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POLITICAL AND PHILOSOPHICAL ANALYSIS OF THE INTERPENETRATION OF PUBLIC-LAW AND PRIVATE-LAW SPHERES OF REGULATION IN THE ACTIVITIES OF THE EURASIAN ECONOMIC UNION

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Abstract: The research objective of this article is to analyse the interpenetration of private law and public law regulation carried out within the framework of the Eurasian Economic Union. It is noted that in the sphere of private law, the EAEU has virtually no powers to unify / harmonise the national legislation of member states, but achieving the goals of building a common (single) market is often impossible without the elimination of private law barriers. This phenomenon is discussed using the example of restrictions on the freedom of establishment (in terms of opening branches of foreign organisations) and digitalisation of public procurement within the EAEU. It is argued that the phenomenon of “privatisation” of state functions, characteristic of the period of so-called globalisation, cannot be a distinctive feature of a multipolar world order. It seems more correct to speak of a close interrelation and interpenetration of private and public legal regulation of social relations.

Keywords: common (single) market, customs union, freedom of establishment, freedom to provide services, private law, public law, competing federalism, free market access.

Introduction

According to par. 2, article 1 of the Treaty on the Eurasian Economic Union (ed. on 05.08.2021, amended on 09.12.2022) (hereinafter – EAEU Treaty), the Union is an international organization of regional economic integration with international legal capacity. Despite the declared international legal status, the Eurasian Economic Union (hereinafter – EAEU, the Union) has the competence inherent to supranational associa-

tions of states, which on the basis of international agreements have delegated some of their powers in certain areas of regulation to the Union bodies. The integration association ensures freedom of movement of goods, services, capital and labour, and the implementation of a coordinated, coherent or unified policy in the sectors of the economy defined by the EAEU Treaty and international treaties within the Union. For the purposes of this study it is particularly important to note that a common policy implies the application by the

Member States of a unified legal regulation, including on the basis of decisions of the Union bodies within the scope of their powers. Coordinated policy, in turn, uses as an instrument of integration processes a “softer” method – harmonisation of legal regulation, to the extent necessary to achieve the goals of the Union as set out in the Treaty on EAEU. Within the framework of a coordinated policy, cooperation between the member states is carried out on the basis of common approaches approved within the Union bodies. Thus, the scope of powers of the Union’s bodies directly depends on what kind of policy the Union is entitled to pursue in a particular area of integration. Article 4 of the EAEU Treaty enshrines the objectives of this international organisation, which are of an obvious economic nature. However, we should not forget that economic growth cannot be an end in itself, neither for an individual state, nor for an association of states, so the first fundamental objective of the EAEU sounds not just “to create conditions for sustainable development of the member-states economies”, but is supplemented by the ontological basis – “in order to improve living standards of their population”. Thus, it becomes apparent how private interest is breaking through the slender ranks of public law goals.

One cannot but agree with the opinion of Professor Jürgen Basedow (2016, p. 380), who suggested that the role of the state in regulating international relations is multivalent and multifaceted, as it operates in two legal worlds: at the level of the international community and at the level of national legal orders. With regard to the EAEU, this means that the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic and the Russian Federation have agreed by international treaty to transfer part of their sovereign powers to the Union, so the interests of integration prevail over the interests of the individual state in addressing issues within the scope of a common policy. However, in legal regulation in the areas of coherent or coordinated policies, the dominance shifts and states usually tend to emphasise the protection of national interests. In this case the “achievement of the goals of the Union” may be overshadowed and take on the character of a complexly interpreted abstraction.

As an association of regional economic integration of states based on the principles of a

common (single) market and customs union, the EAEU naturally takes into account the experience of previously established associations with a similar orientation, in particular the European Union (hereinafter, the EU). At the same time, this experience cannot be accepted unconditionally, as the EU was born in other historical conditions (the 1950s), aspects of the post-war world order had an impact; integration processes in the EU were slowed down by a significant number of its participants which was constantly expanding; economic integration was formally supplemented by political aspects and cooperation in the law enforcement sphere only on the basis of the Maastricht Treaty of 1992. In addition, the integration of states within the EAEU is significantly influenced by the widely deployed processes of digitalization of all spheres of social life; they significantly spur the interaction of member states, as only joint efforts can lead to the prevention of digital lag and the achievement of digital advantages.

