.

The interstate legal system of the Union. It consists of a centralized form of interstate structure. It envisages the voluntary restriction of its sovereign rights by member states in favor of union structures.

Special Studies note that, the Union "from the point of view of its own institutional structure as well as its internal law governing its relations with its member states and the outside world, has the clearly expressed features of the domestic nature that distinguish it from the traditional type of international organizations" (V.V.Elistratova).

The Council of Europe and the European Union can serve as examples of such associations. Although the Council of

Europe and the EU have played an important role in shaping a single European space and generally accepted European legal standards since their inception, unfortunately, at the present stage, these unions also allow **double standards** to make their way to certain regions of the world (especially to certain countries of the Muslim East), and sometimes turn a blind eye to the recurrence of such cases. The Council of Europe and the European Union, in particular, are sometimes biased in their treatment of Turkey and Azerbaijan. The Christian fanaticism of the Council of Europe and the European Union, which has remained silent on Armenia's separatist activities, imperialist policies and Armenian vandalism, is obvious. Since what is said is not directly related to the subject of this textbook, we consider it necessary to be satisfied with what is stated.

The Council of Europe can be considered an important human rights structure because of its old and once objective position in the world community. It was established in 1949 after the Second World War. Almost all European countries (47 countries) are members of the Council. The legal system of the Council of Europe is based on the combination of the following two types of law:

1) **domestic law.** It is a right consisting of normative decisions on issues of self-organization and rules of procedure;

2) **foreign law**. By foreign law, we mean the application of the founding documents and other acts of international legal significance, as well as the application of the legal standards of the Council of Europe to the norms and principles of the member states of the organization.

The legal norm of the Council of Europe consists of certain standards of conduct. These standards are created by the subjects of the Council on the basis of their will and are legally binding (although not all states, such as Armenia, meet such standards). It should also be noted that, in essence, supranational

bodies have been established within the Council of Europe. These bodies have the right to take decisions that are binding on the member states of this international organization and to monitor their implementation. For example, the Council of Europe's Committee of Ministers or the European Court of Human Rights are such bodies.

The general characteristics of the Council of Europe's interstate legal system are determined by the following features:

1) activities in accordance with the constituent documents (with the Charter of the Council of Europe) and universally recognized international (universal and regional) norms and principles;

2) the existence of the basic elements - states as subjects of international law;

3) in appropriate external forms - the presence of objectified general international legal norms in the legal sources of the Council;

4) significant role of court precedents in the protection of human rights;

5) the existence of a rule-making function in the European Court of Human Rights based on the above;

6) first of all, the formation of pan-European legal standards in the field of human rights protection and, on this basis, the relevant mechanisms to monitor the implementation of such duty-based models of behavior (unfortunately, the work of such mechanisms cannot be evaluated satisfactorily, because they are distinguished primarily by their weakness, it is in the process of the operation of these mechanisms that the approach to the protection of human rights in different regions is expressed in double standards.Thus, in one region of the world, for example, in Central and Western Europe, there is an immediate response to the restoration of violated human rights, the recurrence of similar violations in Muslim Eastern countries

is neglected.The indifference to the fate of more than 1 million people who became internally displaced persons and IDPs in the territory of their country can be a "bright" example of this).

The system of such mechanisms developed under the auspices of the Council of Europe is still confusing and unbalanced, and the functions of oversight bodies are often interchangeable. According to researchers of the problems of European integration, all this requires the rationalization and improvement of control processes and, more importantly, the modernization of the entire legal system of the Council of Europe. In our opinion, if the situation continues at this level, the Council of Europe may become one of the most discredited international organizations in the near future. This is also due to the fact that it allows double standards.

Compared to other state unions, it is the **European Union** that has partially embodied the idea of a pan-European legal space. The EU's legal system is already well-established, and although it is able to facilitate the future integration of European states and the development of a unified legal policy, this process is not at the desired level. To a certain extent, the coldness of the relations of some states (for example, the United States, Britain, etc.) with the Union also has a negative effect. It should be taken into account that the development of legal policy within the framework of a single Union allows member states to unite their efforts in solving a number of scientific, theoretical and practical problems of modern law. Modern experience shows that this is not easy to achieve and is unlikely to become a reality in the near future. At present, the socio-economic and political relations between a number of European countries are in such a state that it is impossible to come to a common denominator even in the solution of issues of the same content. This is also negatively affected by the weak integration of countries, which, in turn, sometimes becomes an insurmountable obstacle to

mutual understanding. Therefore, there is little hope that successful steps will be taken in the near future to develop a unified legal policy within the European Union.

The EU, by its essence, is the birthplace and result of the complex interrelationships of European states. Reminiscent of the original international organization, the EU intends to gradually transform itself into a new type of state structure in the process of its activities. However, this process is so slow that not only the emergence of a new type of state structure is visible, but, on the contrary, a number of differences are emerging between the EU member states in this direction. It should also be noted that the EU was the successor to the first economic unions in Western Europe. The formation of succession coincides with a period when there was a strong need for states to strengthen economic relations arising from historical necessity. It is precisely the forces that have identified the necessary ways to achieve many economic goals together. At the present stage, however, the situation has changed radically. Emerging market relations, which are developing and taking on new forms, have created various tensions in a number of economic spheres. The imposition of embargoes on the import of industrial and agricultural products by some states, the enthusiastic involvement of one group of states in the process of economic sanctions against another has led not to the strengthening of economic and political relations on the continent, but to a gradual weakening. Although the EU has made efforts to prevent this, no positive results have been achieved so far. Therefore, the formation of a new type of state structure is still a utopia for the continent. In the context of the formation of the first economic unions in Europe, the countries that laid the groundwork for this process initially defined part of their national sovereignty at the interstate level. At present, it is impossible to talk about it.

The founding documents of such a union, starting with the Treaty of Rome of 1957 on the Establishment of the European Economic Community (EEC) and Maastricht of 1992, Amsterdam of 1997, Nietzsche of 2000, Rome of 2004, continued with the Treaty of Lisbon of 2000, gradually established the general and interrelated functions of the unions and sought to establish a unified mechanism for the management of integration processes, seeking to transform the unions into the European Union. However, this has not been fully achieved.

