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The Legal System of Scotland as a Hybrid Legal System

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Abstract:

This scientific article analyzes the legal system of Scotland, which, as you know, is not subject to English (common) law. The paper addresses the question of which legal family it is a part of.

Keywords:

Scottish legal system; English (common) law; legal family; hybrid legal families

I. Introduction

It seems that the relevance of this article is due to a superficial consideration of this legal system and the theory of law, and comparative law in the analysis of common (case law). A clear and at the same time typical example is the provision according to which "... English common law is not the law of Great Britain, it is applied in the territory of England and Wales, and Scotland, Northern Ireland, the English Channel and the Isle of Man are not subject to English law" [1]. Svetlana Igorevna Kodaneva, considering that the core of the United Kingdom is precisely England, around which the country was formed, believes that "for an Englishman, the concept of "English" and "British" have always been synonymous. Arguing his point of view, the author emphasizes that, for example, "the famous book by Walter Bedjotg, from which entire generations of students studied, is called the English Constitution" (of course, the constitution of the United Kingdom is meant, since England has not had its own constitution since the Union with Scotland, i.e. since 1707) [2]. At one time, Rene David and Jean-Christophe Spinosi, when discussing the geographical limits of English law, arguing that the scope of English law is limited to England and Wales, believed that, on the contrary, the term "British law" should be abandoned [3].

Nevertheless, evaluating English law as "a model for a significant part of mankind", scientists believed that English law occupies a dominant place in the common law family, "and not only in England itself, where the common law has historically developed, but also in many other countries English law continues to be a model, from which, of course, one can deviate on a number of points, but which, on the whole, is taken into account and honored" [3].

Agreeing with this provision, Mikhail Nikolaevich Marchenko makes a reservation: "with the exception of Scotland and the Republic of South Africa"[4]. Yuri Alexandrovich Tikhomirov, characterizing the system of common law, without touching at all on the issue of its legal map, is limited only to the statement that "the colonial activity of the British Empire, and subsequently the mild but stable regime of the British Commonwealth of Nations, contributed to the fact that at least a third of humanity lives under the influence of the principles, norms and methods of common law" [5].

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Describing the Anglo-American legal family, without mentioning the legal system of Scotland, Alexander Vasilyevich Malko and Alexey Yuryevich Salomatin state that "the emergence of a huge British colonial empire contributed to the widespread spread of English legal traditions around the world, including in such states remote from the British Isles, like the USA, Canada, Australia"[6].

II. Research Methods

When preparing a scientific article, the following methods were used:

1. General philosophical (dialectical-materialistic), which is used in all social sciences;
2. General scientific (analysis and synthesis, logical and historical, comparisons, abstractions, etc.), which are used not only by the theory of state and law, but also by other social sciences;
3. Special methods (philological, cybernetic, psychological, etc.), developed by special sciences and widely used for the knowledge of state and legal phenomena;
4. Private scientific (formal legal, interpretation of law, etc.), which are developed by the theory of state and law.

III. Discussion

3.1 Historical Evolution of the Scottish Legal System

The Scottish legal system has developed in the process of a long historical evolution. The French legal orientation, which began after the "wars of independence" with England (1298-1326), was expressed in the fact that Scottish lawyers turned to Roman canon law: certificates, torts, and rules on movable property were borrowed from Roman law; canon law regulated marriage and family relations, hereditary, contractual. The development of Scottish law did not occur in parallel with English common law, but gradually diverged from it.

Until the fifteenth century Scotland did not have its own universities, so future lawyers went to the universities of France, Germany, the Netherlands, where they are mainly Roman law, which at that time played the role of common law in Scotland and which has retained its influence on individual institutions of civil law to this day, in legal terminology, in the division of law into public and private. In the XIII-XIX centuries. Scottish lawyers continued to borrow continental legal experience, primarily French and Dutch. Unification with England contributed to the gradual strengthening of common law traditions. So, the Scottish courts are completely English case system. At the same time, in Scotland, as in the Romano-Germanic legal family, specific legal issues are derived from a general principle, while in the countries of the Anglo-Saxon legal family, a general principle is formulated based on specific cases.

Akmal Homatovich Saidov believes that one should not assume that everything that does not coincide with English institutions and norms was adopted from Roman or Romano-Germanic law. The scientist argues that "the Scottish legal system, differing from the English one, does not completely copy the Romano-Germanic system", because "it has retained its national characteristics and customs that have developed as a result of independent historical development"[15].

