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IMPACT OF THE LEGAL SYSTEMS ON EUROPE UNION AND EUROPEAN COUNTRIES

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ABSTRACT

Legal systems or, as some scholars, the Roman-Germanic family law and common law plays a significant role in the domestic legal system and law professors views a system that has long formed the foundations of legal developments in almost all countries of the world. For this purpose, the researcher has to first examine the legal foundations of its history to engage in any type of legal structures in different countries in the world and in this way, it is necessary to study in one of the Roman-Germanic or common law legal systems. The developed countries have derived their origin and the development of these systems European countries such as Germany, England, France and Russia. In this context, researchers and authors have studied many of the European countries but read the whole thread and the foundations of the family of dual-core European countries in their entirety of particular importance, especially in terms of research in order to explain the fundamentals of general and fundamental changes in the legal systems of European countries. The study will compare the classical foundations of the common law and Roman-Germanic reflecting the impact of developments in European countries during the statutory and regulatory issues therefore; we consider the rights of Europe and several European countries, including Britain and France as they are the bearers of the common law and Roman-Germanic law.

Key words: Common-law, Roman-Germanic, Europe Union, United Kingdom, France

INTRODUCTION

The legal family that we find in today's world, it is the Roman-Germanic family. Roman-Germanic family has a long history. The family background is the old Roman

law; but the change that has occurred over more than a thousand years, far be it from the evening of August and Justinian law significantly not only in terms of substantive law and procedure, but even the concept of rights and the rule of law. Roman-Germanic law is the continuation of Roman law and the perfection of its development; but it is not a copy of Roman law; especially because many of its elements are derived from sources other than the Roman law. Roman-Germanic legal family is now scattered across the globe. Create Roman-Germanic family law in connection with the renewal that emerged in the twelfth and thirteenth centuries in Western Europe. The revival emerged in all fields and was one of the most important aspects of the legal aspects [1].

Western Europe, including the legal system, they are classified in the Roman-Germanic family including the European countries (except the UK and communist countries) and Latin America. These rules form the basis of the rights of Roman law and the moral teachings of the Christian religion wise and liberal thought in the eighteenth century. Although in the past two centuries, social rights have been considered in most of these countries, still the man, his character is objective and based on the principles of freedom and rights. Common attributes and defining the rights expressed

in these countries, you can refer to the following: private property and freedom of contract principle is respected.

It is based on marriage and family law considers illegitimate children from relationships [2]. But since there is a common law rights, including countries such as Britain, America, Canada, Ireland, Australia, different features Roman-Germanic law. The morality of the Christian religion and policies relating to the protection of individual rights and freedom are the main basis for these countries and gradually the rules of law are so many similarities with Roman-Germanic family rules. On the other side, precedent in Western European countries in adapting the rules to the needs of the community it has been such an important part of the last century, so that it can be claimed that another law has lost the respect of the past [2]. Common law or the common law of England, as it has been extracted from the general public and local customs as it has been mentioned in the eleventh century. This law has been made at a place called Westminster in London by the royal court judges in the 13th century onwards and judicial decisions that had to settle the claims of individuals with regard to the history and tradition. In America and Britain are among the countries with a common law legal system, the main source of law rules

that apply to judges in courts in other words, the main source of law in the legal system is a precedent in court. In this group, the principles of the rule of law do not arise. The law defines exceptions into the common law courts [3]. With this brief introduction, comprehensive and concise, we will examine the legal system in European countries and in the Europe Union Rights therefore, in total, we will review the study and future issues in this article 1) Europe Union; 2) England and 3) France and Roman-Germanic law stated that the impact of the common law and the civil law, and provide the results.

1. The legal system in Europe

European countries are organized into a union of harmony and unity. The union, however, is a regional international organization, but it serves more as a federal state. EU countries have special powers to limit its sovereignty to the EU so that it is unique in its kind.

1.1 The legal system of Europe member states

Europe Union countries belong to different legal systems. Countries such as France, Germany, Italy and the legal system by (Roman-Germanic), the common law of England, Scotland, the mixed system, Scandinavian countries such as Finland and Sweden to the legal system the ten countries

that joined the EU in May 2004, mainly belong to the socialist system.