The formation of a special type of interstate union based on a single European legal space is also one of the tasks ahead. In the modern Western doctrine of law, the European Union is seen as a "supranational organization", a "closely integrated post-state body exercising sovereign powers" (presumably a thesis for EU member states). In addition, it is sometimes asserted that the European Union is no longer an international organization in its own right, but a "federated elemental confederation" and will soon become either a federation of its own or a new type of federation, the "Federation of nation-states".

Undoubtedly, such a possibility was clearly ahead of its time and was dictated by euphoric expectations in reference to the European Constitution adopted in 2005. The European Constitution must immediately reform (rebuild) the historically established legal system created by the member states as a result of interstate co-operation of the European Union, and give full priority to the law of the Union over national law (European law was to be binding on all parts of it and to be directly applicable to all member states).

It is well known that the failure of the referendums on the draft European Constitution in 2005 in France and the Netherlands (the referendum did not take place at all) overshadowed these ambitious plans. The Brussels Summit of

the Heads of State of the European Union, which took place in May 2007, also agreed on the adoption of a very "simplified hypothetical" draft in the future in comparison with the previous draft constitution. However, this happened a little later - as a result of the adoption of the Lisbon Treaty, which entered into force on December 1, 2009. The updated document immediately abolished a number of provisions (for example, the provisions declaring that the European Union would immediately become a single superpower without proper guarantees of the preservation of its national identity) that had been met with negative public opinion by Eurosceptic states and a number of countries. The updated document contained the following:

1) it was decided to avoid mentioning the word "constitution" itself, which was traditionally only for sovereign states, and it was acceptable to call the working title of the main pan-European document the "Treaty on Reforms";

2) all references to classical symbols of the state (motto, flag, anthem, single currency and other symbols of the European Union), which are additionally irritating to opponents of the transformation processes in a united Europe, have been removed;

3) member States' veto power on certain issues was restored;

4) an article on secession, the right of member states to leave the Union was added. Now the decision on the right of secession was made on the basis of the results of a nationwide referendum in the countries where the issue was raised.

However, the current state of the EU's legal system calls into question the supremacy (as well as the unity) of the legislation of both member states (28 of them), which can be called "European law" over both legislation. This is also an indication that the European Union still does not have a perfect legal system, and neither near nor far views of such perfection

are noticeable.

Thus, the interstate legal system in the European Union has been formed in such a way that the following features are accepted as typical for this system:

1) activities carried out within the limits established by the constituent documents, as well as in accordance with generally accepted norms and principles of international law;

2) the main elements - first of all, the fact that the member states of the Union are subjects of international law;

3) existence of a common legal field (single legal space) for international law, national law and legal norms of the Union;

4) existence of bodies performing law-making and law-enforcement functions (including the courts);

5) “the existence of a legal system for the division of "primary" and "derivative" law;

6) the special nature of the system of sources of law, including the founding agreements as "primary" sources of law, is even more important;

7) the existence of sources of "derivative" law, including regulations and directives, and court precedents as "third" sources of law are important;

8) establishment of its own human rights system on the basis of the "Charter of Fundamental Rights" of EU citizens;

9) high level of legal unification;

10) availability of effective means of normative-legal integration;

11) recognition of the priority of EU legal norms over the legal norms of the member states;

12) direct entry into force in the national legal system of a number of legal forms (norms called self-execution decisions) of the supreme bodies of the European Union.

As a basic concept of comparative law, researchers (comparativists) who apply to the legal system are experts in the

field of **international law** who are familiar with the international legal system, its concept and content. In modern international legal science, the concepts of "international interstate legal system", "international normative system", "global legal system" also testify to the fact that the legal system is considered only within the borders of the state.

The legal system, as a political and legal phenomenon, requires a more careful approach, reflecting the diversity of the modern world, which is still not, if not partially, free from deep contradictions. The modern world is as complex as it is multifaceted, and some events are still not sufficiently perceived. In essence, both domestic and international law are seen not only as a stagnant set of principles and rules of bahavior, but also as a structure that responds to the processes of globalization and develops dynamically in its manifestation.

Topic 10

LEGAL SYSTEMS OF SOCIALIST STATES

In the twentieth century, the space between the two types of legal systems that have historically formed the legal world has been interfered with by **ideological law**, which denies legal succession and interrelationship with other legal systems. Initially, the revolutionary system created within a country within the Soviet legal system differed fundamentally from the legal traditions of both the West and the East.

From the theoretical point of view, the new law set new political goals for itself, as well as the goal of the establishment of a socialist and communist society. The structure of socialism is regarded as the first phase of the transition to communism, which supposedly included the first embryos of a future classless society. The main goal was to enter the stage of mature socialist society. For this, the need for the use of organizational and political means by the state on the basis of coercion was justified.

Socialist law, in practice, implemented the centralized management of the economy, ensured the supreme interests of the state government, the socialization of property (the superiority of public property over private property, in general, private property was rejected as a remnant of capitalism), the nationalization of banking institutions, factories and plants, land, and the strict regulation of labor and consumption.

Under socialism, party-administrative decisions prevailed over law. The decisions and orders of the Communist Party prevailed over both law and order. Such a ladder was created: party - state - law - man. Apparently, the man was on the lowest rung of the ladder. Therefore, the policy of state paternalism, which is guaranteed by law in relation to the

individual, was introduced. The ones who did not follow the party's directives or failed to do so properly, and not the ones who violated the law of the existing structure or the law of the system it established were considered the most dangerous culprits. It was a constitutional principle of the Soviet socialist state that the authority of a political party was often superior to the law and the laws of the state. The Constitution of the USSR, in its specific norm (Article 6), specifically established the role of the party as an alternative leader in society and the state.

After the Second World War, in different regions, states were referred to a special group based on communist ideology - the group of the family of socialist law. The basis for this was the formation of the countries of the socialist front, especially the USSR. These states were called socialist countries, and in all of them the ideology formed by the Communist Party took the lead. This ideology had penetrated (without exception) into all spheres of social life. Even scientific research had to be guided by the principles and guidelines of that ideology.

At present, the number of countries belonging to the socialist family of law has sharply decreased, leaving only a few countries in this family of law. They include the People's Republic of China, the Democratic People's Republic of Korea, the Socialist Republic of Vietnam, the Dao People's Democratic Republic and the Republic of Cuba. A quarter of the world's population lives in this legal family and preserves the features, traditions and topical analysis of this historical and legal phenomenon.

