

RELATIONSHIP OF EUROPEAN *IUS COMMUNE* AND NATIONAL LEGAL SYSTEMS IN FORESEEABLE FUTURE

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I would like to set up a kind of framework. Firstly we have to go back to the history, to see what *ius commune* is and how did it develop through the past until these days. In the second part I would like to show you on the example of my country the recent situation and relationship between the legal system of Slovak Republic and the *ius commune* as we know it today. And finally on ground stones I am going to think about the possible and at the same time inevitable development of this relationship in the foreseeable future.

2. „*Ius commune*“ in History

When talking about *Ius Commune* we can start with the Ancient Roman Empire. In regards to the process of establishing a common culture and legal system in the Roman empire we can speak about combining the cultural aspects of all nations and peoples of the Roman empire conquered by the Roman legies.

Within the roman legal system itself we can differentiate between *ius civile* and *ius gentium*, which was the part of Roman law which influenced the most of the population of the Roman empire and may be it is the the part

which really could be defined as *ius commune* at that times. In the theory of law *ius commune* is now often understood as the communitarian law of European Union.

So than might the question arise if the international law can be also described as *ius commune* or is it the European law which is the closest „successor“ of *ius commune*. But for the purpose of European legal history, and for the purpose of this paper let us just presume that the *ius commune* we are talking about is or are the legal systems of Europe.

The Roman law at that time was very much influenced by Canon law. Usually the Canon law and Roman law were thought at universities. The Canon law was used for matters of the Church and the Roman law for the use of non ecclesiastical matters.

From these different angels of view we may summarize that *ius commune* is the law which is the unified or commonly used law in one country, mostly formed and thought at universities, the written law. On the other hand in every place there has been of course also the particular law, customs or statutes, so called the *ius proprio - customary law*.

3. „*Ius commune*“ in Presence

Each state has made different changes in his own legal system in order to keep it closer to the European *ius commune*. I would like to develop this idea on the example of relationship between the legal system of my country and European norms.

After looking at the constitution of Slovak Republic we can close up with some remarks. The constitution recognizes the international treaties as the main source of the international law and assures their direct application. With the article 7(2) the main premise is set in integrating the European law into the legal system of Slovak Republic. The constitution inclines to the monist theory but does not declare this principle in the text itself. Acknowledging the importance to the acts of European Union in the

Constitution by giving them priority before national legal norms in the Article 7(2) which is a clear step towards creating common European *Ius commune*.

4. Foreseeable future of the *Ius commune*

On my opinion national law is coming closer to *Ius commune* by integrating international and European rules into national legal systems. As Kelsen is saying the state is the model for the future development of the international legal order which means only that the international legal order tends to become centralized.

Throughout the past we have seen how law in different times and places has been united and later on became integrated to the national legal system. Nowadays we can see the integration of international treaties and European laws, or directives into different national systems. On my opinion the development of an European system of law – an European *Ius commune* cannot be stopped any more. Regarding this obvious signals of the past and present development we can say that there is not only a strong tradition of one unified legal system. But it is may be predictable at this time that the process will not stop at this point but will be developed further.

If you take a closer look at specially the directives of European Union¹, you will see that this process already started. Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.² Whether there occurs a conflict there is also the European Court of Justice that decides how this or that concrete case has to be solved.

In my conclusion I will use and support the idea of Peter Fitzpatrick in *New Europe and Old Stories*. He accepts the idea that legal pluralism infuses the EU legal order, and that it (legal pluralism) cannot alter the modernist orientation of EU law within which pluralism is a way leading to unification³

¹ Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) *Official Journal L 294*, 10/11/2001 P. 0001 - 0021

² [The Treaty Establishing a Constitution for Europe \(CIG 87/2/04\)](#)

³ Peter Fitzpatrick and James Henry Bergeron Aldershot, Brookfield USA, Singapore, Sydney:

hence to the only one legal system, the European Ius commune.