
On European legal cultures

Sobre a cultura jurídica europeia

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Abstract: The paper consists of three main parts. In the beginning the author deals with the notion of legal culture and its categories. Further, the European legal families are analysed. The author stresses the links between the European and Latin-American legal systems. The Hungarian legal culture is also taken into special consideration. At the end of the paper the future of the European legal cultures are examined underlining that their convergence is the main trend.

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Keywords: Legal culture. European legal families. Convergence.

Resumo: Este trabalho é composto de três partes. Na primeira, o autor discute a noção de cultura jurídica e suas categorias. Em seguida, os sistemas jurídicos europeus são analisados. O autor sublinha as ligações entre os sistemas jurídicos europeus e latino-americanos. A cultura jurídica húngara é também analisada, com especial atenção. Por fim, o futuro da cultura jurídica europeia é examinado, sublinhando-se o fato de que a convergência representa sua principal tendência.

Palavras-chave: Cultura jurídica. Sistemas jurídicos europeus. Convergência.

1. Introduction

It is well known that from the middle ages to the end of the 18th century the European continent shared a unified law and a single jurisprudence.² They were based upon the *Corpus Iuris Civilis* and the *Corpus Christ Canonici* which were later supplemented by several important legal institutions of territorial rights and customs. These elements constituted the content of the so called *ius commune*.

However, by the 19th century the law had equated with the law of the singular nation States. This is to be taken as the origin of our problem at issue. Although the legislative efforts of the European Community outlined a unified European law in the past decades.

2 Rousseau was right in writing at the time that: “Il n’y a plus aujourd’hui de Français, de Allemands, d’Espagnols, d’Anglais meme, quoi qu’on en dise; il n’e que des Européens” (ROUSSEAU, 1964).

2. The motion of legal culture and its categories

The relationship of culture and law is characterized by permanent interaction and interdependence.³ The nature of the relationship could be summed up in two tenets: on the one hand, law is an element of the culture of a society, and on the other hand, there can be no law or legal system not penetrated by the culture of the society.

Legal culture, just like political culture, is a result of historical development. The political culture can influence or even mould the characteristics of the legal culture.⁴ The current state of legal culture is always between tradition and innovation. The development of a legal culture is a long process. It is not simply organic growth – it sets the task of preserving the given culture. Having a legal culture is neither the insistence upon the given nor change for the sake of change only.⁵

The composing elements of legal culture are the following: a) written law and “living” law; b) institutional infrastructure (judicial system, legal profession); c) the models of legally relevant behavior (e.g. legal actions); and d) legal consciousness.⁶

In some respects, legal culture can be divided into two parts: “external” (lay) and “internal” (professional) legal culture.⁷

Some even find it apt to talk about *legal* “subcultures”. The possible use of the term could be exemplified by the fact that those unwilling to serve in the armed forces are normally

3 See e.g. MAYER, 1903, p. 24 and FEZER, 1986, p. 22.

4 TARELLO, 1981, pp. 157-166.

5 SCHÄFFER, 1996, n. 1.

6 VISEGRÁDY, 2000, p. 2.

7 FRIEDMAN, 1977, p. 76.

ound guilty in Northern and South Norway, while acquitted in Western and Central Norway.⁸

On a global scale, we could distinguish between *regulative* and *orientative* legal cultures.⁹

In regulative legal cultures (typically characteristic of the societies of the “euro-atlantic” culture) law is accepted as a rule actually and normatively guiding behavior,¹⁰ but not always to the same extent. In the common law systems, for instance, courts have much greater prestige than in other countries. Even the continental legal cultures are far from being homogeneous. Let me indicate this with only two examples: as opposed to the German legal culture (traditionally setting high value on law and having sophisticated civil procedures) the Dutch legal culture is often characterized with the term *beleid*. It means that subjects follow the advantageous laws and evade (circumvent) disadvantageous ones at the same time. This might be illustrated by the fact that until the enactment of the Euthanasia Act of 1993 (exceptionally permitting aid to suicide), the Criminal Code had prohibited but the medical institutions practised active euthanasia. Besides, the Dutch seek to solve their conflicts without turning to courts.