Socialist legal systems are characterized by the following aspects:

1) **denial of any legal succession by law of previous periods.** In other words, these systems deny the previous state-political regimes, national features, and historically formed

traditions of the peoples;

2) **declaring socialist law a higher type of law.** Socialist people's power, the "true" freedom of the individual (as opposed to bourgeois freedom), socialist democracy and socialist legislation are the new state-legal values inherent in this family of law, and are legally established in the constitution of that family;

3) **the class nature of socialist law.** The socialist legal system is based on the principle of the dictatorship of the proletariat, the law expresses the will of the working class and the peasantry (in part, the intelligentsia of society);

4) **the full power of the ruling communist party** in the state-political sphere. The ideological basis of the law is determined only by the Communist Party. Approval of special provisions and instructions, as well as decisions and measures of national importance, belongs only to the Communist Party. The party's guiding role is also enshrined in a number of legislative acts;

5) **private legal language** (having its own legal language). On the basis of this language, legal events in socialist states are given a special meaning that is generally accepted and different from the understanding in civil societies ("dictatorship of the proletariat", "member of the family of the enemy of the people", "social enemy", "socialist democracy", " socialist legislation", "nation-state", "Soviet people", etc.);

6) socialist law can be characterized as **collective law.** According to P. Sandevuar, this is its important task. After all, socialist law does not consist in the establishment of public order, in the achievement of justice in relations between individuals, or in the determination of social balance by defining the principles of dispute resolution. Collective law is considered as an instrument of economic organization of society and education of citizens. Such a collective legal rule

has been politicized, centralized and forcible;

7) the predominance of socialist law at the various levels (congresses, plenums, the ruling party elite) within the actual sources, where the **decisions of the ruling party bodies** are not recorded as normative acts;

8) the **supremacy of common law institutions** in the socialist legal system and the indifference to the special (private) legitimate interests of citizens, respectively;

9) **simplified procedural forms and restriction of the right of defense of the accused and the guilty;** This was the result of treating the offenses not as a manifestation of individual or non-civil acts of conduct, but as an action against the building of a communist society.

At present, such a right is fully in force in individual states, including North Korea. According to the Constitution of the DPRK, adopted in April 2009 and announced to the people only six months later, the country is building a sovereign state based on the ideas of **Juche** (independence, or virtually completely isolated from the world). A stable conservative-totalitarian regime has been established in the DPRK, and the worship of the leader is extremely strong in this country. It is true that such worship, while in some cases merely visual, has become commonplace. In fact, it is a very ridiculous and fake situation.

In other countries belonging to the socialist family of law, ideological legal means are used as a tool in the reorganization of the economy. In China and Vietnam, for example, a practical transition to free base relations has been achieved in many areas. This is confirmed by modern indicators of China's economic development.

A new economic line has recently been announced in Cuba to stimulate private entrepreneurship. However, in the area of human rights policy, these countries maintain their

previous positions. In accordance with this position, in order to establish a socialist state governed by the rule of law, the government must direct, manage and control its citizens.

In fact, such a position is to limit the freedom and initiative of its citizens. This is the essence of communist ideology. This ideology demands: "You do not make any decisions independently, it is done by the party and the state instead of you." In short, this is one of the slogans of the socialist state and the nature of law. Any decision of the party is above the law and binding on everyone. To oppose this decision is to oppose the party and the state, as well as the building of a communist society. Under socialism, everyone must think as the party thinks and act only in the way determined by it.

Post-Soviet legal family. At the end of the twentieth century, the former socialist countries of Eastern Europe and the former Baltic Soviet republics entered a new, post-socialist period of development. Radical economic, political and legal reforms were typical for that period. Successes in the legal field, qualitative changes in the legislation, the establishment of the principles of civil law in the field of human rights have been accompanied by the active participation of these countries in the process of European integration and, in essence, the return to the continental legal family.

At the same time, the independent states created in the former Soviet Union after its collapse, while establishing their new national priorities, continue to operate with the factors that unite them for decades (some sovereign states even retain some stereotypes of socialism).

The legal system that has existed in Azerbaijan for more than seventy years has included the basic legal ideas, institutions and legal processes of the socialist family of law and, in essence, Soviet law. In the development of the USSR, the most important features of the unification of states and their

legal systems (here the term "legal systems" is conditional) were embodied in the ideological principle. Although this unification took place on a voluntary and treaty basis, the sovereignty of the allied republics was suppressed and their independence remained only on paper. They even lost the right to leave the Union freely.

The legal systems of the former Soviet republics (along with the Baltic states) can be conditionally combined with the concept of "**postideological law**" and belong to the **post-Soviet legal family**. This legal family was formed on the basis of the CIS homogeneous legal space.

This group, as a result of its recent past and its continuing tradition of rapprochement with the main units of the legal system without interrupting it, or with a secular model of transition to a secular model of Muslim law, is gaining ground.

The legal systems of the post-Soviet states continue to converge, and this is reflected in the following:

1) **legal succession** determined by long-term existence in a single state in conditions of ideological isolation, on the basis of strict subordination to the central government (including in the field of law-making and law enforcement);

2) **the same basis** for the establishment of formally declared legal systems of "states" with equal rights in the "state" in the Soviet era;

3) **general principles of understanding the law** based on legal positivism in the traditional style;

4) **the scope of validity** of previous normative acts adopted in accordance with the legislation of the Union and the policy of legal unitarism;

5) **coordination** (or efforts for such cooperation) of legal activities within interstate unions (CIS, Customs Union, Eurasian Economic Community, Collective Security Treaty, Belarus and the Russian Federation, etc.).

At present, Russia maintains the group's country-identification mission within the post-Soviet legal family. Russia's legal realities are already so different from socialist law that the following models of legal development traditions within the previous regulatory system can be distinguished under certain conditions;

1) the legal systems of countries traditionally close to the Russian Federation. These countries, together with Russia, are members of a local military-political and economic-political joint alliance (Russia, Kazakhstan, Belarus, Kyrgyzstan, Armenia), which in practice coordinates legal projects;

2) the legal systems of countries that have unequivocally chosen the path of closer rapprochement with Western Europe. Subject to the strict political and legal requirements of the European Union, these countries tend to join the EU (Ukraine, Moldova, Georgia);

3) The legal systems of countries (Central Asian states) with a predominantly Muslim population and secular model of law, such as Turkey.