The law of Scotland, which was forcibly annexed to England in the middle of the 17th century and officially merged with it in 1707, for historical reasons, still differs significantly from English law. Alexander Konstantinovich Romanov goes further in this regard, believing that "due to historical reasons, the Scottish legal system retains its features in comparison with

the legal system of England and Wales." The author argues that "... Scotland has its own system of law (apparently, we are talking about the legal system - Vladimir Valentinovich Kozhevnikov) and its own judicial system"[7].

The subsequent strong influence of English law, which makes itself felt to this day, did not change the independent character of the common law of Scotland. It differs significantly from English common law both in content and terminology, and in particular in the principles of application of its provisions and norms by the courts. The literature emphasizes that, in a certain sense, Scottish law is more similar to the law of continental European states than to English law, and in relation to it is a completely independent system"[7].

Felix Mikhailovich Reshetnikov believes that the law of Scotland "arose as an independent system of principles and judicial precedents based on the practice of Scottish courts, adapted to local conditions, many provisions and institutions of Roman law"[8]. It was in this way that the Scottish court system and the judicial process were formed, which give reason to talk about the very significant independence of the Scottish legal system.

3.2 The Judicial System of Scotland

The judicial system of Scotland takes its basis in Roman law, and therefore differs significantly from the English case law system, while maintaining significant independence in relation to it, enshrined in the Treaty of Union of 1706. The functioning of the judiciary is provided by the independent Scottish Judicial Service (Scottish Courts and Tribunals Serivce), founded in 1995 and accountable to the Scottish Government.

The system of criminal courts. In criminal cases, the High Court of Justiciars located in Edinburgh acts as the highest and final authority (justiciar in the Middle Ages in the British Isles was called an official who served as head of the executive or judicial authority in the absence of the king or on his behalf in Ireland or Scotland). It is composed of the Lord Justice General of Scotland, the Lord Justice Clerk and the Lords Justiciars of the High Court. The judge of this court, together with 15 jurors, hears at first instance cases of the most serious crimes prosecuted under the indictment (such trials are held in Edinburgh, Glasgow and other cities in Scotland). As an appellate instance, the High Court of Justiciars, composed of three or more of its members, hears appeals against sentences of any Scottish courts, including those issued by a judge of the same court. The judgments of the High Court of Justiciars play a very important role in the development of Scottish criminal law and process.

3.3 Criminal Process in Scotland

In Scotland, unlike England and Wales, there has long been a developed system of public prosecution bodies. It is headed by the Lord Advocate and the Solicitor General of Scotland acting as his deputy, and locally represented by procurators-fiscals.

The bodies of public criminal prosecution, at their own discretion, decide on the advisability of bringing to court and maintaining charges in a case investigated by the police (the most complex criminal cases can be investigated by procurators-fiscals). The prosecution in the High Court of Justiciars is supported by the Solicitor General for Scotland or the Lord Advocate's Assistants. In sheriff courts, and sometimes in district courts, the prosecution is supported by procurators-fiscals, who enjoy great independence in deciding many issues. The Lord Advocate, Solicitor General and Fiscal Procurators can also participate in civil cases, acting in defense of the Crown or "public interest".

The functions of defenders of the accused in criminal cases and representatives of the parties in civil proceedings in Scotland are performed by professionally trained lawyers. As in England, they are divided into two categories - lawyers (their professional association is called the Faculty of Advocates) and solicitors (they are united in the Law Society of Scotland). Like English barristers, lawyers have the right to appear in any courts and give advice and opinions on legal issues addressed to them.

The most experienced lawyers, on the proposal of the Lord Justice General, are appointed Queen's Counsel (the appointment is made by the Queen). Solicitors, formerly traditionally referred to as "legal agents", serve primarily as attorneys and work to prepare cases for hearing. They have the right to appear in sheriff and other lower courts.

3.4 The System of Civil Courts

The highest court in civil matters is the Court of Session, sitting in Edinburgh. It consists of the Lord Justice General of Scotland, called the Lord President of the Court of Session as its head, the Lord Justice Clerk (he heads one of the branches of the Court of Session) and the Lords of Session, who are also members of the High Court of Justicars.

