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LEGAL SYSTEM OF THE UNITED STATES OF AMERICA: LAW CRITERIA OF TYPOLOGIZATION

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Abstract. The article examines the legal system of the United States of America with the help of legal typologization criteria (which are the features of the institutional, functional and regulatory parts of the legal system) with the allocation of such cognitive constructs as «identification code of the legal system» and «indicator of the functioning and development of the legal system»; the author confirms its identification with the Anglo-American type (the legal system of the United States of America is a subtype of common law); reveals the state of its functioning, as well as trends and prospects for its solution. The tasks which made it possible to achieve the research objective were as follows: analysis of scientific sources, official documents, including sources of law; creation of an empirical basis for the application of such cognitive constructs as «identification code of the legal system» and «indicator of the functioning and development of the legal system»; identification of typical indicators, indicators of permissible deviations, and development prospects. These constructs made it possible to identify deformations and formulate ways to overcome them. In the course of the study, the author used sociological methodology, in particular, the method of document analysis. Thus, a significant number of official documents were analyzed: laws and other sources of law of the United States of America; scientific sources; and an empirical basis for the application of general theoretical and comparative legal methodology was created. The stability of typical indicators in the legal system of the United States of America is revealed. It is also established that the indicators of permissible deviations are also aimed at ensuring this stability, and this gives rise to the conclusion that the legal system of the United States of America may evolutionarily transition to a future new legal form.

Key words: legal system of the United States of America, general type of legal systems; typologization and identification of legal systems; law criteria of typologization, legal system identification code; indicator of functioning and development of the legal system.

Introduction. The transformation of modern legal systems of the world requires not only distinguishing the types of legal systems using legal criteria, and identifying national legal systems with them, but also finding out the status of their functioning and development, interaction with interstate legal systems, identifying deformations and finding ways to prevent or overcome them. These issues can be resolved with the help of such cognitive constructs as «legal system identification code» and «indicator of the functioning and development of the legal system», as well as by applying the appropriate scientific methodology.

The object of this study is the legal system of the United States of America, which is an American subtype of common law. It was formed, as is well known, under the influence of English law, but since the beginning of 1607, there has been a need to apply not only English law, but also to regulate the new relations that have developed in North American settlements. The Declaration of Independence in 1776 and the adoption of the Constitution of the United States in 1787 (which was ratified by all states by May 1790, although it entered into force on June 21, 1788) were the formal completion of the process of formation of the United States of America and the beginning of the national legal system.

Comparative legal scholarship has long been conducting research that helps to identify law criteria and characterize national legal systems that can be identified with the general type, as well as

those that allow characterizing the American common law subtype. However, the transformation of the global legal order requires revision of doctrinal approaches and development of new knowledge regarding typologization and identification of modern legal systems of the world.

The purpose of the article is to study the legal system of the United States of America with the help of such cognitive constructs as: «identification code of the legal system» and «indicator of functioning and development of the legal system»; to argue that it belongs to the common law based on legal criteria; and to identify the state of its functioning and development prospects.

Material and methods of research. The work uses, first of all, sociological methodology, in particular, the method of document analysis. This made it possible to form an empirical basis for the general theoretical and comparative legal analysis of the modern legal system of the United States of America. Thanks to the general theoretical cognitive construct «legal system» consisting of institutional, functional and regulatory parts, the author clarifies the peculiarities of the legal system of the United States of America and its structural parts which are used as law criteria for typologizing legal systems and identifying them with the corresponding type of legal systems of the world. Such law criteria made it possible to determine the place of the legal system of the United States of America among the modern legal systems of the world using the comparative legal method and typology.

Results and discussion. Given the features which are common to English law, the legal literature includes the following features of modern American law: the Constitution; two-tier nature of the legal system (Federation and States); high level of structure and systematic nature of the legal system; the possibility of different systems of legislation and common law (legal precedent) in different States; a significant number of consolidated acts, as well as codified acts; less formalized precedent than in English law; combination of case law with the rapid development of sectoral legislation; exercise of constitutional control functions by higher courts of general jurisdiction (Luts, 2003: 126–127).

Important principles of the legal system of the United States of America are the principles of: federalism; separation of powers into legislative, executive, judicial; legal protection of rights and freedoms, which are enshrined in the amendments included in an important document that, although not incorporated into the Constitution, is recognized as its organic part – the Bill of Rights of 1791 (contains 10 amendments). As of today, the Constitution of the United States of America has already been amended 27 times, which were adopted in the respective periods of the legal system development from 1798 to 1992.