Topic 11

LEGAL SYSTEM OF MODERN AZERBAIJAN

Azerbaijan's legal system is an independent type of modern law. Azerbaijani law began to take shape in the conditions of a state-organized society, which was one of the stages in the history of mankind specially allocated for it. During certain periods of development of the Azerbaijani statehood, the country was ruled by different empires (first the Achaemenids and Sassanids, then the Arab Caliphate), and as a result of this and the feudal dispersion that followed, and finally the khanates (each khanate was an independent state for itself) that emerged after the collapse of the centralized Safavid state, a normative and legal system in Azerbaijan failed to be formed. The process of formation of the legal system in Azerbaijan began after its annexation by the Russian Empire in the first half of the XIX century. Although this is the beginning of a great process, it is also remembered for some of its intricacies.

The division of the great unitary state into two resulted in the separation of the peoples with ancient and rich material and spiritual culture. However, compared to the despotic regime of the Iranian feudal government in southern Azerbaijan, the situation in Northern Azerbaijan, which was under the full rule of the Russian Empire, where the capitalist mode of production was gradually established, was relatively promising. Along with all other spheres of a great empire, its scientific sphere did not pass without influence in Azerbaijan, and certainly could not pass. Because Azerbaijan was an integral part of it. Of course, most of the action plans developed in the center of the empire had to be applied in Azerbaijan. Azerbaijan had no choice but to take part in those events. In this sense, the adaptation of the colonial empire to the legal system of that time was the only, but in a sense positive, way

out. The legal system of Russia, which existed at that historical stage, in a sense, played a role in the beginning of the formation of the legal system of Azerbaijan.

But, what are the development features of the Russian legal system? Factors determining the historical, cultural and normative originality of Russia also reflect the following specificity of the ways of development of its legal system:

1) Russian statehood was formed at the crossroads of two metasivilizations - Western and Eastern civilizations;
2) At the very beginning of its formation, a peculiar form of Christianity was formed in the country - Russian Orthodoxy, which had a significant impact on the moral and legal foundations of society;
3) as a result of historical circumstances, stable legal traditions based on the inheritance and mastery of the practice of normative regulation of relations in society have not been established in Russia;
4) For a long time in the twentieth century, both the Russian state and Russian law remained in a state of artificial ideological isolation as a result of a utopian attempt to create a country and legal system different from the state and legal systems formed in the world.

The part of the above-mentioned factors, which existed from the second half of the XIX century until the formation of the former USSR, should be applied to the formation and development of the Azerbaijani state and its legal system as a whole. The following different options for the choice of the USSR in the new post-Soviet conditions were discussed:

1) Subordination to the legislation of "translation" of post-Soviet law, mass interference, forced "westernization", understood in the political-legal aspect as "violent modernization" in connection with the relocation of foreign institutions;

2) to try to remain a state-identifier in the supremacy of

typical law (Eurasia) together with the former republics of the USSR, while maintaining its originality in legal development;

3) To lead the Slavic legal family according to the original interpretation of the common Orthodox state interests of the peoples of Eastern Europe;

4) to consistently join a civil legal union on the basis of its legal transformation and taking into account changes in world legal practice.

As one of the components of the former USSR, the fact that Azerbaijan is part of the Romano-Germanic legal system, including Russia, leaves no doubt that Azerbaijani law is an integral part of this legal system. Because another aspect of the issue should not be overlooked. Thus, modern comparativists are turning their attention to another direction. They tend to conclude that the Russian legal system is currently in the process of convergence or integration with the continental (European) legal system. For example, it is confirmed that "there is no doubt that Russian law is related to Romano-Germanic law" (A.Kh. Saidov). Other authors openly deny the reality and state with confidence that "this eventual return to the new Romano-Germanic model has been accepted by practice and science" (A.E. Chernokov). Thus, Russian law, deprived of its socialist (ideological and political) content, "returned" to the Romano-Germanic legal system (A.V. Naumov).

It is clear from the considerations that Azerbaijani law, which has a unique historical path in the development traditions of modern Russian (as well as former Soviet) law, moves towards the German group of the Romano-Germanic legal family, but also reflects the progressive aspects of Anglo-Saxon and Islamic legal systems. In general, the traditions of the gradual convergence of modern legal systems of the world are noticeable. From this point of view, if modern Azerbaijani law is more inclined to the German group of the Romano-Germanic legal family, it

demonstrates that it is one of the worthy candidates for that legal family.

At the same time, it should also be noted that in the modern world, as in all areas, it would be wrong to take a blind approach to the events in the legal sphere, to evaluate the existing processes without a detailed filter of possible consequences. We fully agree with the view that "there is no need to exaggerate the events by admiring them, or to artificially elevate them" (M.N. Marchenko). With this opinion, the author opposes the "artificial transfer of Russian (national law) law" under the protection of Roman-German law ("international" law, European law) or any other law.

Indeed, it is extremely risky to artificially exaggerate events and processes that have already justified themselves in any area of public life, including the legal sphere. Moreover, today the complex socio-political events caused by globalization in different countries of the world, as well as (sometimes contradictory) processes in public life and state life are intensively reflected in the relevant processes of convergence of legal families and legal systems.

As is well known, legal systems themselves have varied to include both continental and Anglo-American law. Although one or another group of legal families differs in the legal logic of positive legal structure, legal techniques and sources, they are still part of the law of countries that consider the rights of society and human rights as the highest social value and the court as the fairest way to resolve social conflicts. If in English-speaking countries the role of law, the codification of general norms has emerged, the tradition of formation of norms, which is more abstract in continental Europe, has, according to the logic of legal systems, implemented the tradition of legal reciprocity. This reciprocal tradition consists in strengthening the role of the judiciary and judicial bodies in the process of legal regulation, the development of their individual law-making activities.

It is commendable that in the course of European integration, the development of provisions and constructions (including by the European Court) of continental law and common precedent law, which were previously incompatible and qualitatively different, is commendable. This was due to the fact that the legal systems of the Western legal civilization or civilizations close to it, their common cultural foundations, the process of integration of universal principles of law and the observance of these principles are of fundamental importance in modern conditions.