1.2 Powers of the Union Europe in the legislation

Increasing the powers of the Union of Europe, especially in uniform or harmonized laws and regulations of the Member States and the creation of an independent judicial system shows that the EU pursues its own legal system is independent of the Member States so this will be a turning point with the adoption of the EU constitution in the near future so now we are facing a "Union of Europe's legal system". As in other systems, it has its own characteristics. The legal system, although there are major differences with other major systems of law (Roman civil and common law) of the scope and function, but it is certainly one of the central issues in the study of comparative law in the sense that it is the best experience in the integration of legal systems and also because it is an independent legal system [4].

1.3 Functionality Union Rights in Europe Member States

The legal system is based on the belief in Europe regulation comes into force in all EU Member States as a result is a kind of unity or legal similarities between Member States. Even in countries that joined the Union, they need to re-organize their

national legal system and its institutions in the process according to the principles of the Union.

1. The countries are: Estonia, Slovakia, Slovenia, Czech Republic, Cyprus, Latvia, Poland, Lithuania, Malta and Hungary. For example, the ten countries that joined the EU in Central and Eastern Europe, they gave to major changes in their legal systems. Europe Union laws and regulations affect the legal systems of the member states in the form of treaties, regulations, directives or decisions [4].

1.4 Domestic Rules in Member States

Although none of the founding treaties of the Union Europe there is no reference to national laws as an independent source of trade union rights but the rules in Member States can be considered as in this case; first, when the Europe Union law refers to the internal law of the Member States explicitly or implicitly to the force in the case of personal status, nationality, qualification of individuals, or status or legal capacity of natural persons or legal representation. Secondly, when faced with legal vacuum union rights at issue, in this case, the Court of Europe tries to resolve the dispute and fill the vacuum by resorting to the law of the Member States [5].

1-5- Legal Sources in Europe

Sources of law in Europe can be divided into two groups: The primary sources and

secondary sources. The Share this topic, we will study the two.

1-5- The Main Sources

The main source of law in Europe is including the founding treaties and agreements. There are two founding treaties in Europe. One of the Coal and Steel Community Treaty before the integration of the three Europe, Europe Atomic Energy Community and the Economic Community of Europe second, following the merger of the Treaties establishing the Communities and the Europe Union. Generally, international agreements on trade union rights in Europe is a specific legal source because the treaties in the Member States as their domestic laws, regulations and decisions of the Union as a union rights and general principles of law as well as the resources that come to Europe by the Court of Justice, but the origins of an international agreement outside the EU legal framework and some of them are caused by the actions of non-member states and therefore they can not be a direct source of good union rights. However, this agreement has had many effects on trade union rights and are used in Europe, as stated by the Court of Justice have made them an integral part of Union law. So despite the origin of the agreements, they should be seen as part of the real sources of EU law [5].

1-5-2- Secondary sources

The secondary sources, which are the pillars of the legislation in Europe (Council of Ministers and the Commission for Europe) so that the so-called secondary court of Justice is also precedent in Europe and the domestic laws of the Member States and the general principles of international law. The difference is that the first of the major sources of secondary sources can have an impact on primary sources that can not change them. Secondly, for the secondary rules are valid, shall be issued under the authority of the organs of the Council or the Commission exporter otherwise, they can be invalidated by the Court of Europe [5].

1-6- Civil Rights Implications of Europe member states on trade union rights

As previously mentioned, the legal basis is one of secondary sources of law in Europe. However, since many of the legal principles have emerged in legal systems in some European countries, rights in Europe has also been influenced by them. Some of these principles can be pointed to the potential retroactivity of the law and human rights. In addition, other principles and practices can be regarded as the principle of legitimate expectations, principle of proportionality and the principle of proportionality, which is derived from the German law, the principle of the hearing, which was adapted from the English law and the principle of

equality or non-discrimination so that it is as certain principles in Europe [5].

1-7- Judicial approach in Europe union rights

Europe is one of the sources of law, judicial decisions. However, in Europe there is no legal doctrine to follow the Court's previous decisions but the Court has roughly followed the previous vote in all cases. The Court of Europe, is an important precedent for the development of Europe it is equally important to practice law in the courts of England. Although lawyers and advisors are always referred to the Court's judicial procedures however, the Court rarely documented in previous decisions. Use the ideas without putting it in quotation marks or attribution sentences or paragraphs re-issued to all previous votes. Although still referred to the Court for judicial procedures when it intends to defend its logic of course, do not use the English method of analysis to explore the history of the Court's ruling in Europe. There are some important things that the Court has relied on precedent and did not follow it. This is caused by a change of circumstances with the comments from the judges. In such cases, the Court usually does with the previous case, unlike the behaviour of the English court; it just ignores it [5].