The United States of America is a presidential republic with a federal system. According to the Constitution of the United States of America, all legislative powers belong to the Congress, which includes the Senate and the House of Representatives, and Section 8, Article of the Constitution defines the legislative and other powers of the Parliament. The chambers of Congress are also vested with certain powers (Constitution of the United States, 1789).

As can be seen from Section 1, Article II of the Constitution, exclusive power is vested in the President of the United States, who exercises the powers of both the head of government and the head of state. The President also has lawmaking powers, such as: in his messages to Congress, he forms specific legislative proposals and bills (within the framework of the legislative initiative); signs, approves the adopted laws (or returns them to Congress); adopts bylaws (Constitution of the United States, 1789). The functions of the Presidential Administration are performed by the Executive Office, which includes: White House Office, National Security Council, Office of Science and Technology, Office of Management and Budget, etc. (each president may change the number and functionality of the departments of this apparatus).

The President is also the head of the government – the Cabinet, which consists of ministers. It should be noted that the powers of the Cabinet are not defined in the Constitution. The Cabinet and central departments are the executive apparatus under the President of the United States and prepare recommendations on issues within their competence.

The federal executive apparatus is a rather large strategic center of state governance. It consists of scientific, coordinating and advisory institutions that carry out a huge amount of work on generalizing internal and external (world) development trends; develop strategic recommendations and legislative proposals in their areas of activity, etc. The United States government system includes a number of ministries: Defense, Commerce, Education, Energy, Justice, Interior, Finance, Transportation, Foreign Affairs, etc. In addition to the ministries, other departments, agencies, and government (public) corporations are established by law. The activities of these bodies are regulated by the Administrative Procedure Act (The Administrative Procedure Act, 1946).

Outside the structure of ministries, independent administrative agencies are created, such as: Nuclear Oversight Commission, United States Agency for International Development Cooperation; Environmental Protection Agency; National Labor Relations Authority; United States Information Agency and others (USA.gov. A-Z index of U.S. government departments and agencies). They are characterized by the powers to issue bylaws; law enforcement; and dispute resolution.

The executive branch is complemented by government (public) corporations, for example: US Postal Service, Federal Deposit Insurance Corporation. It is worth emphasizing that no single agency within the executive branch oversees government corporations. Instead, each corporation is overseen by the relevant congressional committee(s) with jurisdiction over its area of operation (Pritchett, 1938: 189–200).

The judicial system of the United States of America has a two-tiered nature: federal and state courts. According to Section 1, Article III of the Constitution, the judicial Power in the United States shall be vested in the Supreme Court of the United States and in such other Inferior Courts as the Congress may establish. And Section 2, Article III of the Constitution states that the judicial power shall extend to all cases at common law and in equity, and arising under the Constitution, the laws of the United States, and the treaties made in their behalf (Constitution of the United States, 1789).

The Supreme Court of the United States has the prerogative of jurisdiction over the cases of official representatives, ambassadors, and consuls to which the United States is a party. In all other cases, the Supreme Court is the appellate court of law and fact (according to the rules established by Congress). Crimes (except impeachment) are tried by jury (Constitution of the United States, 1789).

The federal judicial system has three main levels: district courts (trial courts), courts of appeals (which are the first level of appeal), and the United States Supreme Court, the final level of appeal in the federal system. In total, there are 94 district courts, 13 circuit courts, and the United States Supreme Court. There are also special courts, which include the Tax Court, customs, bankruptcy, intellectual property, etc.

It is worth emphasizing that the US Constitution obliges all states to maintain a «republican form» of government, although the three-branch structure is not mandatory (Constitution of the United States, 1789). Each state has its own legislative body that is authorized to pass laws. The formal name of such bodies varies from state to state: in twenty-five states it is called the Legislature; in nineteen states it is called the General Assembly; in Massachusetts and New Hampshire it is called the General Court; in North Dakota and Oregon it is called the Legislative Assembly. All states (except Nebraska) have a legislature consisting of two chambers: the upper chamber is always called the Senate, the lower chamber is usually called the House of Representatives, but in some states, it is called the Assembly or House of Delegates.

Since the Constitution of the United States of America in Section 8, Article I defines only the federal powers of the legislative body of the United States – the Congress (Constitution of the United States, 1789), then, according to Amendment 10 of the Bill of Rights, the powers not delegated to the United States by the Constitution nor prohibited to the states are reserved to the states or to the people (Bill of Rights, 1791). When delineating the powers of federal and state bodies, the sphere

of overlapping powers is identified, and such issues are resolved through constitutional prohibitions (Constitution of the United States, 1789).

