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науковому методі. Пізнання ніколи не може бути справою на рівні даності. Це категоріальна праця вищих синтезів, які здійснює свідомість, що пізнає.

Школи догматики та формальної логіки готують висококваліфікованих фахівців з юридичної техніки, однак нездатних до самостійного мислення. Такий стан речей має місце і навіть поширений ще й сьогодні, коли провідні правники орієнтують юриста-практика бути суворо, беззастережно обмеженим законом, незалежно від його уявлень щодо правового характеру останнього. Як результат – однобокість і неповнота правопізнання, спрощене уявлення про правову діяльність, що розвивається. Тому думка Г. Шершеневича про те, що «юридичні науки страждають догматизмом, оскільки базуються на поняттях, які вони сприймають без будь-якої критики»[62], залишається актуальною і сьогодні. Сучасний юрист не повинен займатися тільки вивченням того, що є, обмежуватись розумінням та інтерпретацією суті норми, не ставлячи питання, чи могла б вона бути кращою при задоволенні нових запитів суспільства. В іншому разі цілеспрямоване нормативне регулювання, не засноване на розумінні специфіки закономірностей сучасного соціального життя, тільки посилюватиме накопичені проблеми.

14.2 Mapping of human social and legal value in natural-legal type of understanding of the law

In the context of the development of modern science, which explores the problems of man, his place and role in the multifaceted processes of social life, one of the most important directions of scientific knowledge is the study of the essential characteristics of the social and legal value of man within the limits of the main types of understanding of the law. It should be noted that, beginning from the depths of centuries, the problem of understanding of the law, the role of man in

[62] Шершеневич Г. Общая теория права. Москва, 1910. С. 16.

relation to the law and the right to man does not lose their relevance in modern times. Each historical era made its own adjustments to the system of knowledge about man and law, which was due to spiritual-cultural, economic political and other factors. However, centuries of historical experience, the accumulated system of philosophical knowledge, which is imbue with various ideas, principles, etc., do not give us a clear answer to the question of what constitutes a law. In this context, it is worth recalling the words of N. Rulan (2005), who pointed out that «law is a process of intellectual qualification, not a real natural object apriori» (p. 23-24). It follows that the understanding of the law is directly dependent on the position chosen by the person, knowing the law.

We believe that the basic position regarding the knowledge of the social and legal value of man within the framework of existing theories of understanding of the law is taken by the theory of natural law, which has a millennial history and originates from the depths of ancient philosophical and legal thought, within which the search for the values of the supreme order took place.

It should be noted that the search for moral law and values of the highest order, which conditioned the whole process of human activity, does not lose its relevance in modern times. The existence of a number of negative phenomena in society makes it necessary to strengthen such a search. As K. Lyubutin (1997) notes, «This manifests itself in anthropogenic pressure on the biosphere and man-made pressure on the genotype of man, in the cleavage of the soul, moral degradation of man, and general zeal. All this is a sign of our time, closes on the problem of man. The destruction of man by man himself began» (p. 6).

Knowledge of the social and legal value of a person within the limits of the natural legal type of understanding of the law is important for determining and establishing the present criteria of regularity in the law, carrying out an effective process of its translation into the system of social relations, building the rule of law state, protection of human and civil rights and freedoms.

The basic concept for the disclosure of this issue is the concept of «value», all that allows people to meet their desires and needs, forces efforts to achieve,

preserve and increase them. In our opinion, it is worth agreeing that absolute values of a natural and legal nature do not depend on changes in socio-historical conditions, are not the product of the will of the power, do not prescribe its regulations, are above its instant interest and are not subject to devaluation (Bachinin, 2003).

The highest social value is the man. Hence the right to life, liberty, security and dignity of the individual. The human-centric dimension of law, when viewed from the perspective of reflecting and establishing appropriate forms of law in the system, is to ensure and guarantee the real realization of natural human rights. They serve as an appropriate benchmark and criterion for assessing a positive law against human values such as life, liberty and security. Thus, article 3 of section I of the Constitution of Ukraine (1996) states that «a person, his life and health, honour and dignity, inviolability and security are recognized in Ukraine as the highest social value». Accordingly, section II of the Basic Law of Ukraine enshrined natural, political, social, economic, cultural and other human and civil rights and freedoms in Ukraine (Constitution of Ukraine, 1996). The establishment of human rights in the Basic Law, constitutional acts, codified laws, their enforcement, implementation and protection constitute a mechanism for the constitution of rights, and at the same time an integral part of the legal system of any democratic and rule of law State, including Ukraine (Shevchenko & Kudin, 2019).