It should be noted that the EAEU bodies are not competent to harmonise civil, family or international private law (the main segments of private law regulation); nevertheless, the desire to form a single market for goods, services, capital and labour is one of the main objectives of the EAEU. At the same time, natural and legal persons are direct actors of such common market, so the unified / harmonised regulation within the Union inevitably serves the purpose of protecting private interests by having a direct impact on the private law of the member states.

The removal of barriers to the realisation of single market freedoms is the primary objective of a public-law integration association, but the barriers themselves may arise from both public-law and private-law national regulation.

The present study is based on an analysis of a number of illustrative examples of the interpenetration of private law and public law regulation in the activities of the EAEU.

Methodology

This study is based on the general systems theory in L. Bertalanffy’s axiomatics (1950), which helps to consider the systemic interaction of private law and public law regulation in the EAEU activities. At the same time, it is worth agreeing

with the opinion of I. V. Blauberg (1997), according to which “the conceptual framework that has successfully served science for many years increasingly fails for the simple reason that it proves inadequate to modern tasks and even their very formulation” (p. 165). Thus, the positivist and formal-dogmatic approaches cannot cope with the analysis of the EAEU legal order, as it intertwines the regulation of national legal systems and the supranational level; the goals of the integration association, based on which its powers must be interpreted, play a determining role; the competence to explain the provisions of the EAEU Treaty, international treaties within the Union and decisions of Union bodies is given to the EAEU Court, whose activities, in fact, border with judicial rule-making (art. 46 of the EAEU Court Statute (Annex No. 2 to the EAEU Treaty)).

The concepts of methodology based on the instrumental approach, when methodology is understood as a set of principles, means and ways of cognition applied in the process of studying legal phenomena (Semyakin, 2016, p. 117) seem to be truncated. Thus, M. N. Semyakin reasonably believes that the use of various instrumental means should be complemented by appropriate philosophical and general scientific interpretations, epistemological foundations and methodological principles.

The modern post-non-classical methodology of legal science offers various approaches, including in the field of private law research. When considering the processes of interaction between private and public law in the EAEU legal order, it seems justified to rely on the ontological foundations of both private and public law.

Ontology (Greek: *ontos* – being, *logos* – doctrine) is the philosophical science of being per se, its main types and properties. In the context of the present study, it is proposed to focus on the “being” of private and public law within the EAEU, to consider examples of the impact of private law regulation on the achievement of public law integration goals.

It is not the purpose of this study to explore contemporary approaches to the distinction between private law (*jus privatum*) and public law (*jus publicum*). Despite the fact that the noted systematic division of law dates back to the Ancient Rome, the debate about the distinctive features of public and private law continues to this

day. G. V. Shershenevich (1995) noted, at the beginning of the 20th century, that despite the commonplace nature of this division, it is still not scientifically clear where the boundary line between private law and public law lies and what are their distinguishing features (p. 9). At present, this boundary is even more difficult to draw, precisely because of the increasing interpenetration of private and public regulation. However, among the many doctrinal concepts of private law, let us refer to the one which, in our opinion, is the most informative and essentially correct. It is based on the criterion of interest, refers to the subject of regulation and fundamental principles, defining private law as “the totality of legal norms and other regulations that express the freedom of individuals in the private sphere, regulating property and personal non-property relations on the basis of legal equality of subjects, autonomy of will, dispositiveness, property independence, in order to ensure the most effective implementation and protection of private rights and legitimate interests” (Semyakin, 2014, p. 33).