The Court of Session has an outer chamber and an inner chamber. In the outer chamber court, judges hear cases at first instance either alone or with 12 jurors. The Court of the Inner Chamber, composed of the most experienced and qualified judges, hears complaints against decisions of the Court of the Outer Chamber in panels of four members. Judgments of the Court of Session, unlike those of the High Court of Justiciars, can be appealed to the Supreme Court of Great Britain (formerly the Judiciary Committee of the House of Lords). lower courts. An important part of the Scottish judicial system is the sheriff's courts, which already belong to the system of lower courts. Sheriffs are professional judges, they are divided into two categories - chief sheriffs (each head of one of the sheriffs into which the entire territory of Scotland is divided) and more numerous sheriffs, sometimes called deputy sheriffs. In the field of criminal justice, both the chief sheriff and the sheriff have the right to try, with the participation of 15 jurors, cases of crimes prosecuted under the indictment, or alone - cases of crimes prosecuted under summary jurisdiction. In civil matters, the chief sheriff handles mainly complaints against decisions made by sheriffs. In turn, ordinary sheriffs consider the bulk of civil cases at first instance: their competence is not limited to any amount of the claim. The lowest court in criminal matters in Scotland are the district courts, where either single paid magistrates or two or more justices of the peace hear cases of petty offences. Paid magistrates and justices of the peace are also entitled to deal with certain categories of civil disputes, most often of a family nature. Judges of Scottish courts are appointed to their posts either by the British monarch on the recommendation of the Secretary of State for Scotland, or, in the case of justices of the peace, by the Secretary of State himself [9].

3.5 Legal Sources of Scottish Law

Scottish jurists classify the sources of Scottish law using the system and terminology of English jurisprudence: precedents, legal treatises of institutional significance, and legislation.

Moreover, the first two sources are sometimes referred to as the common law of Scotland. The doctrine of precedent began to take shape in Scotland after its forcible annexation to England, and by the nineteenth century. the principle of precedent, which in fact does not differ in content from the English system, although it has its own characteristics, is finally affirmed in the Scottish courts. Scottish law consists of laws passed by the Scottish Parliament prior to 1707, which continue in principle to the present day, being periodically reviewed, repealed and reissued; from the laws of the Parliament of Great Britain passed from

1707 to 1800, and the laws issued after 1801, when the United Kingdom of Great Britain and Northern Ireland was formed as a result of the annexation of Northern Ireland. In 1997, a referendum on autonomy was held, where 2 questions were asked - about the establishment of our own parliament and about improving the taxation system. The British Parliament also promoted the convergence of legal systems. The Scotland Act (1998) gave the Scottish Parliament, which has the power to legislate on any matter not specifically reserved to the central parliament [2], important powers.

As a result of the referendum (by an overwhelming majority) in 1999, after a 292-year break, the Scottish Parliament met again, which by now has adopted a large number of laws: the Scottish Ombudsman Service Act, the Criminal Justice Act, the Vulnerable Witnesses Act, etc. [10].

In 1948 the annual publication of current Scottish legislation was started and continues to this day. This collection includes the Rules of Civil Procedure and the Rules of Criminal Procedure issued by the Sessional and High Court (the highest courts in Scotland), which are equated with laws by virtue of the historical right of Parliament to delegate its judicial powers. Despite the subsequent strong influence of English law, Scottish common law differs significantly from English common law both in content and terminology, and in particular in the principles of its application by courts. In a certain sense, Scottish law shows great similarity with the law of continental European bourgeois states, but in relation to it it is a completely independent system. Felix Mikhailovich Reshetnikov noted that "an important feature of Scottish common law is that it includes not only judicial precedents, but also some treatises of Scottish lawyers who enjoy exceptional authority"[8].

We note that, along with the common law, an ever-increasing role as legal sources of law is played by laws and by-laws. The gradual expansion of the sphere of legislative regulation of social relations, which seems somewhat paradoxical, leads to the strengthening of English law. The fact is that in Scotland those acts of the British Parliament are in force, which either contain an indication that they apply to its territory, or are issued only for Scotland, which is reflected in the title (for example, the Criminal Justice Act for Scotland).

Irina Yurievna Bogdanovskaya in this regard notes that the English Parliament is the legislative body for England, Scotland and Wales, however, due to the peculiarities of Scottish law, the law may specifically stipulate its effect in Scotland [11].