The idea of natural law itself is important for the disclosure of the essence of the social and legal value of a person within the limits of the natural legal type of understanding of the law. According to A. L'vova (2008), this idea «for a long time developed in the form of absolute natural law, was based on the belief in the existence of permanent and common laws of world life and human relations. Every living being was thought to have natural properties that inevitably manifest themselves in its behavior, and natural law is an unchanged and universal ethical, or legal, norm of human behavior» (p. 108).

Given that the theory of natural law has gone through a long historical path of

its development and is viewed from several positions, namely, the theological, objectical and modern interpretation of natural law, it is advisable to elaborate on the role of man in the context of these approaches.

The essence of the theological theory of natural law was that the basic condition, the basic principle in the understanding of the law, is the awareness of the presence of the will of God in establishing the order to which people should obey in the process of their vital activity. As P. Ol' (2005) notes, it is the «natural law» that is regarded as the external manifestation of eternal, divine law, which is opposed to imperfect human law (p. 72-73). The role of man within the specified approach to understanding of the law is limited to the passive performer of the alien will, in this case – the will of God. However, the question of who and how will represent «God's order» remains open.

A feature of the ideal legal consciousness is that it is characterize by the prohibition of criticism of judges and laws, and doubts about the legality of norm-commandments are not allow. It should be noted that in its system of values, all social interests must be subject to religious regulations. Judges in the ideal system are both clerics and many legal procedures and sacred rituals. In states of ideal orientation, only those rulers whose lineage dates back to the gods, as well as those who have a direct divine sanction of rule, have legitimacy. Therefore, in such states, the monarchy is usually a theocracy at the same time. Such were the states of archaic Greece and Rome, India and Tibet, the Inca Empire and medieval European states.

A feature of the objectifying form of natural law theory, which originates from the Hegelian philosophy of the development of the «absolute idea», is that the concept of spirit was central to it, so it was with the legal consciousness that the image of law, which was reflected in the behavior of members of society in various socio-historical conditions, was connected.

At the same time, in defining the idea of law through the concept of «freedom», its proponents noted that the idea of law itself passes three degrees in its development, namely: 1) abstract law as the right of an abstract free person;

2) morality as a proper sphere, including assessment of human behavior and is subjective; 3) morality as an objective idea of law is reflected in the family, civil society and the state (Zaychuk & Onishchenko, 2006).

We believe that the change in the image of positive law acquires its real manifestation and consolidation in the norms of law only if there is freedom that is inherent to man from birth. One should agree with the opinion of V. Humboldt (1985), who wrote, «...nothing contributes as much to achieving the maturity necessary for freedom as freedom itself. Those who often enjoyed a lack of maturity as proposals to continue the oppression will counter not that claim, of course. Nevertheless, it seems to me that this claim is certainly derive from the very nature of man. Lack of maturity, necessary for obtaining freedom, can be a consequence only in case of lack of intellectual and moral forces..., it requires work, and work – freedom, awakens amateur activity» (p. 137).

So, within the framework of the objectifistic variety of natural law theory, attention is focused on the active, creative activity of man, not aside from the processes taking place in public life. Such a person responds clearly to everything that happens in society by assessing the corresponding phenomena through the prism of his own consciousness, the level of which is due to the degree of freedom of the individual. Continuing the idea of the role of natural law in the context of the manifestation of creative activity of man, it is within this concept that the image of man is deprive of law-abiding as an ideal value-normative model of behavior. The characteristics of a law-abiding subject include:

- passivity in the choice of behaviour;
- internal limitation of will;
- lack of adjustment for creative search for a solution to the relevant issue, which would be in the interest of the individual or valuable from the point of view of the public good.

It is worth noting that for the modern understanding of the theory of natural law there are specific characteristics that determine the place and role of man in the process of creation and realization of law. This is because, compared to the era of

anti-feudal revolutions, there have been significant changes in the views of man as a bearer of natural rights. New views and approaches to defining and understanding human social and legal existence are link to the adoption of a significant number of human rights instruments after World War II. It was during this period that more than fifty human rights declarations and conventions drafted and adopted under the auspices of the United Nations.