In addition, we believe that the private sphere of public life and, accordingly, private law regulation have a steady tendency to expand (Miashchanava, 2017, p. 34). In Western legal doctrine, the phenomenon of the so-called “privatization” of state functions, among which are law-making, law-enforcement and dispute resolution (Mills, 2023, p. 8), is actively debated. It is argued that the modern phenomenon of privatisation has given rise to a number of important international legal consequences, especially when combined with another structural change in the functioning of states, globalisation. For example, the combination of privatization and globalization of capital flows has contributed to a massive increase in foreign investment, with foreign investors acquiring state assets or competing in the market for public service contracts. As a result, annual global flows of direct foreign investments increased (in real terms) by more than 10,000% between 1970 and 2021 (*The World Bank. Foreign direct investment, net inflows (BoP, current US\$)*, n.d.). The increase in foreign investment has coincided with the emergence of international investment law, which has again challenged the established public/private boundaries of modern international law. International investment law is based on inter-state treaties but gives

private parties the right to initiate proceedings against states in international commercial arbitration. This combines claims based on a breach of international agreements with claims arising from a breach of contract.

Although research into the phenomenon of “privatisation” has some factual basis, nevertheless, the concept of globalisation has suffered a noticeable crack in the last few years. The world is objectively breaking up into regional financially-technological ethical clusters with prevailing values orientation, financial systems and technologies. The world order is becoming multipolar. In the context of major geopolitical changes, states have traditionally come to the fore, seeking through their public legal regulation to unite the population in solving the most important political, economic, social and cultural problems. “Privatisation” as such cannot be the hallmark of such historical period. It seems more correct to speak of the close interrelation and interpenetration of private-law and public-law regulation of social relations.

Main Study

As noted earlier, one of the main goals of the EAEU’s creation and activity is the formation of a single market for goods, services, capital and labour within the Union (Article 4 of the EAEU Treaty). This goal is to be achieved through the gradual removal of barriers to the implementation of single market freedoms, which may have both obvious and hidden nature. Barriers may be based on the current legal regulation of the member states, but they may also result from the existing law enforcement and administrative practice. In the process of removing barriers it seems advisable to rely on a study of the EU experience, as well as the right choice of the so-called “internal market model”.

In creating a single (internal) market and improving its functioning mechanisms, it is customary to distinguish between two main models:

1. Decentralised model based on the principles of non-discrimination, free market access and the concept of competing federalism;
2. The centralised model, which involves harmonisation/unification of the legislation of member states (Miashchanava, 2010, p. 17).

Let us consider the principles underlying the

decentralised single (internal) market model.

The cornerstone of all four internal market freedoms is the principle of non-discrimination. This principle is based on Article 18 of the Treaty on the Functioning of the European Union (consolidated version of 01.03.2020, hereinafter – TFEU), which prohibits any discrimination on grounds of nationality. Based on this provision, the Court of Justice of the EU has formulated a general principle of law known as the “principle of equality”. However, the prohibition of discrimination on grounds of nationality was interpreted more broadly to include the prohibition of discrimination on any ground. Both direct and indirect discrimination are recognised as unacceptable in order to ensure freedom of movement of goods, persons, services and capital. The latter is predicated on grounds other than nationality, but creates a less attractive environment for goods, persons, services and capital from other EU Member States. To date, the EU Court of Justice has not only condemned any (direct or indirect) discrimination, but has gone further by declaring non-discriminatory restrictions contrary to TFEU in regulating internal market freedoms. The EAEU Treaty does not contain a single rule prohibiting discrimination, but the prohibition can be seen in certain provisions regulating the implementation of single market freedoms (Article 29 – trade in goods; Article 65 – trade in services, freedom of establishment, making investments; clause 39 of Annex No. 7 – discrimination against third countries as well as disguised restrictions on foreign trade in goods; clause 12 of Annex No. 16 – payments and transfers; clause 36 of Annex No. 16 – relocation of workers).

The principle of non-discrimination is closely related to the principle of mutual recognition (or reciprocity). Some authors see it as a constituent element of non-discrimination (Barnard, 2007, p. 18). The principle was first formulated in Case 120/78 known as *Cassis de Dijon* (*European Court Reports 1979-00649*) in the context of free movement of goods. The essence of the principle of mutual recognition is that if a product is lawfully produced and placed on the market in one Member State, it must be admitted to the market of any other Member State, even if it does not meet the latter’s technical or other requirements. It is only possible to restrict the admission of such goods to the market on the grounds set out

in Article 36 of the TFEU and on the basis of mandatory requirements to protect essential public interests. The principle of mutual recognition has gradually been applied not only to the freedom of movement of goods, but also to the freedom of movement of services and the recognition of qualifications of EU citizens. The main positive effect of using this principle is that there is no need to harmonise Member States' national legislation and thus preserve the diversity of products and services available on the internal EU market. The European Commission has identified the main problems within the application of this principle, clarified its meaning and declared the principle of mutual recognition to be the main tool of the internal market strategy.

