THE INFLUENCE OF ANGLO-AMERICAN LAW ON THE PROCESS OF CIVIL LAW REFORM IN GEORGIA

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Abstract: Establishment of market economy in Georgia has facilitated the development of production and trade, as well as economic convergence of the country with other states, among them, with the United States of America. At the formation stage of the mentioned above relationship, it was already discussed that knowledge of the legal norms, regulating the trade and business in these two countries, should have been given greater importance.

In Georgia, in 1990-s, as compared with the law of continental Europe, one of the main reasons for lower level of study of common law was the fact that Georgia, during the decades, belonged to the socialistic legal system and there was no interest towards the common law. And then, the situation has completely changed. In the process of reformation of the Georgian law, the norms were being introduced from the continental Europe, as well as from common law, raising the issue of study and research of very interesting, but less known for Georgia by that time, common law system.

The Commission, working on the drafting of the Civil Code of Georgia, has not demonstrated particular interest towards the Anglo-American law. Probably, the reason for the above attitude was the fact that societies of transition period of post-soviet space were not offered to take the Anglo-Saxon model, as far as the precision and compactness of expression of obligations was considered as necessary for them, in accordance with the traditions of continental Europe.

Nevertheless, at the initial stage of reform, there was some discussion about compatibility of Georgian law to the common law. For example, in general part of the Civil Code, the footprints of common law are less observed, however, certain influence on the transactions is still noticeable, as the Commission, in the process of working, was also getting familiar with the provisions effective in the common law.

The aim of the paper is to discuss the influence of Anglo-American law on Georgian civil law. This should be a novelty in the sense that in Georgian sources this topic is mainly covered against the backdrop of European, and specifically German law, which makes it interesting to study the experience of a legal system different from that of Continental Europe.

Keywords: Common Law; Continental Law; Georgia; Civil Law; Law Reform.

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Introduction. The establishment of a market economy in Georgia has facilitated not only the development of production and trade but also the country's economic integration with other states, including the United States. A significant factor supporting the strengthening of economic relations between these two countries was the agreement signed on March 7, 1994, titled „Treaty Between the Government of the Republic of Georgia and the Government of the United States of America Concerning the Encouragement and Reciprocal Protection of Investment", which was ratified by the Georgian Parliament on December 11, 1996 (Liluashvili, 1997: 31). This document was preceded by the June 27, 1992 agreement titled „Treaty Between the Government of the Republic of Georgia and the Government of the United States of America Concerning Investment Promotion". Additionally, on June 20, 2007, a framework agreement titled „United States-Georgia Trade and Investment Framework Agreement" was signed.

Even during the initial stages of developing this relationship, it was acknowledged that understanding the legal norms governing trade and business in both countries held great significance (Liluashvili, 1997: 32).

One of the main reasons for the limited study of common law in Georgia during the 1990s – as compared to Continental European law – was the fact that, for decades, Georgia had belonged to the socialist legal system and had shown little interest in common law. However, the situation changed entirely. In the process of reforming Georgian law, norms from both Continental European and common law traditions began to be introduced. This, in turn, placed on the agenda the study and examination of the common law system, which at the time was highly relevant but still relatively unfamiliar in Georgia (Liluashvili, 1997: 32).

The commission that drafted Georgia's Civil Code did not express any particular interest in Anglo-American law (Zoidze, 1999: 14-15). Likely, this was because post-Soviet transitional societies were not being offered the Anglo-Saxon model, as it was considered essential for them to adopt the precision and compactness in expressing rights and obligations that are characteristic of Continental European traditions. Consequently, from a pragmatic – but never structural – perspective, support was given to codifications that were conceptually precise. Everyone involved in working on Georgian legislation at that time hoped this would be the best contribution to Georgia's bright future (Knipper, 1994: 191).

Thus, for transitional societies, detailed codification of their civil and economic law was considered important. At the same time, they were advised not to rely on case law or the art of contract drafting. While both were certainly deemed necessary, it was believed that their time would come (Knieper, 1996: 30).

It is also worth noting that ancient Georgian law was significantly influenced by Greco-Roman law (Zoidze, 2005: 53), which forms the foundation of modern European law (Zoidze, 2005: 36).

Nevertheless, at the initial stage of the reform, there was some discussion about the compatibility of Georgian law with common law (Zoidze, 1999: 14). For example, while the general part of the Civil Code shows little trace of common law, certain influences are still noticeable in the section on transactions, as the commission consulted provisions from common law in the process of working on them (Zoidze, 1999: 17-18).

