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**TÍTULO:** Influencia de la ley alemana Pandect sobre los fundamentos del derecho privado de las provincias bálticas.

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**RESUMEN:** En el artículo se analiza la influencia de la Ley Pandecta alemana para los fundamentos del derecho privado de las provincias bálticas del imperio ruso. Los autores investigan la historia del desarrollo del derecho privado de las provincias bálticas antes de la entrada en vigor del Arco de legalizaciones civiles de las provincias bálticas de 1864, así como hacen un análisis de la influencia de los pensamientos de investigadores pandectos alemanes sobre las formaciones del derecho privado de las provincias bálticas. Se concluye sobre la influencia incondicional de las nuevas corrientes del pensamiento jurídico alemán, y en particular, de los representantes de las escuelas de estudios germánicos sobre la doctrina del derecho privado báltico, especialmente notable por las obras de F.G. von Bunge.

**PALABRAS CLAVES:** pandectización, la escuela histórica es ley, derecho privado, derecho romano, provincias bálticas del imperio ruso.

**TITLE:** Influence of the German Pandect Law on fundamentals of Private Law of the Baltic Provinces.

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**ABSTRACT:** The article analyzes the influence of the German Pandecta Law for the foundations of private law in the Baltic provinces of the Russian Empire. The authors investigate the history of the development of private law in the Baltic provinces before the entry into force of the Arch of civil legalizations of the Baltic provinces of 1864, as well as an analysis of the influence of the thoughts of German pandect researchers on the formations of the private law of the Baltic provinces. It concludes on the unconditional influence of the new currents of the German legal thought, and in particular, of the representatives of the schools of Germanic studies on the doctrine of the Baltic private right, especially remarkable by the works of F.G. von Bunge.

**KEY WORDS:** pandectization, the historical school is law, private law, Roman law, Baltic provinces of the Russian Empire.

**INTRODUCTION.**

In scientific research of sources of private law of the Baltic provinces of the Russian Empire time, directly after entry into force of the Arch of civil legalizations of provinces of Baltic of 1864, in literature is characterized as "pandectization" (Siimets-Gross, H. 2011:54); however, "pandectization" of private law of the Baltic territories was not any new, earlier unknown phenomenon. Such example was set earlier.

F.K. Savigny, "pandectization", of "The general territorial law for the Prussian states" (1794) (Savigny F.; Landrechtsvorlesung 1824. 1994:187-210] and J. Unger - "The general civil code for the German hereditary lands of the Austrian empire" (1811) (Leger R., 2011; C. 345-400).

From the point of view of the science of the German jurisprudence, the Baltic private law, after its codification, belonged to the field of civil local legalizations now and though it also was perceived as the German, but its contents and situation were hardly discussed outside the Baltic provinces (Landsberg E. 1978:559). In this sense, by estimates of experts, it actually was isolated from general law and its scientific consideration (Luts-Sootak, M.; 2009:56).

## **DEVELOPMENT.**

However, it makes sense to speak about a creative component of the German dogmatic orthodoxy for the Baltic private law hardly before a half of the 19th century as the new scientific line designated as pandect methodology, or a pandect researcher in Germany gains development only in the second half of the 19th century. She received such name in honor of one of the main available sources of the Roman pandect law from "Corpus Juris Civilis" of Justinian. Such designation as Begriffsjurisprudenz (literally - law of concepts, concepts) also is widespread in scientific literature (Dawson J.P. 1959:450).

## **Methods.**

In the course of the conducted research, authors used a dialectic method of scientific knowledge and also methods of the analysis, synthesis, induction, deduction and other general scientific methods of knowledge. The system method allowed studying comprehensively the system of private law of the Baltic provinces of the Russian Empire in total and integrity of its elements that allowed drawing required conclusions. The main method of scientific knowledge used by preparation of article - a method of diachronic comparison- which allowed investigating the influence of one doctrinal currents and rules of law on others within a historical retrospective.

**Results.**

The founder of a pandect research is considered F.K. von Savigny who came to a conclusion that the analysis of history of the law served only as means of identification of implicit legal principles, institutes and the general rules, and on the basis of the received material the legal science has to be engaged in creation of full-fledged system of civil law (Reimann M. 1990:854-855). Its work "The system of the modern Roman law" (Savigny F.C. v. 1840-1849) laid the foundation for the new direction on active creative processing and systematization before of the existing legal dogmatics (R. Iyering, 1883:563). Such withdrawal from truly historical researches marked final emancipation of a dogmatic scientific paradigm from especially historical legal analysis. In Germany, from the middle of the 19th century of effort of researchers, began to be aimed mainly at the creative development and improvement of the opened systematization (Reimann M. 1990:862).

Now, it is almost impossible to establish how seriously pandect researchers believed that they actually reconstruct true logical and structural perfection of the Roman law, but not artificially introduce in it a systematization element, and by that, it is distorted. The law operating in Ancient Rome was casuistic, inductive, aliens all generalizations and especially almost focused. Respectively under the flag of discovery of true value of the Roman law, pandect researchers in fact brought in it a systematization element alien to it (Reimann M., 1990:884).

Thus, the pandect researchers returned the German law to the Roman law, but not to the present, and to artificially reconstructed and systematized (Dawson, J.P., 1959:454); moreover, the idea of perfect systematization was not so much a fruit of the historical analysis, how many an echo of the natural and legal doctrine which was finding it possible to construct legal regulation, ideal on the rationality (Max Weber on Law in Economy and Society/ed. by M. Rheinstein, 1967:296).