The states have their own system of executive authorities, headed by governors, who have the same powers as the federal authorities, but to address local issues (although some functions are not duplicated in the states). The governor is the highest official in the state and is elected by the citizens of the state. Each state has local authorities (self-government) in accordance with the administrative-territorial division. The main types of political and administrative units are: counties, municipalities, and special administrative districts. Representative bodies are elected and/or appointed collegial bodies – councils (or committees) headed by mayors or chairmen. Legal regulation of their activities is carried out on the basis of state constitutions, acts of legislative and executive bodies, and even municipal codes (Constitution of the United States, 1789).

The state judicial system includes the Supreme Court (in some states – the Court of Appeals); courts of appeal, district courts, courts of limited jurisdiction (considering civil cases with small amounts of claims, cases of minor crimes, etc.

Within the limits of permissible deviations, it should be noted that Sections 8 and 10 of Article I of the Constitution of the United States of America contain provisions that are the criteria for a clear separation of powers between federal and state authorities (Constitution of the United States, 1789). In addition, it should be noted that the Constitution of the United States enshrines not only the principle of separation of powers, but also the principle of checks and balances. In particular, this includes the independence of the judiciary, whose highest courts are empowered to assess the constitutionality of the actions of the legislative and executive branches (both at the federal and state levels). This allows one branch of government to participate in the functioning of the other branches, such as the President's veto power over legislative decisions; the Senate's power to confirm candidates for positions in the executive branch; and the legislature's power to remove from public office (impeachment) representatives of the executive and judiciary.

The powers and structural organization of the above-mentioned state bodies and other entities are determined by laws (primarily constitutions), as well as the procedure for carrying out their respective legal activities, which are usually divided into lawmaking, law enforcement and law interpretation.

The legislative activity of the United States Congress is aimed at adopting laws.

The general procedure of legislative activity of the Congress and the chambers is regulated by the Constitution of the United States (Constitution of the United States, 1789), the Congressional Reorganization Act of 1946 and (Galloway, 1951: 41–68); the Congressional Reorganization Act of 1970 (Kravitz, 1990: 375–99) (these laws solved a wide range of procedural and institutional problems related to the activities of the US Congress), as well as customs, court precedents, and rules of the chambers. The power of the chambers to establish rules stems from Section 5, Article I of the United States Constitution, which states that each house may determine the procedural rules of its proceedings (Constitution of the United States, 1789). The Standing Rules of the Senate have been in effect since 1789 (currently, there are forty-five rules, the latest version was adopted on January 24, 2013) (Standing rules of the Senate, 2013), and the Standing Rules of the House of Representatives are adopted each time a new convocation is formed.

The legislative procedure of state legislatures is similar to that of Congress. In all states (except Nebraska), legislatures have a bicameral system. Once a bill is approved by both houses, it is sent to the Governor for signature and publication. Governors of all states (except North Carolina) have a veto power; in 39 states, governors can veto the entire bill or its individual articles (Constitution of the United States, 1789).

The activities of executive authorities are generally law enforcement activities, which result in decision-making in the form of law enforcement acts. However, they are also granted certain lawmaking powers, including the adoption of law enforcement regulations. The President of the United

States of America also has law-making powers to conclude international treaties (Constitution of the United States, 1789).

By-laws are created by governors or state executive authorities, local governments. However, the main activity of these bodies is law enforcement, and therefore the creation of acts of application of law. The judiciary also carries out law enforcement activities, but the Supreme Court of the United States, as already mentioned, also carries out lawmaking activities (in particular, creates precedents that are sources of common law). The Supreme Court also carries out law interpretation activities, since there are no special bodies of constitutional control (interpretation of the Constitution) in the United States of America; it also carries out law-making (control) activities regarding the compliance of laws adopted by the Congress and state legislatures, as well as acts of the executive branch with the Constitution of the United States (Supreme Court of the United States. Official website).

The state supreme courts are responsible for interpreting state constitutions and laws, as well as for constitutional review and administrative justice (Federal and State Courts: Structure and Interaction, 2023).

Within the limits of permissible deviations in the legal system of the United States of America, it is necessary to pay attention to the lack of a clear distinction between lawmaking, law enforcement and law interpretation activities, and some higher judicial bodies perform all these types of legal activities.