The legal cultures of the region of Central Eastern Europe could be characterized by a deeply (historically) rooted attitude manifested in the faith in legal regulation and excessive expectations concerning legal regulations. This is accompanied (and has been accompanied) by an inclination to perceive social problems in a certain legal framework. The efficacy of law was also affected by the fact

8 PODGÓRECZKY, 1967, pp. 40-43.

9 KULCSÁR, 1997, pp. 137-147.

10 Its main characteristics are individualism and rationalism. See HOECKE, 1998, pp. 503-505.

that (besides overcomplicated legal regulations) norms of behavior generated by the actual practice gained primary significance.

3. European legal families

The national legal systems integrated by the European Union belong to different legal families¹¹ within the regulative legal culture.

3.1. The common law systems

Common law systems can be found on five continents and have three representatives in Europe: English law (practised in England and Wales); Irish law (which is a kind of “modified” English law) and Scottish law (which has a “mixed” character).¹²

As the English law provides the model for the common law systems, we concentrate upon its features. The characteristic features of the English law are the following:

- a) The English law *resisted* the reception of Roman law in the 15th and 16th century (unlike continental legal systems) following its own way of development;
- b) It must be treated as another essential feature that the English law is *not codified*: most of its rules are not incorporated in statutes;
- c) The English law is *judge-made* law;

11 DAVID, 1977, DE CRUZ, 1995 and ZWEIGERT; KÖTZ, 1996. The way I outline the legal families of Europe here combines the conceptual devices developed by Zweigert/Kötz and R. David. Although Zweigert and Kötz heavily criticized David's analysis, I find it apt to link together the two categorizations.

12 VISEGRÁDY, 1999. To the Irish law, see DOOLAN, 1986. To the Scottish legal culture, see WATSON, 1974, *passim*.

- d) It follows from the previously mentioned feature that the rules of the English law are *less abstract and generalized* than the rules of continental legal systems as they always refer back to the decision in a particular case;
- e) The English law is an *open system*. It is based upon a method that allows for answering all sorts of legal questions, but does not contain material legal regulations that are to be applied without respect to the circumstances;
- f) And last but not least, as opposed to the Romanistic-German legal systems, the English law has a *historical* character. Its development was never interrupted, it always kept its unity. So we cannot talk about old and new English law; every legal regulation, no matter how old it might be, belongs to the present legal system unless it was repelled by a statute or by custom. Moreover, the older the legal regulation, the higher the prestige it has.

3.2. Romanistic-german (continental) legal systems

The Romanistic-German legal system formed the first legal family in the world. Its history dates back to the distant past. It dates from the law of the ancient Rome but its long development resulted in not only the modification of most of its material and procedural norms: its underlying conception of law and legal norm has also been significantly altered since the time of Augustus and Justinian. The legal systems that belong to this category are descendants of the Roman law but they carried on its development and brought its institutions

to perfection. They have never been mere copies of Roman law as many of their elements stem from other sources.

In the continental Europe every contemporary legal system belong to this category. It does not mean that Romanistic-German legal systems are not to be found on other continents. Reaching well beyond the former boundaries of the Roman Empire, it conquered every Latin American country, most of Africa, the countries of the Middle East, Japan and Indonesia. This expansion could be explained partly by the influence of colonization and partly by the advantages associated with the reception of the legal technique of codification generally applied in the Romanistic legal systems in the 19th century.

The characteristic features of the Romanistic-German legal systems could be summed up as follows:

- a) The pillars of these legal systems are the *written sources of law* (statutes, decrees, ordinances). Statutes are primary to other sources of law;
- b) Their law is relatively abstract which means that legal norms are not created in association with deciding particular cases, with the intention of their application in further cases, like in Anglo-Saxon legal systems. Norms determine certain patterns of behavior without respect to the concrete circumstances of particular cases;
- c) Legal norms are characterized by a kind of *optimal generality*: they are not too general (as too general norms would throw difficulties in the way of the application of law), but general enough to be applied to certain type-situations;
- d) The spheres of the creation and the application of

law are strictly separated unlike in Common Law systems;

- e) In these legal systems the primary task of lawyers is the interpretation of legal norms. Every possible specification that was left out of legal norm, automatically opens the way to interpretation. Thus, in Romanistic-German legal systems, the law consists of not only the legal norms enacted by the legislator but the “secondary legal norms” as well developed by the legal practice;
- f) The material of law forms an *independent, closed system* in which – at least in theory – all sorts of questions could or should be answered by way of “interpreting” existing legal norms.