The German pandect researchers built the new system of private law. The concept of the legal institute grouping several precepts of law around one general legal phenomenon was the basis for an initial design of system of private law. The system of the law was under construction not through accumulation of precepts of law, and indirectly - through systematization of legal institutes

(Wieacker F. A., 2003:315). It was difficult and gradual process during which legal institutes were formed, changed and disappeared under the influence of objective need, without any subjective or casual influence (Reimann, M., 1990:882). According to this scientific paradigm, authorship of the new theory could not belong to the specific researcher, but he could "open" only already existing, earlier not noticed by society (Wieacker, F. A., 2003:316).

However, from the middle of the 19th century, the pandect concept of creation of system of private law undergoes some modernization. To the place of legal institutes, "the pyramid of legal concepts" comes where each concrete norm is deduction from more general legal concept which, in turn, represents an emanation from even more general legal concept and so, on up to the most universal concepts and the idea of the law in general.

The test for adequacy of concrete precept of law consisted in check of as far as she fits into this law of concepts. Instead of considering legal concepts as inductive generalizations of private political and legal and valuable reactions to the concrete social facts and to realize variability of generalizations after transformations in social and cultural basis, pandect researchers began to consider the legal concepts constructed on generalization of rules of law of Ancient Rome as the axioms which are torn off from those political and legal reasons which pushed the Roman pretors, judges and lawyers in due time to choose the relevant standards.

As a result of change of methodology, the field for creative productive development of the law was formed, but this development was carried out especially in the area of formal logic and systematization (Ainur G. Demieva, 2014:481).

Feature of development of the German pandect research was the fact that during formation of its theory in the German states, there was no general civil code. Therefore, there were no conditions for active development of such direction as a legislative formalism (in the spirit of the French school of exegesis). Instead of the dominating value gets a formalism the conceptual, become characteristic feature of the German legal science 19th century.

The practical value of such pandect methodology consisted that from the legal concepts output by scientists by means of formal logic, it was possible to receive legal answers to any questions by the return deduction. According to pandect researchers, it is actually law and had to develop by means of the return deduction from concepts, opening thereby the hidden national legal spirit (Wieacker F. A. 2003:318).

Drew both camps of the German law on closeness of legal system: both pandect researchers, and germanists; however, pandect researchers insisted on creation of the closed system on the base of the Roman law while germanists tried to create the closed system of truly national private law (Wieacker, F. A., 2003:325-326). It is necessary to tell, that the discussion about "the buried system" directly found reflection in practice of the Baltic codification of private law. Not all Baltic lawyers with approval apprehended these ideas.

Influence of methodology of the German historical school is traced also in scientific courses of the Baltic private law of F.G. Bunge's background where the author carries out the scientific analysis of the operating local law, based on law history. The obligatory historical introduction preceding the analysis of each institute of the Baltic private law that according to F.G. Bunge's background, was necessary for explanation of the law operating (Bunge F.G. v. 1839) is very indicative in this regard (p:42-43).

Influence of historical school of germanists is traced in the Baltic legal thought not only on the example of works of F.G. Bunge's background. Almost along with the last and irrespective of it, other representative of science of the Baltic private law, Reinhold von Gelmersen, publishes the work on stories of the main beginnings of the Livonian law of succession (Helmersen R. v. 1832). Already from the preface of its work, it becomes visible that the methodology of a research P. of von Gelmersen is also based on provisions of the doctrine of the German historical school and germanists. We will not see any worship for the Roman law in its work; on the contrary, all its attention is paid to exclusively local national sources which are, according to the author, fundamentals of the operating Baltic private law.

The great influence on distribution in the environment of the Baltic law of the ideas of early German pandect researchers was exerted by the translation with Latin on German of the book of K.F. Mühlenbrock of "Doctrina Pandectarum" (Mühlenbruch C.F. Dr., 1844) executed by professor of the Derpt university.

K.O. von Madai, in the subsequent, when carrying out codification works of the Baltic private law, the editor-in-chief Mr. Bunge, when designing articles, borrowed a lot of material from this translated work.

In a summary,

1. Influence of new currents of the German legal thought, and in particular representatives of school of Germanic studies found reflection in the doctrine of the Baltic private law, especially it is noticeable by works

F.G. Bunge's background.

2. Small number of doctrinal researches in the sphere of the Baltic private law and lack of that depth of study of theoretical questions, what was characteristic of the German law in science of the Baltic private law, is explained by a factor of rather late formation of the jurisprudence in the Baltic region in the 19th century; however, considerable progress in perception of the ideas of the new directions of the German law in works of representatives of the Baltic scientific thought since 30th of the 19th century, in comparison with works of the first quarter of the 19th century.

3. Perception of the ideas of the German law by the Baltic lawyers became a step forward not only in application of new methodology in researches of the local law, but also in development of dogma of the Baltic private law in general.

4. The ideas of school of germanists about a priority of sources of the national law promoted activation of researches of various systems of the local law by representatives of the Baltic law. In turn, development of local legal literature promoted surge of interest in the Baltic private law in wider scientific community and facilitated ways to its systematization and codification.

## **CONCLUSIONS.**

In the article, the research proving influence of the German pandect law for private law of the Baltic provinces of the Russian Empire is conducted. The conclusions received during the research can become a starting point for new discoveries in the development of the ideas of school of sciences of the German pandect law.

## **Conflict of interests.**

Authors confirm that the submitted data do not contain the conflict of interests.

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