As I have already noted, the legal system of the United States of America, although based on English common law, has acquired a number of peculiarities in the course of development, including in terms of sources of law.

The legal literature suggests that the United States of America is characterized by two main sources of law: laws and court decisions containing common law rules. The ratio of priority of these two sources of law changes from time to time. In modern conditions, the role of laws is increasing, while the fundamental importance of the decisions of the Supreme Court of the United States is maintained. The position is also expressed regarding the division of sources of law into mandatory (normative) and non-mandatory (non-normative) (Glendon, Gordon, Osakwe, 1985). In turn, the hierarchy of mandatory sources is considered as follows: The Constitution of the United States of America; common law (defining principles that are recorded in court decisions based on law); statutory law; laws; international treaties of the United States of America; court procedural rules created by the Supreme Court of the United States; subordinate legislation (delegated legislation, subordinate legislation); court precedents; the law of justice, the law of reason; trade customs; private law agreements (contracts). Non-binding sources of law include: legal doctrine; laws of foreign countries; obiter dictum (a court's position that goes beyond the facts of the case); decisions of foreign courts; judicial practice (a set of decisions of courts of all levels that do not create precedents) (Glendon, Gordon, Osakwe, 1985).

According to the Constitution of the United States, the Constitution and the laws made or to be made by the authorities of the United States shall be the supreme Law of the Land, and the Courts in every State shall be bound by the same, whatever may be the Constitution or Laws of any State, to the Excellency of the same (Constitution of the United States, 1789).

Therefore, the fundamental source of the law of the United States of America is the Constitution of the United States of America of 1787, which consists of seven articles and 27 amendments (Constitution of the United States, 1789). It should be noted that the Constitution does not enshrine all the legal institutions that are inherent in the modern Basic Law, but these gaps are filled by court precedents, constitutional customs, acts of Congress and the President. The Constitution is supplemented by amendments, and the Supreme Court of the United States is called upon to ensure its prestige and authority, thanks to whose interpretation the Constitution is adapted to modern realities.

The statutory law of the United States is a set of federal and state laws and regulations. Each state has its own specific sources of law; however, no state law or regulation may contradict the United

States Constitution or state constitution. Eliminating the legal uncertainty of diversity is an important issue in the United States of America, which is being addressed through the adoption of unified acts.

The Supreme Court of the United States plays an important role in shaping the law. It is worth noting that court decisions in the United States, according to researchers of this problem, play a leading role, but, unlike in England, without formal adherence to precedent (Legeais, 2016).

Attention should also be paid to the peculiarities in states that were formed under the influence of Romano-Germanic law. For example, the state of Louisiana, which was formed under the influence of French and Spanish law, has a Civil Code adopted in 1808 in a bilingual version. It regulates most of the issues of private law in Louisiana, in particular: property, contractual, commercial spheres, most of the civil procedure and family law (Parise, 2014: 453); the territory of Puerto Rico is based on Spanish law, in particular the Spanish Civil Code (Código Civil, 1889).

Collective bargaining agreements and international treaties play an important role in the system of sources of law in the United States of America. According to Section 2, Article VI of the Constitution of the United States of America, treaties (along with the Constitution and laws) are the supreme laws and take precedence over state laws (Constitution of the United States, 1789).

The results of the activities of executive authorities and judicial bodies are law enforcement acts. At the same time, a number of executive bodies are authorized to create bylaws, i.e., they have lawmaking powers. In addition to law enforcement powers to hear cases and render judgments, the highest courts also have law-making powers (formulation of common law principles; creation of regulatory precedents) and law interpretation powers, which result in decisions of the Supreme Court of the United States on the interpretation of the Constitution, decisions of state supreme courts on the interpretation of state constitutions, etc.

Within the limits of permissible deviations, attention should be paid to the possibility of adjusting the Constitution of the United States, albeit under the rather complicated procedure provided for in Article V of the Constitution (Constitution of the United States, 1789).

Article VI of the Constitution of the United States, which determines the priority of the Constitution, laws and international treaties of the United States (federal law) over state laws, which must comply with federal law (Constitution of the United States, 1789), is important for ensuring a balance between federal and state sources of law. The balance in the legal system of the United States of America is also ensured by judicial precedents established by the Supreme Court of the United States and state supreme courts, which fill in legal gaps or adapt existing sources of law to modern realities. At the same time, they promote legal unification through judicial practice and provide standardized legal regulation on similar issues (both at the federal and state levels). In addition, the decisions of the Supreme Court of the United States and state supreme courts contain interpretive provisions that are also aimed at standardizing legal regulation, especially in terms of the approximation of state common law.