Retain their effect and many acts issued before 1707 by the existing Parliament of Scotland. It seems that the peculiarity of Scottish law is quite well manifested in the regulation of relevant social relations. Thus, the regulation of property relations, especially land, differs significantly from the provisions of the current English legislation. In the area of commercial relations and copyright, on the other hand, the influence of English law is most obvious.

Some types of contracts provided for by Scottish law (loan, deposit) originate from Roman law, others (purchase and sale) are governed by rules that basically coincide with English law. Responsibility for offenses is regulated by norms that are only partly identical to English law (for example, the institution of strict liability does not find application here, which allows in England, under certain circumstances, not to require evidence of the guilt of the offender).

Criminal law, like most other branches of Scottish law, remains uncodified. The range of acts recognized as crimes is determined for the most part by statutes, but the signs of most

crimes are listed in the rules of common law. Many issues of the General Part of Criminal Law are interpreted in Scotland differently than in English law (for example, the types of intent and mitigating circumstances differ significantly, liability for complicity is determined according to other rules than those provided by English law).

3.6 Criminal Process in Scotland

The criminal process in Scotland is very different in its main features from English, and historically it was closer to the French system of justice. Until recently, the Rules of Court of 1936 and 1965 served as legal sources for it, however, the British Parliament, on the proposal of the Law Commission for Scotland, issued the Criminal Procedure (for Scotland) Act 1975, which is essentially a code of criminal procedure drawn up in in accordance with the Scottish system of law and incorporating the norms of both legislation and case law. It is complemented by the Criminal Justice (for Scotland) Acts 1980 and 1987. The foregoing allowed Alexander Konstantinovich Romanov to state that, unlike in England, the norms of criminal procedure in Scotland are now codified [7].

3.7 Civil Procedure in Scotland

The civil process in Scotland, which formerly borrowed much from Roman law, is now governed mainly by uncodified statutes and judicial rules, in the development of which the Court of Session plays a large role. A large place in its regulation is also occupied by the norms of Scottish case law, which uniquely interpret the issues of admission and evaluation of evidence, as well as a number of other procedural institutions [8].

3.8 Which Legal Family does the Scottish Legal System belong to?

After such a largely historical excursion into the formation and development of the Scottish legal system, it is necessary to decide on the main question of this article: what legal family is the latter a part of?

When answering this question in legal science, there are at least two positions. The supporter of the first was Mikhail Nikolaevich Marchenko, who, when considering the general and special Romano-Germanic and Anglo-Saxon law, believes that it is important not to lose sight of "... the fact that some legal systems are constituent parts of these legal families, due to historical and other reasons, organically combine "mixed legal traditions" characteristic of both Romano-Germanic and Anglo-Saxon law [12].

The scientist refers the Scottish legal system to "intermediate" states. For comparison, the author refers to this group the legal system of Louisiana (the former French colony) - now one of the states of the USA, where traditions, principles and institutions of Romano-Germanic law dominate in private law, and traditions and principles of common and American statutory law are reflected in public law. rights. It is also stated here that, "despite the fact that elements of the same common law function in the territory of this state, which completely dominate in the remaining 49 states of the United States, nevertheless, for ordinary citizens of the state of Louisiana, the components of the continental (civil) law are more important and preferable. , Romano-Germanic law"[12].

From the position of Mikhail Nikolayevich Marchenko, the situation is similar in some other legal systems, such as the legal system of the French-speaking province of Quebec, one of the subjects of the Canadian Federation, where there are about 150 years ago, with the arrival of the common law English, who declared Canada their dominion in 1867, the institutions and traditions of Anglo-Saxon law were formed, as well as the legal system of South Africa, "influenced both by the traditions of the Romano-Germanic (through the

system of Danish law) and from the Anglo-Saxon legal family (through the UK legal system)"[12]. In fairness, we note that it is difficult to understand what a scientist understands by the UK legal system.

It seems that the Afghan scholar Hashmatullah Bekhzruz is more accurate terminologically, defining such legal families as families of mixed law, including legal systems that have common patterns of development and similar features that are between Romano-Germanic and common law. Specifying, the scientist, that they can be called hybrid legal systems, combining elements of local sources of law and borrowed legal provisions from both Romano-Germanic and common law. It seems that the author expressed a very important and fundamental position that "... despite this, they are considered independent legal families"[13].

