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THE MAIN STAGES OF ROMAN LAW ASSIMILATION INTO EUROPEAN JURISPRUDENCE

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Abstract

The subject of the article is periodization of the stages of Roman law assimilation into European jurisprudence.

The purpose of the article is to allocate independent stages of reception of the Roman law by legal science of the European countries.

The methodological basis of research is analysis and interpretation of legal literature devoted to genesis of European jurisprudence. Taking into account that methodology as a specific branch of scientific activity appeared relatively recently, this work is mainly devoted to historical and legal issues of acceptance and subsequent reception of Roman law by European legal science, which in

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turn means focusing on more easily protected private law, which has a much longer history of formation and development compared to other legal systems.

Results, scope of application. The paper attempts to systematize the main stages of penetration of the foundations of Roman law in the main legal concepts of the European States, occurring from the moment of their origin at the end of the 12th century up to the beginning of their unification in the national codified acts in the 17th century. There was a predominance of teaching of Roman law and, in particular, the Code of civil law (Corpus iuris civilis), - Digests of Justinian, - which became the main text for legal research. The Roman law, however, did not have a complete monopoly, and therefore the paper examines the fundamental conceptual approaches of Canon law and moral theology. Their own systems of legal norms were also developed in Canon law on a completely different basis in compare with Roman law. Those systems in a critical dialogue with the approaches inherent in Roman law, actually paved the way to natural law, which served as the basis for the creation of modern normative legal acts, including codified ones. The work takes into account the considerable scale of Europe, which influenced the historical development of jurisprudence in its various parts, in connection with which the European legal science existed for centuries until the emergence of national codified legal acts objectively predetermined the need to focus mainly on their own national legal systems. Special attention is paid to the period of time between the emergence of the first universities in continental Europe and the development of national codified legal acts in the XVIII century.

Conclusions. It is obvious that the glossators may have applied Roman law, although it has very little evidence in the historical material. In turn the commentators definitely used Justinian's Digests. The criticism of legal humanists and natural lawyers meant that Roman law was ultimately applied only when its reasonable content continued to be satisfactory. The transition to national codifications, accompanied by the abolition of Roman law as a source of law, actually became a real paradigm shift in European jurisprudence. However, this does not mean that the common heritage of Roman law has become forgotten.

Keywords

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