Considering new views on the definition of the essence of human social and legal existence, it is necessary to refer to the definition of human rights itself, which is characteristic of modern legal science. The concept of human rights in literature (foreign and domestic) is define differently:

- as opportunities necessary for human existence and development under certain historical conditions;
- as human requirements addressed to the State and society;
- as certain human goods, needs and interests and the like.

It should therefore be noted that human rights, recognized by the international community, are universal. They are indivisible and interdependent. The international community has an important role to play in relation to human rights, which should treat them globally, fairly and equally, taking into account the importance of national and regional specificities and the various historical, cultural and religious characteristics of the development of states (Kartashkin & Lukasheva, 1998).

Therefore, we believe that the normative consolidation of human rights has opened a wide space for the creative and active activity of the individual and has defined the boundaries of state interference in the affairs of society. The law-abiding subject is replace by a person who includes a significant potential for legal activity, a focus on the will behavior of the subject, who, being within the axiological sphere of law, is able to make a choice between values of a legal nature and his own ideas of expediency or impracticability, correctness or misbehaviour of behavior.

Under such conditions, there is a violation of the foundations of the eternal

legitimacy of the regulations. Change of a political situation from democratic in antidemocratic, specifics of the public relations, requirements of practical character inevitably lead to the fact that standard instructions lose the legitimacy and put the subject in a situation of need of settlement of dispute between dogma of the law and real-life requirements, between values of natural character and values or anti-values that declared by rules of law.

It should be noted that the right to human dignity is part of the system of natural human rights, since, as a being of natural origin, man is worthy of living in decent natural and social conditions. Man is worthy to govern himself, as well as to treat himself with dignity as a subject of moral choice. The realization of the value of human dignity, in our opinion, does not take place automatically, but requires a high level of value content of the person, a meaningful attitude to human existence, an awareness of the value and role of the person in the life of society. In this context it is worth recalling the opinion of O. Muchnik (2009) on the importance of understanding the dignity of man. He believes that the «philosophy of human dignity» includes that of self-preservation and the development of any human being, people and humanity as a whole. The value, in our view, is that the author emphasizes the «culture of dignity», understanding under it the stereotype of behavior, which is characterized by such signs as solidarity, benevolence, propensity for mutual support and dedication in order to preserve each other's dignity (p. 23-25).

A feature of the realization of the natural human right to dignity is that without it is impossible to realize all other human rights and freedoms. That is why, in certain historical circumstances, human beings and society face questions about the need to understand the existence and choice between two kinds of values, namely: 1) values that express practical, temporal and subjective orientations of human behaviour; 2) values that have no time constraints or are derived from their content.

Thus, the hierarchy of values is determine by the change of value determinants, which inevitably leads to the fact that in the first positions there is

one or the other value determinant, forming a value-meaningful basis of human behavior in the legal sphere. This is a clear indication that human development is uneven. It is worth recalling in this regard at least the fact that for a long historical period of time the power of the state was determined by its territorial scale (the Roman Empire, the Russian Empire, the former USSR) and served the needs of such a state anti-democratic law. However, it is wrong to perceive the greatness and power of the State on the basis only of the size of its territory and the normative and ordered system of law. And this realized humanity, turning again after the tragic events of the mid-20th century to the problem of natural law. However, in modern circumstances, the ideas of natural law by some states are ambiguous and falsified. This is manifested in the disregard of the sovereign rights of other peoples (such as Russia's aggressive external and political activities against Ukraine and other countries), which cannot but cause indignation from the entire civilized world.

In this context, the movement for the survival of mankind, the achievement of peace among peoples, social progress, the democratization of society and the realization of human rights and freedoms is becoming widespread. This requires addressing the issues of human-society interaction, human beings and law, human beings and the state, and defining the role of human beings in the context of multifaceted social relations.

It should be noted that qualitatively new opportunities are characterize by man in the conditions of global world processes. Confirmation of this is the emergence in the scientific literature of an opinion on the emergence of Man International, in which, according to V. Mikheyev (1999), it is necessary to understand «...a new type of people who think in global categories do not close within the interests of their village, country, region, having a desire for mutual unification and unity» (p. 110).

We believe that the use of natural law ideas provides a reliable basis for the active inclusion of man in the integration processes that characterize the current state of many countries, including Ukraine. Solving the problems of modern times

is unthinkable without a value reflection on the ways of coexistence and development of mankind, the need for mutual convergence of legal systems while preserving their identity and uniqueness, the uniqueness of national features. Thus, the definition of further ways of the existence of modern civilization within the limits of this approach can «satisfy the needs and interests of each person (personal value of the integration process in Ukraine), social communities and associations (group value of the integration process in Ukraine), society as a whole (social value of the integration process in Ukraine)» (Kolodiy, 2015).