The Romanistic-German legal systems could be divided into three legal families.

European countries that belong to the *Romanistic legal family* are:

- 1) France (as the “cradle” of the legal family);
- 2) Belgium, Luxembourg, the Netherlands (that came to touch with French law as a result of French military expansion);
- 3) Italy, Spain, Portugal (that were also heavily influenced by the German and the Swiss codes which makes them representatives of an intermediary type);
- 4) Some Countries of the Middle East and former French colonies in Asia and Africa;
- 5) The Countries of Central and South America;¹³

13 MERRYMAN, 1985.

6) Louisiana in USA and Quebec in Canada.

The characteristic features of the Romanistic legal family could be summed up as follows:

A. The code of central significance is the *Code Civil* (1804) in the legal family. This code has a clear-cut structure, free of any feudal elements, any “compromises”. It leaves almost no room for judicial discretion, its formulations are concise and simple. It is often called the “most *bourgeois*” civil code that laid the foundations for European codification.

The Code Civil is in force in Belgium, in four Italian regions, two Swiss cantons and with some modifications in Baden. Replicas of the Code Napoleon were enacted in the Netherlands (1838), in Sicily (1812), in Parma (1820), in the States of Sardinia (1837) and in Modena (1842). As an adapted translation of the original, it was instituted in Greece (1841), in the unified Italy (1865) and in Romania (1865). And finally, although not as the exclusive source but as primary inspiration, it influenced the Portuguese (1867) and the Spanish (1889) civil law codification, just like Louisiana and Quebec in North America.

However, the success of the Code Civil peaked in South America. It was took over in its original language in Dominica (1825), and later in translation in Bolivia (1831). The creative adaptation of European models (as mediated by French patterns) was first achieved in Chile (1825) that encouraged some countries to follow the lead (Ecuador 1861, Columbia 1873) and others to create their national code based on the Code (Uruguay 1867, Argentina 1869).

In Asia, the Code Civil made an impact on almost the same scale but in a far less homogenous way. Its principles are applied in Japan, and all four French codes were adapted in Turkey. In Egypt, the first codes (1867, 1883) were replicas of the Code Napoleon, the present code (1948) is

a developed version based on it (which inspires Syria for adapted reception). The civil codes of Lebanon (1934) and Venezuela (1942) are also of French origin, although both are to be taken as significantly different to it.¹⁴

A.1. The Code Civil regulates the relationship of the statute and the judge in a rather radical way. Judges are not allowed to interpret the statute “arbitrarily”, in matters of legal interpretation they have to turn to the authority of *referé legislative* (established in 1970).

A.2. The Code Civil is the code of the “owner”. It was based upon the idea of a citizen who makes rational decisions, who is aware of the relevant information and the norms of law. The Code strives to guarantee the freedom of property and contract as much as possible.

A.3. The Code finds a middle way between abstract principles and concrete (casuistic) norms. It determined the paradigmatic style for civil law codifications as well as codes on other fields of law for the future.

B. The Romanistic legal family (unlike the Germanic and the common law systems) is characterized by the prevalence of legislature. The influence of Roman law-quite paradoxically because of the early reception of Roman law – is much weaker.

The second legal family of the Romanistic-German systems is the *Germanic legal family*, its “members” are the following countries:

- 1) Germany;
- 2) Austria;
- 3) Switzerland;
- 4) The countries of Central Eastern Europe (especially the Czech Republic and Hungary).

¹⁴ VARGA, 1979, pp. 117-118.

As characteristics of this legal family, the following features are to be pointed out.

A. With respect to the development of the Germanic legal family, it proved to be a significant factor that, compared to other legal systems, *the influence of the Roman law* asserted itself rather late (only in the 15th century), although when came across *it was very strong*.