The next principle is provisionally called the principle of "free market access". It follows from the principle of non-discrimination that imported goods (or migrant workers) have to meet the requirements laid down in the legislation of the host state, which applies equally to its own goods/workers as to imported/foreign ones. It has therefore become apparent that any national rules impeding broad market access should be considered abusive if they create not formal but so-called "de facto" discrimination. The principle of "free market access" is reflected in the Court's case law in the Gebhard case (*European Court Reports 1995 I-04165*), which concerns freedom of establishment, i.e. the application of Article 49 TFEU. In this case, the Court does not apply the term "discrimination", but instead refers to national measures that "may hinder or make less attractive the enjoyment of fundamental freedoms guaranteed by the Treaty". In the Court's view, these measures breach Article 49 of TFEU unless they are objectively justified.

The advantage of the "free market access" principle is that it goes further in building the internal market by eliminating any undue restrictions on trade. At the same time, however, the principle represents a deeper intrusion into the domestic competence of states to regulate certain relations than is permissible under communitarian law. The result is that virtually any provision of national law can be held to be unlawful because it has an impact on the mutual trade of member states, even if there was no intention on the part of the national legislator to impede trade, and such an impact is negligible. At the modern stage the Court has become aware

of the dangers of this approach and uses various legal techniques to distinguish between those rules which should be abolished under communitarian law and those which are not subject to the regulatory impact of the latter.

The practical application of freedom of movement of goods, persons, services and capital inevitably leads to competition between different national legal systems, as individuals dissatisfied with the political, legal or social environment in which they exist, may relocate to another state where conditions are more agreeable to them. This encourages national authorities to develop better, more attractive models of legal regulation of the relations in question. This phenomenon is known as "competing federalism" or "regulatory competition" (Tiebout, 1956, p. 416).

For "competing federalism" to function, two conditions must be met. First, the central government (in our case the EAEU through its bodies) must develop and enforce rules under which goods, persons, services and capital can move freely from one state to another. Secondly, the member states should retain the freedom to regulate the production of goods, the provision of services, the definition of requirements for workers, etc. in accordance with their own standards, as an objective prerequisite for the development of competition. The outcome of the "competing regulation" process should be the development of optimal, effective, innovative legislation capable of attracting private parties. However, the said process has not only positive consequences, as "the most attractive legal regime" does not always mean the most optimal and perfect legal regime. This phenomenon has been explored in corporate law with the "Delaware syndrome" (Charny, 1991, p. 422). The model of "competing federalism", with an active role of national authorities drafting domestic legislation in line with consumer interests and a limited role of the central authority (the EAEU authorities) ensuring only freedom of movement, certainly has considerable appeal, but this model cannot be used in its pure form in the present context. Thus, the principles of non-discrimination, free market access as well as the concept of "competing federalism" in their interplay have been the basis for the decentralised model of the EU single (internal) market and seem to serve as a starting point for developing appropriate approaches within the EAEU.

The centralised model, in turn, proposes establishing a uniform set of rules at central government level that should apply to a wide range of relationships. Harmonisation and unification of member states' law are the main instruments of development. This model poses a number of problems. The legal problem is that the central authority does not have sufficient competence to act in this way, given that uniform policies are only possible in a limited number of sectors of the EAEU member states' economies. The practical problem is to develop the unified standards themselves on the basis of the most common approach in the practice of member states or on the basis of the most modern, progressive approaches. Finally, the political problem is the leveling out of national differences, the loss of the advantages connected to local responsibility, which could eventually lead to a "market freeze" and stagnant legislation. Thus, the centralised model cannot be applied in the process of building and functioning of the EAEU single (internal market) in its pure form.