Based on the conceptual ideas of the theory of natural law, which are base on eternal values, humanity will inevitably, in our opinion, approach the realization of the need to form a common civilizational mentality, the components of which are the desire for peace and a reasonable solution to existing problems. Otherwise, beyond this approach, it will not be possible to reach consensus on many problems that are of a planetary scale.

It should be noted that the list of natural rights includes not only inalienable human rights, but also a number of socio-economic rights, the right of nations to self-determination, the right of the people to revolt against anti-democratic power, etc. Thus, based on the characteristics of modern theory of natural law, it should be noted that it is not considered as a set of once and for all established requirements. The a priori doctrines of the Age of Enlightenment are opposed to the idea of «natural law with changing content». It is worth noting that on the basis of the essence of the theory of natural law with changing content, which provides for the expansion of the list of natural human rights, the role of man is to direct his activities to the process of realization of values of a natural nature, resulting from the needs of a specific historical period of society's activity. In order to achieve this goal, a person must prove himself as a «person in law».

A person in law has two images, namely:

- Law person;

- Legal person (Rabinovych, 2006). A law person is a human individual who, given his biological nature, has such legal qualities as natural, inalienable,

fundamental rights. As for the legal person – it is a human individual, in the process of socialization is able to perceive, realize and transform the right as special-social, that is, as a state-will, legal, «positive» phenomenon, which is an element of the culture established in this society. We support the view of S. Alekseyev (1999) that it is because of the legal right that a person «realizes the possibilities and power of mind... The ability to understand the world around you, to anticipate, to evaluate, to make decisions and to put those decisions into practice. From here - the ability to be a creator, the creator, an impulse and active force in development of reality» (p. 17-18), but focusing on the right natural.

Thus, the social and legal value of man is reflect already at the level of the natural and legal type of the right to understand. Within the framework of positive law, it finds its logical continuation and development. Positive law provides completeness, normative certainty, sustainability to the value characteristics of the person, which are initially contained in the law natural. This is quite consistent with the essence of the naturalistic concept of law as a kind of concept of natural law, the content of which is the understanding that natural law is the laws of social nature. The role of man is to give them the form of legislation. In this case, a positive right should be see as a statutory form of natural law.

However, the value of man within the naturalistic concept of law is not limited to the identification and normative consolidation of the laws of social nature. They themselves cannot be realized, but require the use of the will and consciousness of man, which, in turn, are part of a more complex system - a mechanism for the protection of human and civil rights and freedoms, which includes such constituent elements:

Legal norms establishing human and civil rights and freedoms;

- legal facts;

- legal relations;

Activities of human rights actors.

At the same time, it should be noted that the process of functioning of the mechanism for the protection of human and civil rights and freedoms does not take

place automatically, but requires the participation of a number of actors, namely, political parties, public organizations, political leaders and civil society as a whole. A special role in the functioning of this mechanism should belong to civil society itself, as a combination of free and equal citizens and their voluntary associations, which, in accordance with the requirements of natural law, should direct their activities to take an active part in law-making, the implementation of the norms of law and the monitoring of respect for human and civil rights and freedoms.

We note that the functioning of the mechanism for the protection of human and civil rights and freedoms is of particular importance in the context of the development of mankind in the twenty-first century. And here we should agree with the opinion of O. Kostenko (2009) that in modern conditions there is a «massive nature of abuse, which is masked as human rights, and in fact, is an abuse of human rights enshrined in the legislation. This is a new challenge to modern civilization, which can be answered only by further development and improvement of the concept of human rights» (p. 76).

Using a natural-legal approach to understanding of the law, there is a constant process of comparison and behavior of a person with ideal samples that are universal. In the course of communication with other people, a normative and value system is formed, which constantly relates to perceptions of the right with the signs of human centrism, «in which the dignity and value of every human person is inherent, which was respected and protected by the ыtate. The state is an equal force that balances the selfish interests of individual members of society, the contradictions of the private, individual and general, while using legal means» (Pukhovs’ka, 2015).