The aim of this article is to examine the influence of Anglo-American law on Georgian civil law. This presents a novel perspective because this topic has mostly been addressed in Georgian sources in the context of European – and specifically German – law, making it particularly interesting to explore the issue through the lens of a legal system that differs from Continental Europe. This is especially relevant today, as in recent years we have seen the reception of certain legal institutions or norms from the common law family into Georgian legislation (Amiranashvili, 2016: 70).

Methods. This paper employs both general scientific and specialized research methods as the methodological foundation for examining the issue at hand. The general scientific methods include historical, systematic, analytical, synthetic, and logical approaches, while the specialized methods include dogmatic and comparative legal research.

Specifically, the article examines opinions from the 1990s regarding the influence of Anglo-American law on Georgian law. These observations are then compared with views expressed on the same topic nearly 20 years after the adoption of the Civil Code of Georgia, and relevant conclusions are drawn.

Discussion. The Civil Code of Georgia was adopted on June 26, 1997. On November 24 of the same year, one of the key architects of the Georgian Civil Code, German (from Bremen) professor Rolf Knieper, noted the following in his report titled *„Some Reflections on Implementing Private Law Reform in Georgia"*:

Codification, as an alternative to unwritten or uncodified law – once a controversial issue – seems to have lost its sharpness. Specifically, the question of whether countries undergoing transformation should adopt a Continental European or Anglo-Saxon legal system – formulated by the German sociologist

Max Weber – remains relevant. According to Weber, legal development should be based on systematic codifications, i.e., a „closed, contradiction-free and comprehensive system of norms", rather than on a „formless, empirical and precedent-based law" (Knieper, 1998: 74).

He noted that Weber left open the question of which legal concept – one or the other – would be more advantageous for countries with private market participants and politically influential groups. In societies undergoing transformation, where private market participants are still emerging as key economic actors, this question remains to be resolved. Experience indicates that this politically desirable process will be best implemented through systematic codification, offering legal clarity and stability (Knieper, 1998: 74).

The core distinction lies more in method and form than in substance. There is no Continental European legal system that, in terms of essential principles and decisions, fundamentally differs from Anglo-Saxon law. Civil law in both traditions is based on property, contracts, torts, unjust enrichment, family law, and inheritance (Knipper, 1998: 74-75).

In Georgia, systematic codifications of both substantive and procedural private law were developed and largely entered into force. At the same time, it is clear that this orientation does not hinder cooperation with Anglo-Saxon investors or legal services, nor with American academic or legal professional institutions. This is especially true since the primary orientation did not result in copies or „transplants" of German or Dutch laws, but rather in wholly original and characteristic norms that exhibit their specific dynamic in practice (Knieper, 1998: 75).

From the moment the question of legal reform arose in Georgia, the question of which legal family Georgian law belongs to also emerged. This question was answered by Georgia's own legal history. Today, it can be said that Georgia is part of the Continental European legal family. Nevertheless, at the start of the reform process, there was some discussion about Georgia's relationship to common law. Some recall the history of private law, where, prior to parliamentary debates, serious disputes arose about which system should regulate entrepreneurial (corporate) relations. Alongside the law „On Entrepreneurs", drafted to European standards, there appeared a version of the Georgian Commercial Code resembling the U.S. Uniform Commercial Code. Parliament only considered the European model, which remained in effect for a long time (from October 28, 1994, to August 2, 2021) as the „Law on Entrepreneurs". It did not take much effort to reject the idea of a commercial code modeled after the American one. An American-style commercial code would have been incompatible with civil law, causing a rupture in the organism of private law and leading to confusion and conflict between civil and commercial law domains.

The issue is that many of the relationships regulated by the U.S. Commercial Code are traditionally governed by civil law in European legal systems – including in Georgia. The institution of sales contracts is one example. In European private law, civil law is clearly separated from entrepreneurial (corporate) and commercial law in terms of subject matter. It appears that in countries with positive (statutory) law, it is easier to achieve this separation through codification than it is in precedent-based legal systems.

What was the basis for such an ineffective transplant of foreign law? Much of it stems from political and cultural ties with developed market economy countries. Among these, Georgia's relationships with the U.S. and Germany have been particularly significant (Zoidze, 1999: 15).