At the beginning of the 21st century, the convergence of legal systems is becoming more global. In this regard, comparators more often refer to the idea of **convergence**, which is in the process of establishing itself in comparative law (I.N. Bogdanovskaya). This concept, understood in other historical dimensions and used as a well-known political science category, serves, first of all, to identify some modern processes that characterize the general traditions of development of national legal systems. Convergence occurs both **naturally** - through the study of similar norms by different legal systems, and through the unification of law under the growing influence of international legal states, as well as through the **transplantation** of one national legal system into another.

Because the diversity of the legal culture of countries and peoples is still preserved. This, in turn, gives them the right to testify in favor of resisting the pressures of globalization. This, in turn, facilitates such processes and the ability of national legal systems to adapt to the demands of a "changing world".

Thus, in our opinion, the legal culture of the Azerbaijani society, to some extent, the legal system also coincides with the ideological and cultural postulates of European civilization. Therefore, on such grounds, it is still questionable whether there is a need to create a separate legal system that is not part of the

established structure of the world legal system.

Historical aspects of the legal system of Azerbaijan. At present, the legal system of Azerbaijan is experiencing its own stage of improvement, reform and renewal, while maintaining its originality and at the same time approaching modern global legal processes in a comprehensive manner. The legal system of our country really exists. It is legitimately nourished by the universal legal values of mankind. Because, at the same time, our legal system is an independent type of legal system. Thus, it has its own history of realization, formation and development. Azerbaijan's legal system has its own national and specific features.

Inheritance in the development of Azerbaijani law allows us to distinguish the following stages of its historical formation.

1. **The legal system of ancient Azerbaijan.** The formation of ancient Azerbaijani law is associated with the emergence of the first state institutions (Aratta, Lullubi, Kutium). As in most ancient countries of the world, **customary law** existed in Azerbaijan and lasted for a long time. As is well known, customary law was an unwritten law. The political and legal ideas of science also had a certain influence on the formation of law in Azerbaijan.

The **Avesta**, our great political and legal monument, had an important influence on the formation of the legal system in ancient Azerbaijan. In its first version, the Avesta includes not only a set of religious beliefs, but also ethical and moral norms, moral instructions and requirements, rules of behavior, military culture, as well as legal (family, property, inheritance, civil, criminal, etc.) norms, and a collective containing penalties acts against society, state, and religion (if it is possible to say so, a systematized legislative collection, a kind of code). In Azerbaijani philosophy, the Avesta is rightly called the "Code of Ethics" (Y.I. Rustamov).

2. **The legal system of Azerbaijan in the early Middle**

Ages. It can be assumed that the decision of the "**Aquinas Assembly**", which played an important role in the implementation of the current legislative and judicial power of Albania in the 5th century in the territory of Azerbaijan, had a certain impact on the formation and strengthening of the legal system of our country. The decision consists of only 21 articles. Although it deals mainly with religious issues (because it consists of church law), it also has articles that are purely legal (8 articles).

The laws adopted and approved by the eighth-century Albanian Catholicos Simson ("Simson's Laws") can also be considered as one of the legal events that influenced the development of the legal system in early medieval Azerbaijan. These laws primarily served to strengthen the legal basis of their support, as well as to strengthen the immunity of the clergy (church).

"Matikan-i Khazar datastan" ("Book of a thousand court decisions") is a collection of legislation drafted during the period when Azerbaijan was part of the Sassanid Empire. Only one work of Sassanid legal monuments - "Matikan" ("Book of a thousand court decisions") has been preserved. Probably, the Sassanid Empire did not have a systematized (codified) set of laws. The set of laws consisted of a systematization of legal cases and covered issues related to various areas of law and judicial proceedings. "Matikan" was compiled in 620 as an information book with practical recommendations for judges.

The norms of "Matikan", which have a purely practical purpose, have acquired legal and historical significance in the activities of the Sassanid Empire as a whole, as well as the legislative (legal) system of Azerbaijan from the point of view of the following:

1) In addition to being a legislative collection of legal norms, "Matikan" also gave impetus to the development of political and legal thought;

2) the legal norms contained in the collection have been widely applied in judicial practice;

3) "Matikan" had a universal character and content.

3. **The Arab occupation and the formation of the Muslim legal system.** During the formation of the Arab state (seventh century), a new religious and political ideology - "Islam" emerged. Islam will later become one of the world's religions. Islam, means obedience, "submission to God." The followers of this ideology (religion) were called **Muslims**.

Nourished by the religious and political ideas of a number of religions (Judaism, Christianity, etc.), Islam substantiates the idea of theocracy, the supremacy of religious authority over secular authority, and the idea that there is only divine authority throughout the world. Theocracy is a characteristic of the political ideas expressed in the Qur'an, the holy book of Islam.

Early Islam states that all secular and religious power belongs to the **Prophet** (Prophet Muhammad - the Messenger of Allah) and after his death to the **caliphs** (deputies of the Prophet). For, if during the time of the first four (momin) caliphs the supreme power was clearly theocratic (even then the property of the state was considered the property of Allah), after 945 the real power passed to the secular rulers - sultans, emirs.

The Qur'an, which is considered the main source of Islamic law, sanctifies private property and justifies the need to protect it. Under Islamic law, those who encroach on private property are severely punished by the state.

The political and legal ideology of the Qur'an fully echoes the concepts of Islam. The alpha and amega of this ideology is obedience and reconciliation. Real life and its meaning are not in this world, but in the afterlife. Therefore, every Muslim who wishes to enter heaven must come to terms with poverty and his current financial situation. Otherwise, he will have eternal punishment in the afterlife.

In order to properly understand the historical development of Islamic law, it is necessary to know the definitions of the terms "figh" and "sharia". Figh is freely translated as "Islamic right", "Islamic **law**". The same applies to shariah. However, these terms are not synonymous in Arabic or in the eyes of a Muslim scholar.

Fiqh literally means a correct understanding of what the intention is (a correct understanding of the essence of the intention). However, in the practical context, figh is the science of extracting the norms of Islamic law, the fatwas from the main sources of Muslim law - the Qur'an and the Sunnah. Therefore, in the broadest sense of the word, it means the whole set of extracts of Islamic legal norms made in this way.