Let us turn to the problem of removing barriers to the creation of a single market. Thus, the Republic of Belarus in its domestic legislation contains a barrier to the implementation of the freedom to provide services (according to the classification of the Eurasian Economic Commission (hereinafter – EEC)) – the absence of the possibility of opening a branch of a legal entity of a member state of the Union in the Republic of Belarus (*Barriers in States. Portal of general information resources and open data of the EAEU*, n.d.).

Based on sub-paragraph 24(6) of the Protocol on Trade in Services, Establishment, Operation and Investment (hereinafter – Annex 16) to the EAEU Treaty (Terms and Definitions) the establishment is carried out in the following forms: establishment and/or acquisition of a legal entity; acquisition of control over a legal entity of a member state; opening of branches and representative offices; registration as an individual entrepreneur. The establishment is carried out, inter alia, for the purpose of trade in services and/or production of goods. Under European law, the establishment of a legal entity in another member state is permitted in the forms of "primary" and "secondary" establishment. In the case of a "primary" establishment, a legal person is created in one state and then moves its admin-

istrative centre (head office) to another state. This phenomenon has been referred to as "freedom of company relocation". The term "secondary establishment" speaks for itself, and includes the right of companies incorporated within the EU to freely establish agencies, branches or representative offices in all member states.

Annex 16 treats the concept of "establishment" more narrowly (more literally) and does not in fact include the freedom of companies' relocation, but only refers to the creation, acquisition of a legal entity or acquiring control over a legal person. Nevertheless, "secondary" establishment through the creation of branches and representative offices is defined quite clearly in Annex 16.

The distinction between freedom of establishment and freedom to provide services seems to be fundamentally necessary because entrepreneurs and legal persons who seek to "establish" in the host state must go through all domestic procedures provided for such "establishment" and meet all the requirements of the host state. If, on the other hand, a person provides services in the territory of the host state without being "established" there, such requirements do not apply, it is sufficient that the person meets the requirements of the state of origin for access to certain activities (Miashchanava, 2010, p. 78). Thus, the barrier contained in the national legislation in terms of the lack of possibility to open a branch of a legal entity of a Union Member State in the Republic of Belarus is nothing but an obstacle to the freedom of establishment. The point is that Article 51 of the Civil Code of the Republic of Belarus (hereinafter, the Civil Code of Belarus) defines the concept of branches and representative offices of legal entities and their distinctive features. However, Article 51-1 of the Civil Code of Belarus only regulates representative offices of foreign organizations, which are recognized as separate subdivisions, located on the territory of the Republic of Belarus and performing protection and representation of interests of foreign organizations and other functions that do not contradict the legislation. Thus, the legislator establishes an original restriction for foreign organisations, without mentioning a possibility of establishing branches by them. Besides, the Regulation on the procedure for opening and activities of representative offices of foreign organisations in the Republic of Belarus, approved by the

Resolution of the Council of Ministers of the Republic of Belarus No 408 of 30 May 2018, regulates the procedure for establishing such representative offices, including defining a non-exhaustive list of purposes for their establishment and activities. According to the clause 8 of the Regulation, a representative office of a commercial foreign organisation may be opened, unless otherwise established by legislative acts or international treaties of the Republic of Belarus, only for the purpose of carrying out preparatory and auxiliary activities on behalf of and on instruction of the foreign organisation it represents. As a general rule, such representative offices have no right to carry out commercial activity on the territory of the Republic of Belarus.

The specifics of legal regulation of activity of representative offices of foreign organisations in the territory of the Republic of Belarus consists also in availability of the concept “permanent establishment of a foreign organisation”, which is a public law term of tax legislation and can in no way correlate with corporate regulation. If the foreign organization carries out works and (or) renders services in the territory of the Republic of Belarus during the period, which exceeds one hundred eighty days continuously or in total during any twelve-month period, starting or finishing in the appropriate tax period, such activity is considered as permanent establishment of the foreign organization, including in case of its realization in different places (clause 3 of article 180 of the Tax Code of the Republic of Belarus (General Part) of December 29, 2009 No. 71-Z). It is obvious, that in order to carry out such activity it is not necessary to establish a separate subdivision of a foreign legal entity. Thus, the concept of corporate law – “establishment of a foreign company” is close to the extent of confusion with the concept of tax law – “permanent establishment of a foreign company”, which, in our opinion, is a problem of the Belarusian legislation, since the substantive content and the purpose of those concepts do not coincide. At the same time, the legal framework of Belarus does not mention branches of foreign legal entities, including those incorporated in the territories of EAEU member states.