B. The code of central significance in the legal family is the *Bürgerliches Gezetzbuch* (1900) which is a conservative code (unlike the Code Civil).

The BGB was used in the recodification of the Greek civil law (1940) and in the codification of contracts in Poland (1933). It provided the basis for the Brazilian (1916), the Mexican (1928) and the Peruvian (1936) *Codigo Civil* as well as the codification of civil law in Japan (1898), Siam (1925), China (1929) and Thailand (1962). It also inspired the Italian *Codice Civil* (1942) which is quite remarkable as the *Codice Civile* of 1865 was formulated in French spirit.¹⁵

B.1. The law of the BGB is the law of lawyers, it is characterized by a style that strives for accuracy, subtlety and abstraction. Its addressees are not citizens but primarily lawyers (of course, in the sociological sense of the world). Its institutional constructions and terms are artificial, its language is technical (only professionals can understand its true meanings). As its primary focus is not conciseness but accuracy, the code is often very complicated.

B.2. The norms of the code are ordered in a specific way that more or less follows the structure of the *Institutions* of Justinian (personal and family law, the objects, types of property, the ways of acquisition of property etc.).

Many think that the Austrian Civil Code (ABGB, 1811) finds a kind of middle way between the lawyers' of law of

15 VARGA, 1979, pp. 120-121.

the BGB and the application-oriented law of the Code Civil.

The famous Swiss Civil Code (ZGB, 1912) has distinguished position in the Germanic legal family. The ZGB is “deliberately vague” at certain points to allow the judge to search for the solution that is the most appropriate in the given case. The code is characterized by the extensive use of general clauses that are to be interpreted by the judges in the particular cases.

At last, the *Nordic legal family* consists of the following countries:

- 1) Denmark;
- 2) Finland;
- 3) Iceland;
- 4) Norway;
- 5) Sweden.

The legal family can be characterized by the following features.¹⁶

A. This legal family is often regarded as a kind of intermediate version between the common law and the Romanistic-German legal systems.

It resembles the common law systems as it was hardly influenced by the Roman law and the wave of codifications in the age of the Enlightenment (*e.g.* the comprehensive codification of the civil law has not taken place yet). On the other hand, the similarity to the Romanistic-German systems can also be pointed out: judges do not have a central role in system and there is no normative precedent-doctrine.

The Nordic countries had lived in relative isolation for a long period. Their legal institutions were influenced by the French law in the 19th century, the German law at the

16 KONDOROSI; VISEGRÁDY, 2011, pp. 127-137.

beginning of the 20th century and the common law (especially the law of the USA) mainly after World War II. However, despite all these influences, they kept their original character.

B. The co-operation of the Scandinavian countries is manifested in their laws as they make efforts to integrate the content of their legal systems. It could be exemplified by the Scandinavian Sales of Goods Act that was passed in every Nordic country (Sweden 1905, Denmark 1906, Norway 1907, Iceland 1922). The act is influenced by both the British Sales of Goods Act (1893) and the German BGB. The co-operation is facilitated by their common legal and linguistic traditions.

C. Last but not least, it should be mentioned that judges of higher courts and jurists of high authority play an important role in Scandinavian legislatures.

But let us take a look at the discrepancies with respect to the political cultures of the EU member countries as well. In my opinion, political culture points to the subjective side of politics – directly or indirectly – to the political consciousness of citizens. If we talk about the political culture of a society, we refer to the political system internalized in the knowledge, emotions and evaluations of the population. Just like the political system moulds the political culture, the latter – as an essential element of the environment – “conditions” the functioning of the political system including the efficacy of the legal system.

4. The Hungarian legal culture

4.1. The main historical characteristics of Hungarian legal culture

The legal cultures of the societies of the Eastern and Central European region were also mainly of regulative character, although during their history some features of orientative legal culture also became mixed into them. This may be explained by two reasons.

On the one hand, the legal system of this region had strong regulative features in some respects, for example, with regard to the inclination to litigate, especially in Hungary. In other respects, however, the willingness to evade the law did not simply exist for centuries and exists even today but it also became an accepted form of behaviour in legal culture.