These legal systems, according to Hashmatullah Behruz, include the Latin American legal family, in the sphere of private law Romano-Germanic law turned out to be influential, and in the sphere of public and especially constitutional law, the principles of American law (primarily, the American constitution and the judiciary), and also Scandinavian law (the legal systems of Sweden, Denmark, Norway, Finland, Iceland, etc.), which, on the one hand, resembles the constructions and basic principles of the formation and functioning of Romano-Germanic law, on the other hand, the codification process in these states consists in an integrated approach to the regulation of branches of law (codes do not regulate individual branches, but are aimed at regulating institutions belonging to different branches of law) and a special place and role of judicial precedent in the system of sources of law [13].

By the way, we note that in René David's classification, the main legal families are Romano-Germanic, Anglo-Saxon and socialist, the German comparativists Konrad Zweigert and Hein Koetz mention the Scandinavian "legal circle", and Akmal Kholmatovich Saidov defines the Scandinavian and Latin American legal families as independent. Christopher Osakwe, drawing attention to mixed legal systems, argues that these are "a hybrid of Romano-Germanic and Anglo-American law" which are based "on Roman law with a significant influence of common law", including here the legal systems of the state of Louisiana (USA), the province of Quebec (Canada), Puerto Rico, South Africa, Israel, etc., including Scotland [14].

Assuming that the peculiarity of mixed legal systems is that they combine elements of the Romano-Germanic legal family with elements of the legal family of common law, as well as elements of traditional and religious legal systems, as the first scientists analyze the legal systems of the Canadian province that we have considered above. Quebec, the American state of Louisiana, as well as the legal system of Israel, the Republic of South Africa, etc. [15].

The second position is defended by Akmal Homatovich Saidov, who believes that "the case law, acting under the influence of the precedents of the House of Lords (currently lost the status of the highest judicial body - Vladimir Valentinovich Kozhevnikov.), As well as laws adopted by the English Parliament, are those channels for Scotland which influences English law. As a result, the Scottish legal system, having its roots in Romano-Germanic law, is now developing more and more in the direction of English common law. After that, the author makes a very illogical conclusion: "that is why we have considered Scottish law in the section on the legal family of common law, and not in the section on "Mixed legal systems", as is widely used in comparative literature"[15].

It seems that the position of those scientists who attribute the Scottish legal system to a mixed legal family as a result of state-legal integration and convergence of legal systems, as a

new comparative phenomenon that combines elements of two or more legal families and traditions, often competing with each other, is more reasonable.

For example, Anastasia Andreevna Grafshonkina, arguing that the Scottish legal system is a mixed law system that has retained its uniqueness, originality, traditions of Scottish law and at the same time "absorbed" elements of common and continental law, emphasizes that "law in Scotland is a conglomeration of customary law, old Irish law, English case law, Norman law, continental legal doctrines, principles and institutions. Turning to the analysis of legal sources of law, the author, touching upon the features of judicial precedent in Scottish law, writes that, despite the fact that the doctrine of stare decisis during the nineteenth and twentieth centuries. found confirmation in the law of Scotland, it did not take such a strict form as in England. Along with the precedent, close attention in deciding the case was paid to legal principles, as is customary in continental law, as well as to the works of institutional writers [16].

Elena Nikolaevna Trikoz, referring to the problem of mixed legal systems, goes further, highlighting their two conditional types: hybrid and pluralistic. Explaining his position, the author emphasizes that the hybrid type implies a certain community of states with elements of two classical legal families at once - Anglo-American and Romano-Germanic; in mixed pluralistic legal systems, which are the majority, elements of the legal family of common law are combined with elements of the Romano-Germanic legal family, as well as with the institutions of traditional and religious legal systems, which often develop within the borders of states that have distinctive legal and cultural institutions, a colonial legal past and heterogeneous sources of law (a certain measure of independence of development is inherent only in rare legal systems, for example, the law of Israel, Japan, China and Ethiopia) [17].

Analyzing the concept of a mixed legal system from the standpoint of a broad and narrow approach, the author emphasizes that from the standpoint of the first one "... the interaction of two or more types of law (or rather, legal families - Vladimir Valentinovich Kozhevnikov) (legal traditions) is the central criterion".

Therefore, for "the recognition of a legal system as a mixed one, any interaction within its framework of legal subsystems of various types or heterogeneous sources of law (for example, religious law with ordinary law) is sufficient. From the position of a scientist, "adherents of a narrow approach to heterogeneous legal systems use a limited understanding of the "mixture of law", taking as a basis systems of private law based on common law with elements of Romano-Germanic law"[17].