The removal of barriers to the implementation of freedom of services and freedom of establishment within the EAEU is envisaged in phases. The first stage establishes a ban on the intro-

duction of new discriminatory measures against trade in services, establishment and activities of persons of other member states as compared to the regime in force at the date of entry into force of the EAEU Treaty. The second stage is the gradual liberalisation of the conditions for mutual trade in services, establishment, activities and investments (Article 66).

The barrier in question appears to be of a private law nature, as it interferes with the right of individuals (companies) to freely establish separate units with a wide scope of competence (branches). At the same time, the List of “horizontal” restrictions retained by the member states in relation to all sectors and activities (Annex No. 2 to the Protocol on Trade in Services, Establishment, Activities and Investments) does not include the considered barrier, therefore, gradual liberalisation is needed in the sphere of establishment of foreign organisations in the territory of the Republic of Belarus, which should be implemented taking into account international principles and standards through harmonisation of legislation (Article 67 of the EAEU Treaty).

One of the areas of close interaction between public and private law regulation is the area of public procurement, which is currently under the close scrutiny of the integration association. Thus, the List of Measures to Enhance the Stability of Economies of the Eurasian Economic Union Member States, including Ensuring Macroeconomic Stability, approved by Eurasian Economic Commission Council Decision No. 12 of March 17, 2022 (clause 2.14) provides for the accelerated formation of a set of measures to fully digitalise public procurement in the member states, including issues of mutual recognition of EDS (electronic digital signatures) and bank guarantees. These aspects of building the EAEU internal market could be the subject of an independent study, including the fact that the introduction of digital technologies in the implementation of legal relations necessitates scientific understanding of legal practices carried out “electronically” (Inshakova et al., 2020, p. 601). At the same time, the mutual recognition of EDS and bank guarantees is of paramount importance for the conclusion of public procurement contracts that have a civil law nature, despite their explicit public purposes.

The possibility of opening branches in the territories of member states other than the state of

incorporation of a legal entity, as well as digitalisation of public procurement are by no means a complete list of possible examples of the relationship between private law and public law regulation in the activities of the EAEU. However, it is important to emphasise that often the liberalisation of public relations within the framework of a free single market must be based on a corresponding liberalisation of the private-law segment of regulation. Otherwise, the attainment of the set goals may be in question.

Conclusion

We believe that the processes of interpenetration of private law and public law regulation are clearly manifested in the Union's activities, which necessitates the direct application of certain legal acts of the EAEU bodies within the national legal framework. At the same time, such direct application is possible only in relation to the EAEU acts adopted within the framework of a single policy. In order to eliminate barriers to the implementation of single (internal) market freedoms, it is necessary to take measures aimed at harmonisation of national legal regulation, as well as liberalisation of conditions for mutual trade in services, establishment, activities and investments. These processes of harmonisation and liberalisation may involve both public and private law, and very often these areas are closely intertwined. Using the example of the barrier to freedom of establishment present in the legislation of Belarus with regard to the lack of possibility to open a branch of a legal entity of a Union member state in the Republic of Belarus, we show how the private law restriction (the right to open branches and representative offices of legal entities is provided by civil law) affects the creation of the EAEU single market, which is one of the primary objectives of this integration association.

The trend towards a close intertwining of private and public interests and the corresponding legal regulation is evident in the area of public procurement. The correlation between national and supranational interests in this area could be the subject of a separate study.

In conclusion, we would like to emphasise that the study of various manifestations of interpenetration of public and private legal spheres of

regulation in the activities of the Eurasian Economic Union is not only of theoretical and doctrinal interest. The EAEU's actual lack of authority to harmonise the private law of its member states is a significant obstacle to realising many of the public-law objectives of this integration association. In this regard, further analytical work is needed to prepare proposals for expanding the EAEU's competence in interrelated areas, including those regulated by private law.