Although the idea of the rule of law had an impact on royal law-making – as proven by Hungarian legal history –, until the beginning of the 16th century royal law-making practically created legal rules lasting only for the length of the reign of the king.

Until the 16th century neither court judgments nor charters referred to statutes, but to the ancient custom of the country (*antique regni consuetudo*). This circumstance diverted Hungarian legal development – together with legal culture – from Western legal systems to some extent, later re-raising the question of the need for adaptation.¹⁷

In Hungarian legal culture, the social standing of the court and, together with it, of the judge has remained ambivalent. It was only in 1869 that our judicial organization was separated from public administration and, at the same

17 KULCSÁR, 1997.

time, the independence of the judiciary as a principle was laid down by statute.

On the one hand, the role of the judge has never become so significant and prestigious in Hungary as it has, for example, in Anglo-Saxon systems of law. On the other hand, the inclination to litigate manifested in Hungarian legal culture indicates the importance of the court as the institution participating in the resolution of legal disputes.

In the “socialist” era, unrestricted legislation became a dominant feature, the number of bureaucratic type legal instruments of symbolic and technical nature started to increase quickly, and as a result of the above, normativity was pushed to the background. All this led to a significant decrease in the social prestige of law and the legal profession, which was further damaged by artificially generated political show trials serving political purposes.

4.2. Hungarian legal culture after the democratic political transformation

4.2.1. Written and living law

Looking at the historical past we must consider the question whether the changes within institutional and political cultures are a result of continuity or discontinuity. In Hungary the following spheres may be differentiated:

The political institutions: *discontinuity*, a revolutionary new system of government.

The legal system: *continuity*.¹⁸

Within this field, special attention must be paid to the famous decision of the Constitutional Court (1992),

18 PACZOLAY, 1993, pp. 559-574.

which amongst other things laid down clear statements in the sphere of what becomes Rule of Law and the legal importance of a change of regime:

The classification of Hungary under the Rule of Law is both a clarification and a program at the same time. The Rule of Law is established when a Constitution truly and unconditionally is put into practice. A legal change of regime is only possible if made compatible with the country's Constitution and in the same way, in the field of legislation, the whole legal system has to be in concordance. Not only the provisions of law but also the operation of government organizations have to be in strict harmony with the constitution and then the conceptual culture and value scale of the Constitution also has to affect the entire society. This is the reign of law; this is how a constitution is materialised. The achievement of the Rule of Law is a process. The change of regime took place on a legal basis and the principle of legality constituted the basis for the norms of the legal system to become effective unconditionally. The Constitution which induced revolutionary changes in the field of politics, and the fundamental provisions of law respecting the principles of the old legal system, were impeccable in form and this is the source of their strength. The former legal system also remained in effect. Because of its effectiveness, there is no difference between the law before or after the Constitution. The legitimisation of the different systems over the past 50 years in this sense is superfluous, and regarding the constitutionality of provisions of law, it is an un-interpretable category. Whatever their origin articles of law have to be in accordance with the new Constitution. There is no dichotomy in constitutional investigation – there are not two different yard sticks to measure them by. The date of application of an article of law is only significant when earlier articles become unconstitutional when a new Constitution came into effect.

The decision of the Constitutional Court also refers to the importance of changes in ways of thinking and attitudes within the legal (and therefore political) culture.

This democratic political transformation, having taken place by way of a revolution to the rule of law and on

the ground of legality and continuity, required masses of legislation. The emphasis in norm-making became shifted towards the apex of the hierarchy of sources of law, this is how more than one and a half thousand effective Acts of Parliament were created (the legal provisions in force at present comprise almost six thousand legal instruments).¹⁹

Since the beginning of the 1990s the number of Acts of Parliament has been increasing continuously. Three fourths of the Acts have been passed since 1990; consequently, the most important level of the legal system became exchanged after the democratic transition. While, for example, Parliament passed 104 and 145 acts in 1990 and 2000 respectively, the number of acts passed by Parliament between May 2010 and May 2011 reached 200, including our new Fundamental Law replacing the Constitution of 1989. A high level of activity can be observed in the case of delegated legislation (legislation by decree) as well. The judges of the Constitutional Court exercise permanent control over legislation.