The **Shari'ah** literally means a watering-place for animals to come to drink water every day or the right way, which is expressed in verse 18 of 45 Surah Al-Jathiyah: "Then (ya Muhammad!) we made you the follower of shariah. So follow it and do not follow the desires of those who do not know (the right)".

From the above definitions of the terms, the following three differences arise between them:

shariah – this is a single set of instructions contained in the Qur'an and Sunnah, and figh is a set of norms that can be applied to specific situations on the basis of the Shari'ah;

shari'ah is defined as one-time and unchangeable, and figh is changed according to the circumstances in which it is applied;

the vast majority of **shariah** law is general in nature; they lay the foundation for basic principles. The norms of figh have a specific direction; they show how the basic principles of shariah are applied to specific situations.

When it comes to the obligation to obey the divine laws, as well as the responsibility for violating these laws, Islamic law considers people equal before the law. The laws mentioned in the Qur'an do not differentiate between different categories and

groups of people. This can also be seen in the following words: "Allah commands you to return the trusts to their owners and to judge with justice when you judge between people" (Qur'an: Surat an-Nisa ', 4); “O you who believe! Be just witnesses (in performing your duties) before Allah. Do not let your resentment against any people lead you to injustice. Be fair. This is closer to piety. Fear Allah. Allah knows what you do!" (Qur'an: Surat al-Ma'ida (5), verse 8);

"… Allah wants you to be just, to do good things, and help your relatives (suggesting help to a poor relative in a way that the Shari'ah deems obligatory), and forbids adultery, evil, and oppression." (Qur'an, Surat an-Nahl: 90th verse).

Based on the above, the Muslim legal system that existed in Azerbaijan until the first half of the 19th century can be summarized as follows.

1. Early Islamic law consisted of Shari'ah norms revealed by revelation, written in the Qur'an, and embodied in the Sunnah. Shariah norms mainly concerned the ideological foundations of Islam, faith (belief in Allah), as well as the socio-economic laws necessary for the establishment of an emerging Muslim state.

2. Since the main essence and purpose of the Islamic laws contained in the Qur'an is to change people and society, useful human customs and traditions, including those that existed before the formation of Islam, have been recognized and incorporated into the theocratic system.

3. In order to achieve the goal of change, the legislation enshrined in the Qur'an contained the following principles:

- overcoming difficulties;
- reducing the number of religious duties;
- improving social welfare;
- realization of common justice.

4. **The legal system in Azerbaijan in the XV-XVIII centuries.** In the 15th century, Azerbaijan had three independent

powerful feudal states - Shirvanshahs, Garagoyunlu and Aghgoyunlu. In this century, royal decrees and other legislative acts had a significant impact on the development of secular law. Aghgoyunlu rulers Uzun Hasan's "Kanunname" and Godak Ahmad's economic reforms covering the economic sphere played an important role in improving the legal system.

At that time, as an important legislative act, Uzun Hasan's "Kanunname" gained a great majority in the proper regulation of public relations in many areas, and was a kind of legal reform. Thus, according to the "Kanunname", the election of gazis (judges of Shariah courts) to the court is determined; the terms of civil lawsuits are extended (up to 30 years). Prior to the "Kanunname", gazis were appointed (now they had to be elected for a certain period of time). The "Kanunname" remained in force for the next century.

Godak Ahmad's legal reform covered not only the economic sphere, but also the state-government structure. The reform has not bypassed the country's tax system. As indicated in the legal literature, 20 types of taxes and duties have been abolished. Income of nomadic military nobles decreased compared to the income of the state divankhane (R.A. Akbarov).

In the century being discussed, the "Teymur Kanunname" was in force in the territory of Azerbaijan, as well as in the whole empire. In a sense, the legislation is reminiscent of a code of systematized norms. Thus, in this legal act, a lot of attention was paid to criminal penalties (application of corporal punishment).

An important historical event in the 16th century that had a positive impact on the legal system of Azerbaijan was the establishment of the **Safavid state**. The Safavids existed as a centralized state in 1501-1736.

Both the Shari'a and the secular courts functioned in the Safavid legal system, which had an extremely broad and complex state apparatus.

The Safavids, like the feudal state, had large land reserves. Feudal private property rights prevailed over the land. The legal literature states that there is only one document in the sources about the conviction of peasants during the Safavid period. The Decree issued by Shah Abbas I in the month of Ramadan (November 7 - December 7) in 1612 states that the villagers could be sentenced to 12 years (R.A.Akbarov). It should also be noted that there is no historical information about the acquisition of official rights of serfdom in Azerbaijan during the feudal era.

The Safavid state had an extensive system of taxes and duties. Interestingly, even casino owners, musicians, rooster fights` planners, slaughterhouse owners, and bird owners were taxed. Such a picture is to some extent consistent with the nature of the economic structure of capitalism. Undoubtedly, this was not reasonable in the Safavid society.

Thus, the legal system of the Safavid state included the features of both religious (theocratic) and secular law. It is difficult to say which of them was preferred.

The 18th century is marked by the existence of khanates in the history of Azerbaijan that existed as state institutions. Researchers rightly call this century the "History of the Azerbaijani Khanates". Each of the khanates was a separate independent state body. Such retail in the country not only prevented the formation of a unified legal system, but also kept it from general development and improvement. Although secular law was applied in the Azerbaijani khanates, Shariah law was a priority.

Of the 21 Azerbaijani khanates that existed in the second half of the 18th century, only Sheki, Karabakh and Guba were the most powerful. Forms of feudal land ownership that existed during the Safavid period were further developed in the Azerbaijani khanates. Taxes and duties remained almost the same as in previous centuries. In all khanates, Islamic law (figh) acted

as a regulator of public relations, and legal conflicts and disputes were resolved on the basis of Shariah norms. Undoubtedly, such retail could not but have a negative impact on the formation of a unified legal system in the territory of Azerbaijan.

In the history of state and law of Azerbaijan, as a source of law of the XVIII century, there is a legislative act - "Jar Tala "Kanunname" (R.A. Akbarov). The "Kanunname" including Shariah norms and secular legal norms has influenced the activity of the legal system not only in the Jar-Balakan region, but also in other khanates.