MATERIALS AND METHODS

2. The legal system in England

British law and its principles of great importance because on the one hand, this is a law of the United Kingdom and the other it has a great impact on the rights of the United States of America and the Commonwealth (Komalos) as it consists of 31 member states. English law has the flexibility and stability for judges to follow the customs, traditions, customs and social habits as it was reflected in judicial decisions while the Germanic Roman law, the law more logical characteristics considered in the regulation of social relations, and therefore it is less stable in addition, judges apply by following the logic of the Court of Justice instead of truth within the dry law and regulations. British law has come in the course of evolution with respect to the development of the Courts and its resources now include common law, precedent, fair rules and laws [6].

2.1 Common Law

Common law originated from tribal customs that moved fifteen centuries ago northwest Europe and settled in England. As written, the customs laws, was not recorded in any place there was not even a single credible source so that all judges follow until then, they are classified to the same rules across the country. These rules still retains its value and they refer to the same rules seek to

resolve the dispute Judges in any case, the law is ambiguous or brevity or conflict with each other. It can be found in the common law legal treatises famous. Items in this treatise, although "proof" does not mean it is legal but British judges are of great importance attached to them. Court decisions are a source of grace for access to custom when the difference is because of the regulations, rulings by the courts is a guide to solve them [7].

2.2 Precedent

Although the lower courts have no obligation to abide by the decisions of higher courts, supreme Court decisions are actually invoked every time the same claims raised the resolution of legal issues and the term "similarity judgment". The victory of the ideas of the former, it embodies the benefits that provide uniformity and continuity in the administration of justice and prevents slippage of the hearing, neglect and issuing ballots distributed to high and it gives the expected consequences to persons in the exercise of their rights. But at the same time it provides rigidity and fanaticism causes the law and inflexible to changes in economic conditions and developments makes it permanent social life [7].

2.3 In the claims, disputes and other matters that are outside the scope of "common law" and also when implementing regulations are inconsistent with the spirit of the law of

justice, claimant's petition to the Chief Justice. So who was actually at risk of damage to the "common law", he had no choice but to wait and demand compensation from the court after damage. However, the court did not avail of the losses that are not compensated in any way. In such cases, the claimant would have to go to the Court of Justice to issue an interim injunction to prevent damage. Judges of the Court gradually created the procedures and provisions cited in opinions of its predecessors and tried to develop a set of rules which are interpreted to be "fair" [7].

2.4 The Rules

Sometimes accidents and incidents caused by the common law and the rules of fairness had not expected them therefore, the new law was necessary for them. The law was originally enacted and enforced by the king and later at the request of Parliament and the command of the monarch until parliament were a major source of legislation and the excellence of its decisions by the court decisions, as well as all the rules and regulations of the ruling principle of parliamentary sovereignty. Over time, the government assumed new responsibilities in the economic and social was added to the volume set of rules. None of the devices are complicated by the UK government in its jurisdiction. Despite the extensive developments in the late nineteenth century,

still retains a mysterious and winding their way. The reason is that before any other device, traditions and customs of the past and it goes on and remains and new ideas have negligible impact on the [7].

2-5 Scottish Judicial System

Although Scotland is a family of common law countries but it has a special judicial system. The civil lawsuit in court dealt with "Seshen" so that it is composed of two parts. "Inner" is composed of two branches, and "outer portion" of the twelve judges to serve as individually. Members of the House of Lords held that judicial proceedings in the appeal proceedings. Criminal proceedings in courts of justice comes to action and representative government in court and address their research relates to the Supreme Court votes are not so conclusive, final and conclusion of proceedings in the House of Lords [7].

3. The legal system in France

France has always considered legal doctrine in public law through its subject matter and the interest of the general public (twentieth century). However, the idea of substance in French law is summarized in four cases, including: Unity of the legal system, unified source of law, property rights and the separation of law from morality evolved, religion, and politics.

3.1 Unified Legal System

Although France is a single legal system nevertheless, in some cases there are specific provisions of law (in Alsace and Lorne) and custom business rules are different in different parts of the country. It also issued a precedent to be different from the court of France because when the justice system to do its job properly, the new rules will be interpreted in different judges. Thus, the dissent provides legal grounds for the lack of unity. The Court declared that France distinguish its final decision to establish a legal union between the courts and court offices, but sometimes it takes a long time to resolve such conflicts [6].