As far as “living law” is concerned, its most important scene is judge-made law. Courts do not merely “carry out” the orders of legal norms, but also interpret,²⁰ apply and thereby necessarily develop all branches of law. Accordingly, *praetor ius facit inter partes*. Therefore, the permanent and uniform practice of the courts as well as the precedent-setting law uniformity decisions, decisions in individual cases and some opinions of the Supreme Court developing this uniform practice may be considered norms in the way of sources of law. Just for the sake of example: 46 criminal, 37 administrative and 24 civil precedents were born between 2008 and 2010.²¹

19 FLECK, 2010, p. 55.

20 ZIRK-SADOWSKI, 2011. ungary

21 VISEGRÁDY, *Judge-Made Law in Hungary* (under publication in Poland).

4.2.2. The legal profession

Before the democratic transition the Hungarian legal profession had been characterised by two traits basically. On the one hand, their prestige had decreased and on the other hand, in spite of the four decades of “socialist” – and under its cover: Eastern – influence, they had preserved continuity of traditional Hungarian legal thinking to a significant degree. This latter characteristic proved to be of decisive importance during our democratic transformation.²² After the first elections, Parliament was to a great extent filled with lawyers, independent intellectuals and philosophers.

The attractive force of the legal career increased suddenly, corresponding to our development into a democratic State governed by the rule of law. Instead of the approximately 4.000 people pursuing a traditional career in law at the time of the democratic political transformation, today in these fields there work 15.000 lawyers, more specifically: 2.800 judges, 1.729 prosecutors, approximately 10.000 attorneys and 313 notaries. Instead of the earlier four law faculties, training takes place at nine law faculties. At the beginning of the 1990s there were 3.000 law students; today there are more than 18.000. On graduation most of them choose to become attorneys.

4.2.3. Litigation

The inclination to litigate, which had always characterised Hungarian legal culture throughout its history, as a matter of course, increased even further in the conditions of market economy, and courts had difficulty in

²² KULCSÁR, 1997, p. 135.

coping with the burden of the increasing numbers of cases. While, for example, in 1998 the number of cases filed with local and county courts amounted to 402.884, in 2010 this number increased to 456.188. The number of resolved cases was 410.810 and 453.325 in the respective periods.

Hungary is closer to the countries of short lawsuits, but on average all types of lawsuits last somewhat longer in Hungary than in Germany (6 months) or in France (4 months). Although Hungary can boast – in proportion to the population – the second largest judiciary (2.800 judges) after Germany, first-instance and second-instance proceedings last one year on average, and in most overloaded courts the length of proceedings may reach even two years (*e.g.* Pest County).²³

4.2.4. Legal consciousness

Changes in the legal consciousness of the Hungarian population following the democratic political transformation are excellently demonstrated by the main results of the analysis conducted in 1997-98 on a sample of 219 persons.²⁴

Out of the branches of law, criminal law proved to be known the best and administrative law and procedural law were known the least.

90% of those questioned knew that the court did not accept it as a defence from the litigant or the accused that they had not been aware of the legal rules based on which the court wants to condemn them. Compared with the survey of 1965, there was a 15% increase in the number of those who gave the right answer mentioned above.

²³ POKOL, 2003, pp. 46-49.

²⁴ KORMÁNY, 1999.

A fortunate consequence of Hungary being a democratic State governed by the rule of law is that 30% more people think that it is just to enforce this fundamental principle. In other words, there has been a change in the quality structure of legal consciousness.

87% of the population involved in the analysis knew that in Hungary acts are passed by Parliament, 10% did not answer the question and 3% gave wrong answers. At the time of the survey of 1965, the percentage of people that chose Parliament was only 45%! The reason for the remarkable difference also lies in the democratic transition, since the weight and power of Parliament has increased significantly and citizens follow – may follow – the work of Parliament.

It is regrettable, however, that to the question as to how it is possible – without any preliminary permission – to participate at a public court hearing, the proportion of right answers was altogether 33%. This may be explained by citizens' apathetic attitude toward the courts and by the fact that confidence in the system of administration of justice has greatly deteriorated in recent years.