A sign of mutual cooperation is the Georgian interest in the legal cultures of these countries. At that time, many young Georgians studied law and other disciplines in American or German universities. In turn, it was common to see American or European lawyers in Georgia. In the contest to export law to Georgia, European jurisprudence has prevailed, thanks in part to the historical spirit of pre-reform Georgian law (Zoidze, 1999: 15).

Since it was not possible to formally adopt American law at the legislative level, a more pragmatic route emerged: its introduction through legal practice, achieved by practicing lawyers. Here, the reception of law refers to the contractual level. This is complemented by the market economy sectors that primarily attracted American investment. In those cases, American law revealed its essential feature: it is law derived from practice (Zoidze, 1999: 15).

Georgian law remains positive law, but already at that time the growing role of practicing lawyers in the law-making process became evident, as previously noted (Zoidze, 1999: 15).

Thus, it can be said that Georgia has benefited from both the support of the United States and cooperation with EU states, including Germany. In the field of law, the influence of both legal traditions is evident when reviewing reformed legislation. This also applies to the substantive legal foundations of the Civil Code. Lawyers continue to engage in consultation and cooperation with representatives of both legal traditions – common law and Continental European law – to support legal and judicial reforms (Deppe, 2016: 40-41).

However, when discussing the role and significance of the Europeanization of Georgia's Civil Code, it should be considered that Europeanization inherently involves adherence to certain values. For such values to take root, a country must have a legal past, which ultimately plays a decisive role in its choice. On that basis, a country can determine whether it belongs to the Continental or Common Law family. Georgia, based on its history, has opted for the former (Jorbenadze, 2014: 68).

The central legal value in common law countries is judicial precedent. However, this should not be understood to mean that common law countries do not have statutes – they do. But these statutes do not usually embody the detailed application of norms. For a country to benefit from common law experience today, it must have a wealth of judicial precedents. Imagine the chaos if Georgia, upon gaining independence, had attempted to implement fundamental common law principles. A country without established judicial practice – and not even well-formed legislation – would have faced the need to create new precedents and legal directions with each case. This would have led to legal uncertainty and confusion in daily life (Jorbenadze, 2014: 73).

Despite its sophistication and external appeal – especially due to the dynamism and flexibility of the common law system – it is impossible to establish common law methods and traditions in Georgia as long as the legal profession is shaped by Continental European traditions. Georgia does not have lawyers or judges, in either the necessary number or qualification, trained in the common law methodology, capable of drafting contracts or judgments in ways that could set binding precedents or challenge existing statutes. Lawmakers must face this reality and offer codified law to those who interpret and apply the law (Chanturia, 2016: 14-15).

Thus, traditionally, from the perspective of its legal system, Georgia belonged to the Continental European legal family. This trend was characteristic not only of Georgia but also of all of Central and Eastern Europe, which was under the strong influence of Romano-Germanic law (Burduli, 2016: 10).

It was precisely this political-legal historical foundation that determined the course taken by the country's then-government toward the reception of European law. Due to the close ties between Georgia's political elite at the time and representatives of Germany's high political circles, the focus was placed specifically on the reception of German law. However, this was based not only on political or personal factors but also on legal and legal-cultural phenomena: the legal thinking style of Georgian jurists was closely aligned with that of the German tradition. Knowledge of the language, comprehensive familiarity with the German legal system, active involvement and participation of various German organizations in Georgia's legislative process, and the implementation of projects supporting legislative initiatives – all contributed to the fact that, ultimately, the newly independent country developed a legislative framework based on German law. This applied in full to Georgian private law (Burduli, 2016: 10-11).

Conclusions. This paper has presented the observations made in the 1990s regarding the influence of common law on Georgian law. Specifically, as emerged from the discussion, there was some initial discourse at the beginning of the reform about the compatibility of Georgian law with Anglo-American law. Although traces of common law are less evident in the general part of the Civil Code, some influence on certain legal institutions is still noticeable, since during their development, the commission also reviewed provisions from Anglo-American law. It should also be noted that even at that time, it was emphasized that a gradual convergence between Continental European and Anglo-American

legal systems was underway. The 21st century was seen as a period of such convergence, especially considering that even then, many key legal norms were already shared between the systems (Zoidze, 1999: 25).

Furthermore, the article incorporates opinions expressed nearly two decades after the adoption of Georgia's Civil Code, which reveal that despite the noticeable influence of Anglo-American law on Georgian legislation, Georgia's legal system unequivocally belongs to the Continental European legal family.

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