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References

- Barnard, C. (2007). *The substantive law of the EU. The four freedoms*. (2nd ed.). New York: Oxford University Press.
- Barriers in States. Portal of general information resources and open data of the EAEU* (n.d.). Retrieved September 5, 2023, from <https://barriers.eaeunion.org/en-us/Pages/obstacle-barriers.aspx>
- Basedow, J. (2016). *Pravo otkrytyh obshchestv – chastnoe i gosudarstvennoe regulirovanie mezhdunarodnyh otnoshenij: obshchij kurs mezhdunarodnogo chastnogo prava* (The Law of Open Societies – Private Ordering and Public Regulation of International Relations: General Course on Private International Law, in Russian). Moscow: Norma.
- Bertalanffy, L. V. (1950). An outline of general system theory. *The British Journal for the Philosophy of Science*, 1(2), 134-165.
- Blauberg, I. V. (1997). *Problema celostnosti i sistemnyj podhod* (The problem of integrity and systems approach, in Russian). Moscow: Editorial URSS.
- Charny, D. (1991). Competition among jurisdictions in formulating corporate law

- rules: An American perspective on the “Race to the Bottom” in the European communities. *Harvard International Law Journal*, 32, 422-428.
- European Court Reports 1979-00649*. Case 120/78. Cassis de Dijon. ECLI:EU:C:1979:42. Retrieved September 5, 2023, from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61-978CJ0120&qid=1682435472438>
- European Court Reports 1995 I-04165*. Case C-55/94. Gebhard v. Consiglio dell’Ordine degli Avvocati e Procuratori di Milano. ECLI identifier: ECLI:EU:C:1995:411. Retrieved September 5, 2023, from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61994CJ0055&qid=1682436232-811>
- Inshakova, A. O., Frolova, E. E., Rusakova, E. P., & Kovalev, S. I. (2020). The model of distribution of human and machine labor at intellectual production in industry 4.0. *Journal of Intellectual Capital*, 21, 601-622.
- Miashchanava, M. V. (2010). *Pravovoe regulirovanie vnutrennego rynka Evropejskogo Soyuzha: ucheb. posobie* (Legal regulation of the internal market of the European Union: Textbook, in Russian). (H. Herrmann, S. A. Balashenko, T. Borich, Eds.). Minsk: Zorny Verasok.
- Miashchanava, M. V. (2017). *Sistemnost’ v mezhdunarodnom chastnom prave: monografiya* (Consistency in private international law: Monograph, in Russian). Minsk: Chetyri chetverti.
- Mills, A. (2023). The privatisation of private (and) international law. *Current Legal Problems*, XX, 1-54.
- Semyakin, M. N. (2014). *Chastnoe pravo: filosofskie i istoricheskie osnovaniya i problemy sovremennoj civilisticheskoy doktriny: monografiya* (Private Law: philosophical and historical foundations and problems of modern civil doctrine: Monograph, in Russian). Moscow: Yurlitinform.
- Semyakin, M. N. (2016). *Problemy sovremenogo ponimaniya metodologii civilisticheskogo pravovedeniya* (Problems of modern understanding of the methodology of Civil Law, in Russian). In *Chastnoe pravo. Preodolevaya ispytaniya: K 60-letiyu B. M. Gongalo (Private Law. Overcoming trials: To the 60th anniversary of B. M. Gongalo, in Russian)* (pp. 111-119). Moscow: Statut.
- Shershenevich, G. F. (1995). *Uchebnik russkogo grazhdanskogo prava (po izdaniyu 1907 g.)* (Textbook of Russian civil law (According to the edition of 1907), in Russian). Moscow: Spark.
- The World Bank. Foreign direct investment, net inflows (BoP, current US\$)* (n.d.). (Figures in current US\$). Retrieved September 5, 2023, from <https://data.worldbank.org/indicator/BX.KLT.DINV.CD.WD>
- Tiebout, C. (1956). A pure theory of local expenditure. *Journal of Political Economy*, 64(5), 416-435.