Finally, mention should be made of the dichotomy that while three quarters of the 219 people asked recognized the difference between homicide and attempted homicide, they mixed up the notions of legislation and administration of justice and they were not able to distinguish between natural and legal persons either.

In consideration of all this, when being content to observe the consolidation of our legal culture we still must not forget about spreading information about the law and developing legal consciousness.

4.3. The impact of EU-membership on Hungarian legal culture

The paper provides space only to give short answers to two questions. Firstly: was Hungarian legal culture ready for the accession in 2004? Secondly: can Hungary bring any positive additions to the legal culture of the EU?

The law of the EU is not “European legal culture”, but the product of European legal cultures.²⁵ The new “European legal culture” is evolving now, which is indicated by, for example, the proliferation of technical laws and at the same time, the increasing unification and vertical plurality of the legal system.

One must proceed from the fact that, besides national endeavours, some harmonisation factors have always been present in our legal development looking back for a millennium. The main forces behind this harmonization process have been: Hungary’s similar economic and social structure to the Western-European one and endeavours to catch up with the European standard of living. In this respect, therefore, the legal harmonisation dimension of Hungary’s accession to the EU is not the first challenge in Hungarian history.

Since the democratic transition it has been possible to observe several positive tendencies in the development of Hungarian legal culture pointing towards Euro-conformity. Such include, for instance, the fact of the legality of the democratic political transformation as well as the advantageous influence exercised by the consistent practice of the Constitutional Court on Hungary’s legal culture. On the other hand, the approximation of laws plays a significant role in consolidating Hungary’s regulative legal culture.

25 Cf., e.g., FEBBRAJO; SADURSKI, 2010.

Let us only refer to the fact that the Union legal instruments laid down in the White Paper were harmonised by Hungary between 1990 and 2003.

The further training of judges and civil servants in languages and European law has taken place, but obviously, the final solution may be expected of the mass employment of the new generation graduating from universities.

However, it must be emphasized that Hungary's integration into Europe does not exclude the preservation of the individuality of the country's legal culture.

Integration has a double aim. On the one hand, it has to guarantee the realization of some common effects; on the other hand, for this purpose it has to build guarantees into the processes in order to ensure that similar resultants would lead to similar results. "All this translated into law means that only those elements of our legal culture can – and in some cases: must – be unified that, caused by their *sine qua non* role, are of instrumental importance with regard to the fundamental aims to be achieved by all means".²⁶

Therefore, when working to make Hungarian legal culture Euro-conform, attention should also be paid to fostering our existing culture! I do not think that it is an exaggeration to claim that Hungarian legal culture could also make a contribution to the development of European Union legal order if Hungarian legal politics could initiate the adoption and utilization of some of our legal solutions for improving legal institutions still unelaborated in the Community acquis. Such a solution might be, for example, the Hungarian Ethnic Minorities Act.

26 VARGA, 1992, p. 446.

5. The possibilities and limits of the approximation of legal systems in the European Union

As it is well known, the European Union launched the most comprehensive legal harmonization programme of all times. It concerns not only the 27 member States but – as a point of orientation – the member of EFTA and the countries of Central and Eastern Europe as well. The goal of the Union is not some kind of a “unified law” but the co-ordination of the legal regulations of the member States, the elimination of excessive deviations with preserving the national legal systems to a certain extent.²⁷

With respect to this issue, we should touch upon the old debate on the applicability of the convergence theory on the European law.

The advocates of the convergence of the legal cultures of the EU point to the common history, common values and traditions.²⁸

On the other hand, many hold the view that the common law and the continental legal cultures are so different to one another that there can be no approximation between them.²⁹

And finally, according to the third view, the above mentioned conceptions take legal cultures in a formal sense. We would rather need a sociological approach that concentrates upon identities. For example, civil law is often a symbol of national identity or a manifestation of national legal culture. This might explain why the member States are

27 See, *e.g.*, EVANS, 1998, p. 465, CABERO, 1989, pp. 177-180, CARTOUR, 1994, pp. 155-158, SORENSSEN, 1988, pp. 287-297, LOURIN, 1992, pp. 172-190 and KECKÉS, 2009.