Emphasizing that today, on the legal map of the world, mixed legal systems serve almost 200 million people and jurisdictionally cover an area the size of a subcontinent, the author, based on research by scientists from the virtual project "Mixed Legal Systems" of the University of Ottawa (Canada), who believe that this concept covers almost half of modern legal systems focuses on the following "groups of legal families": 1) continental and common law; 2) continental and customary law; 3) continental and Muslim law; 4) common and customary law; 5) common and Muslim law; 6) continental, Islamic and customary law; 7) common, Islamic and customary law; 8) continental, common and customary law; 9) common, continental, Islamic and customary law; 10) continental, common, Jewish and Muslim law; 11) Muslim and customary law.

Elena Nikolaevna Trikoz reasonably argues that in this conglomerate of legal systems, depending on the prevailing legal and cultural tradition, two large subgroups of mixed legal systems are distinguished: 1) non-religious, or hybrid, legal systems that develop within the framework of the Western tradition of law, i.e. on the overlap of Romano-Germanic and Anglo-American law; and 2) religious-traditional or pluralistic legal systems that develop within the framework of the extra-Western tradition of law, combining Southeast Asian law and African customary (ancestral law).

Speaking of which, referring the legal system of Scotland to a hybrid legal system, it is noted that "only Scotland and Israel, without colonial coercion, have in fact freely chosen a mixed system for their national legal space. Moreover, the oldest mixed jurisdiction remains the Scottish system of law (more precisely, the legal system-VK), which acquired a hybrid identity as early as 1797 or even earlier"[17].

IV. Conclusion

In conclusion, we note that since 1900, when the I International Congress of Comparative Law was held, and at a later time by various authors (Ademar Esmen, Ernst Glasson, Henri Levi-Ullmann, John Henry Wigmore, Rene David, and others) proposed author's classifications of legal families. However, given that many national legal systems, including the Scottish legal system, are classified as mixed, comparative scientists should, in their classifications, in addition to the Romano-Germanic, common law family, Muslim, Hindu, customary law, etc., name a mixed legal family .

It is interesting to note that this proposal is not new. Particular attention in the post-war period, up to the present, has been given to such criteria for classifying legal families, which are based on the commonality of their historical roots, the similarity of the style or model of legal thinking, the proximity of the main legal institutions, etc.

Thus, Peter Kruse divided the existing national legal systems into 4 main legal families: Anglo-Saxon (common law family), Romano-Germanic (civilian), socialist and legal family of "hybrid or mixed jurisdiction"[18]. It seems that the actualization of mixed legal families is currently associated with globalization "as an objective process of rapprochement, internationalization, interdependence in all spheres of life of countries and peoples of the planet"[19].

The globalization and universalization of culture most directly affects the once closed legal families: there is a blurring of the line between different types of legal systems based on the common types of cultures and civilizations. What is happening is what can be called standardization or mutation of legal systems and the legal image of the peoples inhabiting different countries and continents. This is especially noticeable at the level of the European continent.

The expansion of the number of states of the European Union and the Council of Europe unifies the legal development of the countries included in these communities. Such fundamental changes also affected the once most closed legal family - the Muslim one. Under the influence of the legal systems of various countries, the Muslim legal family is evolving. This is primarily due to its westernization, i.e. borrowing by Muslim law of some ideas, principles, norms inherent in the continental or Anglo-Saxon legal families. Legislative activity is being developed, codes (civil and civil procedure) are being adopted, the activities of courts are being improved (they are being restricted from abolishing the activities of traditional

courts that ensure the strict application of the provisions of Shariah). There has been a general trend of humanization of Muslim law [20].

In 1981, the Universal Islamic Declaration of Human Rights was adopted, containing a catalog of human rights. The Declaration guarantees the right to life, liberty, equality and non-discrimination of any kind, to a fair trial, protection against abuse of power, protection from torture, protection of honor and reputation, the right to asylum, protection of the right of the non-Muslim minority to freedom of conscience, thought and speech , freedom of religion, assembly, protection of property, etc. Thus, the notion of Muslim law as an exclusively set of Muslim duties, which Rene David drew attention to in his time, when speaking about religious legal families, goes into the past: "One can even doubt that they are a right, because in most of them the emphasis is on the duties that are assigned to a righteous person, and the concept of a subjective right is absent. The term "law" is used in these systems for lack of a better term"[21].

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