5. **The legal system of Azerbaijan within the Russian Empire (19th century - beginning of the 20th century).** The Treaty of Turkmenchay, signed on February 10, 1828, made Azerbaijan one of the colonies of Tsarist Russia. The division of the country had a negative impact on all spheres of its socio-economic and political-legal life. For the sake of justice, it should be noted that the Northern part of the country, which is now part of Russia, where capitalist relations have already developed in comparison with the southern part of the country, which remained part of feudal Iran, began its scientific and cultural development. Thus, the acquaintance of Northern Azerbaijan with the European science and economy had its own positive aspects. In particular, in the field of law, Azerbaijan has the opportunity to get acquainted with the achievements of European law through Russia, to benefit from it.

After forcible unification, the lands of the Azerbaijani khanates and the feudal lords who left the country became the property of the state treasury (Russia). At that time, along with state lands, there were also feudal lands and lands of beks.

The consequences of the imperfections of the legal norms in the field of economic, military-political fragmentation and regulation of public relations, which existed during the khanate period, continued for a long time during the empire. It is true that

the implementation of legal reforms (including judicial reform) that affect the overall system of law has led to some changes, but it is difficult to show that they have a positive impact on the legal system as a whole. Because these legal reforms were carried out in the interests of the empire. For example, in Azerbaijan after the reforms, as in other parts of Russia, the conduct of civil and criminal proceedings in Russian has created certain difficulties in ensuring the rights of the population. Local people, especially those who were not sufficiently literate (mainly rural people), and ones who did not speak Russian, found it extremely difficult, and sometimes impossible, to recover their violated rights in the courts. This meant depriving them of the opportunity to appeal to a fair court led by Russian officials.

Thus, in our opinion, it would not be wrong to imagine the situation in the legal system that existed at the time when Azerbaijan was part of the Russian Empire in conjunction with the situation in the Russian legal system of that time. In general, however, it is impossible to say that there is such a fundamental innovation in the legal system of the empire (unless the entry into force of a number of legislative acts is taken into account).

6. **Soviet Socialist Legal System (1917-1991).** Soviet socialist law was a legal system formed in accordance with the official communist doctrine and ideology. In the early years of the Soviet state, it was also called proletarian law. This law declared the state's priority over the law.

The law of the socialist experiment period, by its very nature, covered the state's ubiquitous and harsh interference in all spheres of public life. And this, in its turn, lead to the complete dependence of general legal institutions from the state, first to the opposition, and then to the persecution of informal views and actions, simplification of procedural forms in procedural law, restriction of the rights and opportunities of defense of offenders and convicts, intensification of repressions, as well as the

imprisonment of citizens who act ideologically voluntarily, sometimes without investigation or trial.

The development of law itself could not be separated from the essence of Soviet power. The Soviet government, on the other hand, denied the principle of separation of powers, and divided the process of issuing normative legal acts into class positions. This was nothing more than "force implantation" into the minds of the people that the political will of the Soviet state was superior to law and rules.

In the former Soviet Union, both representative bodies and higher authorities, such as the executive branch, had legislative power. The definition of "law" was widely explained. Thus, the legal acts of the All-Russian Congress of Soviets, its Central Executive Committee (CEC), the Presidium of the CEC and the Council of People's Commissars (CPC), as well as of individual people's commissariats were covered by the same concept. Old history has never witnessed the politicization of law at this level. Any legal act of the named bodies was considered a law in the Soviet state.

The first decree of the Soviet government "On the procedure for approval and publishing of laws" adopted by the CPC in November 1917 stated that "the drafting and publishing of laws is carried out by the Provisional Workers 'and Peasants' Government elected by the Congress of Soviets of Workers 'and Peasants' Deputies. As noted by legal historian Y.A. Yurtayev, despite the existence of the term "arrangement", there is no doubt that the content of this act is about the adoption of laws. Thus, from the first days of Soviet power, the executive body appropriated the function of law-making. This, in our opinion, was one of the most disgusting examples of disrespect and disregard for law and legal science.

At that time, the Constitution of the Azerbaijan SSR of 1937 (after the Constitution of the USSR of 1936) abolished the

multi-level legislative order at the republican level and the Supreme Council was the only legislative body with high legal force. The next Constitution of the USSR - 1977 (1978 of the Azerbaijan SSR) established the provision that laws can be adopted not only by the Supreme Council of the USSR, but also by popular vote (referendum). However, as a de facto body with a real legislative function, it was the Presidium elected by the Supreme Council (in fact, appointed by the country's party leadership). The Presidium consisted of a limited number of persons (it did not matter whether these persons were lawyers; they consisted of a farmer, a worker or a peasant, a teacher or an academician). This was a practice that had no alternative in any civilized society in the world.

It should also be pointed out that the law does not have a dominant position in the legal system of the Soviet socialist state, nor in the system of real sources of Soviet law. In this state, party-administrative decisions were a priority. In other words, the party's directive decisions took precedence not only over the law, but also over the law itself. The bitter consequence of all this was that the judiciary, the investigation and the prosecutor's office, as well as all other law enforcement agencies, were guided in their activities not by the laws but by the decisions of the Central Committee of the Communist Party. Appropriate authorative persons who did not comply with it were expected to be expelled from the Communist Party in the first place, and thus, naturally, to be prosecuted. Because the motto of the communist ideology that prevailed in the former Soviet state was: "If he/she does not think like us, then he/she is not from us, and such a person must be punished." Therefore, in those times, a person who was rarely expelled from the party (either a high-ranking or a middle-ranking official) could rarely avoid criminal liability.

7. **The legal system of modern Azerbaijan.** Since Azerbaijan gained its independence, especially since 1995, a

number of changes have taken place in the country's legal system, and some progress has been made in the field of legislation. The following can be attributed to these positive developments:

1) Constitution of the Republic of Azerbaijan adopted on November 12, 1995;

2) commencement of wide-ranging legal reforms (judicial reform) after the adoption of the country's Constitution;

3) start of modernization in almost all areas of the republic's legislation;

4) completion of nationalization in the country by the end of 2000;

5) activation of the implementation of measures to modernize the judicial system of the country;

6) reconstruction of the law enforcement system to improve advocacy in the country;

7) implementation of special measures to strengthen the application of international legal mechanisms in the country, as well as domestic law in the field of more effective protection of fundamental human and civil rights and freedoms, further expansion of the sphere of international legal relations and relations in this regard.