28 See, *e.g.*, GERVEN, 1995, pp. 679-702, JOERGES, 1997, pp. 378-406 and DE CRUZ, 1995, p. 99.

29 See, *e.g.*, LEGRAND, 1996, pp. 52-81.

so reluctant to “harmonize” their civil laws. However, the EU set its heart on this harmonization.³⁰

Without entering the debate here, we deal with some issues of it in brief.

The first question could be formulated as follows: to what extent does the European Union make use of the institutions of national legal systems? Well, for example, that incorporation of human rights in the community law is mainly due to the German Constitutional Court. As the community law consists of mostly norms of administrative nature, many of its basic principles trace back to the highly developed administrative law of France and Germany. Recently, however, the European Court derived some principles – mostly procedural ones – from the “natural justice” of English law. This is how the “right to hearing”, the “duty of justification”, the “right to due process” became part of the community law. The community law also borrows from the economic law of other member States.³¹

Secondly, we have got to talk about the European Court. This is the forum functioning as a kind of “forge” of Anglo-Saxon and continental legal cultures. Comparative law is a permanently used “tool” in the hands of the European Court.³²

The amalgamation of the two legal cultures is also manifested in the fact that the European Court applies (basically) the method of case law, although its verdicts do not function as precedents.

The next problem to be explicated concerns the common law. *In concreto*, I have in mind the ever more obvious tendency that the practice of British courts –

30 See PAASILEHTO, 1999, pp. 101-104 and DE CRUZ, 1995, p. 99.

31 KECSKÉS, 2009, p. 128.

32 KECSKÉS, 2009, p. 127.

although the efforts to synthesize the Anglo-Saxon and the continental legal cultures could also be noticed – assimilates with the American model in which decisions are based upon principles rather than rules.³³

Finally, we cannot avoid posing the question: is the Hungarian legal culture mature enough to European integration, or can the former contribute to the latter in any respect?

6. Concluding remarks upon the perspectives of the *ius commune Europaeum*

The law of the EU is not the “European legal culture”³⁴ but the product of the *European legal cultures*. The new “European legal culture” is in the making and manifested by, *e.g.*, the proliferation of technical norms and the growing unity and vertical plurality of the legal system.³⁵ However, the future common law of Europe means much more than the growing harmony of different fields and norms of law. The “euro-centrism” of European law does not involve that it relies upon only the legal systems of the countries of Western Europe. It is also influenced by the legal institutions of, *e.g.*, USA, Australia and New Zealand. One of the questions of the future is how can this complex but homogeneous legal order integrate the legal traditions of the countries of Eastern Europe.³⁶

The pledge of the future of the *aquis communautaire* is the extent of efficacy of its rules.

33 LEVITSKY, 1994.

34 GESSNER, 1993, pp. 5-18.

35 KULCSÁR, 1997, p. 139.

36 BURROWS, 1996, p. 312.

It is a complex task to measure this efficacy that includes – among others – the inquiry into the following factors:

- a) The way the legislatures of the institutions of the community reflects the policy of the community;
- b) The application of the community law in the member States;
- c) The translation of the community directives into national laws;
- d) The effectiveness of secondary community legislature and national “naturalization” in respect to the systems of public administrative;
- e) The effectiveness of the community law in respect to the activity of economic and other organizations, or even private persons;
- f) The legal actions concerning the community law at national courts;
- g) The enforcement of the community law by national courts.³⁷

As far as the perspectives of the approximation of the legal systems are concerned, I join the advocates of the convergence of continental and common law models. Both systems will be modified as judicial law becomes significant besides written law, and statutory law gains strength in relation to case law.

Just like the past, the European states will undoubtedly follow the same legal principles in the future. The root of the tree of European law is the Roman law, its bole is the *ius commune* and its branches that grew in different directions

37 SYNDER, 1993, pp. 25-27. On the notion of the efficacy of law, its factors and its measure, see VISEGRÁDY, 1997.

will be grown in the same direction by the slowly evolving, unifying will of the European people.³⁸

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38 SCHRAGE, 1992, p. 407.

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