Important for the characterization of this subgroup of Anglo-American legal systems is the definition of the principles of interaction between national and international law. First of all, it is worth emphasizing that the United States of America belongs to the states that automatically integrate international treaties into the national legal system (Bolintineanu, 1974).

Case law (decisions of the Supreme Court of the United States) is formed as follows: it records the provision that the Constitution has supremacy over treaties concluded by the United States of America. International treaties have equal legal force with the laws of the United States of America, and in cases of conflicts between treaties and laws, the courts are guided by the principle «the last source of law in time is a reflection of the sovereign will» and the source of law that was adopted later has priority. Whether a treaty or a law, the effect of international treaties in domestic spheres can be annulled by courts on the principle of «subsequent law annuls the previous one» (Mulligan, 2023). However, courts proceed from the presumption that the legislature did not intend to cause the state to

be liable under international law for violating international treaties and try to interpret national law in such a way as to ensure its compatibility with the treaty concluded earlier. At the same time, the provision of Section 2, Article VI of the Constitution of the United States of America, according to which an international treaty is classified as a higher source of law (Constitution of the United States, 1789), indicates their priority over state laws (they are executed on a par with federal laws).

The second source of international law of the United States of America is international custom. Although its influence on domestic law is more difficult to discern, more than a century ago the United States Supreme Court noted that customary international law is part of U.S. law, despite domestic laws that conflict with customary international law (Dubinsky, 2010).

Conclusions. The study of the legal system of the United States of America provides grounds for a number of conclusions. First of all, it should be noted that according to identification indicators it belongs to a general type, namely: it has subjects authorized to create law (among which the highest judicial bodies are also endowed with norm-setting powers); a fairly flexible relationship between law-making, law-enforcement and law-interpreting activities; significant attention is paid to the norms of procedural law; the structure of the legal system consists of three components: statutory law, common law and the law of equity; the system of sources of law includes: regulatory legal acts, regulatory legal agreements (collective and international), judicial regulatory legal precedents; a large number of consolidated acts are used; the system of sources of law is mostly formed under the influence of international legal standards.

It is worth emphasizing that the indicator of the functioning and development of the legal system made it possible to establish that the studied legal system has typical indicators, such as: the principles, goals, tasks of the functioning of the systems are fixed in the Constitution; the institutional part is structured; the bodies of the legislative, executive, judicial and other authorities are endowed with the appropriate law-making, law-enforcement, and legal interpretation powers to carry out the relevant types of legal activities, the procedure for which and the requirements for legal acts (results of this activity) are defined in the sources of law and regulatory acts.

Regarding the indicators of permissible deviations, it is advisable to note that they are usually aimed at strengthening typical indicators, achieving the goal of the legal system: means of legal unification are distinguished, overcoming deformations (legal analogy, unification of judicial practice, corrective activities, legal interpretation acts, means of overcoming conflicts, etc.). There is a clear demarcation of powers between the competence of federal bodies and subjects of the federation. The US Constitution enshrines the principles of separation of powers, as well as the principles of checks and balances; the Supreme Court of the United States of America can decide on controversial issues between states; higher courts are empowered to assess the constitutionality of the actions of the legislative and executive branches. If there is a vague distinction between law-making, law-enforcement, and law-interpreting activities (since some higher judicial bodies perform all types of activities), this is compensated for by clear rules for the implementation of any type of legal activity, enshrining them in official documents and strictly prohibiting their violation. There is use of corrective law-making activities, in particular, regarding amendments to the Constitution. The distribution of issues regulated by federal and state laws is regulated, and in the event of conflicts, the supremacy of federal law is recognized.

It is flawed that the system of sources of law is formed on the principle of balancing and interaction, eliminating deformations: judicial precedents; creation of unified model laws. In the United States of America, autonomous implementation of international treaties is in effect. An important role in ensuring the validity of US treaties is played by courts that shape practice, namely: The Constitution has supremacy over US treaties, and they have the same legal force as the law. There has been no record of inconsistency of sources of law with real social conditions; the use of legal means that do not allow achieving the goal of the legal system; violation of structural organization; replace-

ment of legal means with other social means, as well as no indicators or trends in the development of a progressive state.

Thus, it is possible to state the stability and balance of the legal system of the United States of America due to the action of typical indicators and indicators of permissible deviations.

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