Source Unity in Rights

In Roman civil law countries generally arises from the legislature it is a set of rules governing social relations, performance or future behaviour of people. Basically else has the right to enact laws and prescriptions and with other institutions, as well as freedom of contract is a graduate of the law. To prescribe the constitution of France in 1958, currently plays the role of law and regulation. French judges are obliged to investigate and resolve complaints about existing laws in cases of ambiguity, the brief silence; judges have discovered judicial solutions without legislation. In accordance with Article 4 of the French Civil Code, if the judge does not resolve the dispute to excuse the silence, obscurity or brevity of

the law, he will be punished. France has no precedent in the common law in English law if we study English because we have rights, we will be faced with two very important (common law and equity) [6].

3.3 The Character of Perfection in French Law

The purpose of French law is that social relations are determined by law (with the exception of certain moral issues). If you sign the contract, he expects the anticipated requirements in the law. In this method, one is surrounded by legal regulations, what in the street as traffic regulations, including compliance with the obligations arising from marriage and the family, and so on. In this system, it is a judicial authority to deal with the objections of persons and the judge is obliged to handle and resolve disputes and regulatory disputes incomplete, inconclusive nature of the law, it is silent or ambiguous. In many human societies, law is not perfect, customs, traditions and social and moral obligations to bind more tightly Human Relations Act [6].

3.4 Breakdown of law from ethics, religion and politics

Despite the separation of religion and law in France, Christian thinking and respect for religious practices have been recognized by the law however, French law has not accepted some religious sites such as the impossibility of divorce. Although the law

can not be immoral and ethics is one of the most important sources of law, but lawyers believe the separation of law and morality in terms of enforcement. Partaleh says rights play a role in the evolution of social morality and righteousness in the form of rights issue and will be subject to the law of peace and righteousness but morality can not interfere in the practice of law such as the payment of compensation to the woman who is married to an illegal under certain circumstances. But to justify the separation of law from politics, they rely on the principle that: rights should be somewhat away from political volatility and instability [6].

RESULTS AND DISCUSION

- European countries are largely a function of the large Roman-Germanic and common law including the UK, which is based on the common law tradition and the weakness of the law written on it.
- Countries like France are the Roman-Germanic (civil law), with the exception that it has distanced itself from the traditional system of religion Tarsykh Laeeteh principles.
- Europe Union's legal system is a complex system because it refers to some fundamental principles of the common law (common law) and he runs the state and many of its rules are rules of civil law (Roman-Germanic).

- Dependence on European countries to the Roman-Germanic and common law, not the absolute it is adapted some of the basics of the system over time and require dynamic civil law countries, so that some countries like the UK have laws written and compiled as part of its legal resources on the other hand, France, precedent and tradition of unwritten criteria put it in order to fulfil the legal justice.

- Both the Roman and Germanic common law had a direct relationship with the religious and historical trends they have retained many of its original features with slight adjustments to the present law. It is more about the origins of religion (Christianity) in both systems.

- The main and most important difference in the effects of the legal systems of Europe and the European Union in Europe Union as a federal institution and according to the characteristics and needs of Member States in the direction of establishing a legal basis and the survival of their sovereign while European governments are faced with this issue as an independent and unified country each fully affiliated to either the common law or Roman-Germanic.

REFERENCES

[1] David, Renee, Aspynozy, Kami Zhofreh, An Introduction to Comparative Law and the two major contemporary legal system, translated

- doctor Hassan Safai, Publication of Mizan, Fourth Edition, Tehran, 1381.
- [2] Katouzian, doctor N., Introduction of law, corporate publishing, thirty-eight print, Tehran, 1383.
- [3] Hayati, doctor, Ali Abbas, the introduction of law, Publication of Mizan, Fourth Edition, Tehran, 1389.
- [4] Shiravi, doctor Abdul Hussain, Comparative Law, Publication of Samt, Fourth Edition, Tehran, 1385.
- [5] Taghizadeh Ansari, doctor Mustafa, Europe union rights, publishing forest, Second Edition, Tehran, 1391.
- [6] Erfani doctor Mahmoud, comparative law (contemporary legal systems), publication of Jangal, Fifth Edition, Tehran, 1388.
- [7] Bushehri, doctor J., fundamental rights issues, Publication of Dadgostar, first printing, Tehran, 1376.
- [8] Bushehri, doctor J., Constitutional law, Publication of knowledge treasure, first printing, Tehran, 1376.
- [9] Zoler, Elizabeth, Introduction to Public Law, translated SM Vaezi, Jangal publishing, first printing, Tehran, 1389.