Some of the negative factors that have delayed the normal development of the modern legal system in Azerbaijan include the following:

- some **imperfections** still existing in some areas of legislation due to unsatisfactory professionalism of the competent persons serving to carry out law-making activity at the republican level;

- non-existence of **civil society institutions** that are not able to influence the legal policy and legal practice of the state "from below";

- the low level of professionalism of some judges working in the judiciary of the republic, as well as the **predominance** of

authoritarian methods in the administration of justice, albeit to a lesser extent;

- unsatisfactory level of **legal culture** in society as a whole, **incompatibility** of law enforcement (especially internal affairs) officers with the positions they held, employment of persons in the police who are **completely ignorant** of the science of law, especially criminology (sometimes with a predominance of such persons);

- **poor organization of work** in the field of professional development of law enforcement officers, etc.

8. **The system of legal sources of Azerbaijan**. Azerbaijan is a unitary republic due to its state structure. **The system of sources of Azerbaijani law** at the republican level consists of the following hierarchy:

1) **The Constitution of the Republic of Azerbaijan.** The Constitution governs the foundations of the constitutional order of Azerbaijan, the rights and freedoms of man and citizen, the powers of the head of state, the organization and activity of the country's parliament (Milli Majlis), as well as the local self-government;

2) **Legal position of the Constitutional Court of the Republic of Azerbaijan**. This position consists of the decisions of the Constitutional Court, which contain general conclusions on certain legal issues. These decisions are binding on all subjects of law;

3) **Laws and other normative legal acts of the Republic of Azerbaijan;**

4) **Normative decrees of the President of the Republic of Azerbaijan;**

5) **Laws and other normative-legal acts of the Milli Majlis of the Republic of Azerbaijan;**

6) Decisions and orders of the Cabinet of Ministers of the Republic of Azerbaijan (Government of the Republic of Azerbaijan);

7) **Normative-legal acts of the executive authorities of the Republic of Azerbaijan.**

Other sources of law that may have a certain impact on the legal regulation of public relations in the modern Republic of Azerbaijan include, for example, **normative legal acts** that existed in the former USSR in the form of governance. It should be noted that the number of such acts is declining.

It is debatable whether the universally accepted norms and principles of international law, international judicial practice, as well as the decisions of the European Court of Human Rights, are the sources of modern Azerbaijani law.

SHORT EXPLANATORY DICTIONARY

C

COMPARATIVE LAW – a set of the available knowledge on the state-legal phenomena of the modern world on the basis of their comparison.

COMPARATIVE-LEGAL APPROACH – it is a system of methods by which the state and legal systems of different countries are compared in order to determine the general features and specific aspects of modern manifestations.

E

EAST (RELIGIOUS-TRADITIONAL LAW) LAW – group of legal families and legal systems based on interpersonal approach, priority of debt and duty, dependence of the individual on society, subordination of the person to the state, obligation of the individual to sacrifice himself to teaching and ceremonies in the public interest and state interests.

ENGLISH-AMERICAN (ENGLISH-SAXON) LAW – is a group of families and systems of law united by the precedent of the court on the basis of adherence to the English doctrine, and can be expressed by the following formula: "A one-time court decision is binding on both the court that made it and all lower courts in similar legal situations".

F

FAMILY OF SOCIALIST LAW – legal family formed after the Second World War on the basis of the communist ideology of states with overlapping legal systems in different regions.

FORMAL-LEGAL APPROACH – system of methods aimed at studying the state-legal systems in the ideal-generalized state.

I

IDEOLOGICAL (SOCIALIST LAW) LAW – a group of legal systems based on the superiority and principles of communist ideology and ensuring the priority interests of the socialist state.

INTERSTATE LEGAL SYSTEM – a whole structure established on the basis of norms and principles determined by interstate

associations and limiting the sovereignty of national law in certain spheres in order to form an appropriate legal order between the member states.

J

JURISPRUDENCE – science containing general knowledge about the regularities of development of legal events, legal institutions and legal processes in the state-organizational society (union).

L

LANGUAGE OF LAW – a set of grammatical, logical and other methods and means that define the conceptual content of a legal act.

LAW (POSITIVE LAW) – is a set of universally binding instructions defined on behalf of the state and provided by it, expressing the agreed public will and aimed at the normal functioning of the individual, society and the state as a whole.

LEGAL ARRAYS (GROUPS) – union of legal families (for example, legal families of continental law).

LEGAL FAMILY – a set of national legal systems selected on the basis of the generality of development traditions, as well as its specific features and sources of law, its structure, historical ways of formation and modern parameters of its activity.

LEGAL GEOGRAPHY (LEGAL MAP OF THE WORLD) – division of states according to similarities and differences of their legal systems.

LEGAL SYSTEM – historically conditioned formation of legal events, legal institutions and processes establishing and protecting normative stable relations in the state-organizational society.

LEGAL COMPORATIVISTICS – a science that combines comparative statehood, comparative law, and comparative legal science.

LEGAL CONSTRUCTION – the order of compilation of normative material on the basis of differentiation of interacting elements of the legal act.

O

OBJECT OF COMPARATIVE LAW – is the legal system of state-organized societies (unions) whose content opens with their

overlapping components (law, law-understanding, law-making, sources of law, legal institutions, legal system, mechanisms and results of the power of law).

OMBUDSMAN – a person appointed by the parliament who independently monitors the implementation of human rights by public authorities

P

POSTSOVET LEGAL FAMILY – legal systems of the former Soviet republics (excluding the Baltic states) formed in the comparative homogeneous legal space of the Commonwealth of Independent States.

PURPOSE OF COMPARATIVE LAW – achievement of a complete picture of the legal development of the modern world.

S

SOURCES OF LAW – official documents or special provisions establishing and containing legal norms.

SUBJECT OF COMPARATIVE LAW – contains general specific regularities of creation, development and activity of legal systems by comparison of state-organizational societies (unions).

SYNCRETISM OF LAW – a set of moral norms, religious norms and legal norms that have a fundamental impact on the behavior of legal entities in Eastern law.

W

WESTERN LAW – group of legal families and legal systems with European legal traditions embodied in the ideas of the theory of natural law, in the notion of the expression of justice and free will, in the freedom of the individual in society, in the non-interference of the state in the affairs of the individual.

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