The notion of the desired right is inextricably linked to the issues of the normative establishment and realization of natural human rights, as ideal models of behavior it is advisable to consider in two meanings: in objective, when they are recognized by other people, as well as subjective – awareness of the person’s role and importance in public life. The characteristic of natural rights is that they are ethical, emphasize the self-worth of the individual and provide for a high level of

spiritual development of society, but do not coincide with moral and ethical norms, which are due to historical and other factors.

The social and legal value of the human being is derived from the very content of the natural legal type of understanding of the law and is inextricably united with moral issues, on the basis of which the need to link human rights with their obligations is realized. This is particularly true of the obligations to recognize the rights of others. Given that man is a creature, it is unthinkable outside society and lives not only for itself, but also for others, so he is able to establish an appropriate order in relations. This based on the recognition of the rights of another. That is why from philosophical positions it is necessary to emphasize the rights of another person, the presence of the «other» in existential space (Alekseyev, 1998).

It should be noted that scientific research in the understanding of the essence of man, which was carried out in the XVIII – the first half of the XIX cc., drew attention not only to the properties of man, which are due to its nature (prior to legal experience), but it was also noted that human beings, compared to other living beings, have a wider range of behaviour choices and adaptations to changing life circumstances.

As well as natural law, moral values originate from absolute and eternal notions of what justice, dignity, wisdom, good and, as an integral education of moral consciousness, include norms of morality, representations, principles and ideals that are related to the needs of man and act as guidelines for his behavior. Moral values are the basis for carrying out activities with signs of self-regulatory character and imply the ability of the person to knowingly decide the relevant issues, freely choose solutions based on social and moral values. Under such conditions, the realization of values is perceive by the individual as a moral duty, the deviation from which is correct by the mechanism of internal self-control and the conscience of the person. It is clear that moral values and natural law are closely related.

It should be noted that «in modern ontology a synergistic model of

myroponymy is popular, the main principles of which are: complex systemicity, dynamism, instability, singularity, spontaneity, probability, openness, self-correlation, self-organization and autonomy of systemic elements, while traditional dialectical ontology applies, including in law, the method of derivation: the conclusion of partial from general. Therefore, here the share to acquire its meaning solely on the basis of its membership of the whole» (Danil'yan, 2014).

Since the law as a phenomenon of public life is holistic, and one or another approach to its understanding is only a view of it, carried out from an appropriate point of view, it can be argued that the law to make sense only when the social and legal value of the person, which is revealed by means of a natural legal type of understanding of the law, will be recognized as a positive law as an undeniable fact. For this purpose, it is necessary that the rules of positive law include the spirit of natural law, imbued with its essence.

Having deep historical roots, at the present stage of its development, the natural-legal type of understanding of the law reduced to the need to understand the relevant peculiarities, namely: modern understanding of natural law has significant differences from those views that were characteristic of the thinkers of the past. Taking as a basis the natural-legal type of understanding of inalienable human rights, it should be noted that the end of the XX and the beg. of the XXI cc. are a period when the process of expansion of natural rights, which include political, economic, cultural, as well as the rights of national minorities and nations, is taking place.

Such inalienable rights as the right to life, liberty, equality, the right to fair treatment of the person must be further developed and detailed not only at the level of normative consolidation, but also in the real process of implementation, in the system of social relations. The classical teaching of natural law and the modern understanding of natural law with its volatile dynamic content serve as a basic reference for the development of various forms of law. Therefore, it is legitimate to focus attention on the multifaceted manifestations of natural law and the level of its reflection in public relations in need of legal regulation, to explore how natural law

is reflected in the system of normative and legal acts, as well as the implementation of the constitutional provision on recognition of human beings as the highest social value.

It should be noted that questions of the social and legal value of man arising from the essence of natural law take on special importance in the context of global social transformations, strengthening the interaction and interdependence of modern states and peoples. Given the fact that massive violations of human rights are taking place at the beginning of the XXI century, mankind is in the process of finding effective forms for aggressive foreign policy, and states with an anti-democratic political regime are pursuing.

We mean the imposition of various kinds of sanctions in response to the civilized world to disregard the sovereign rights of states, the rights of national minorities and peoples.

Legal globalization implies the establishment of the principle of liberal legal ideology and the rule of law, the basis of which is natural law. This is the only way to help resolve conflict situations, overcome crisis phenomena, confront threats and challenges of the present day. The whole history of mankind, beginning from the early stages of human society development, is imbue with law and the struggle for it. However, the struggle for law must be human, harmoniously a consequence of the realization of the value of man and human society in whole. Due to its objective nature, the law provides a leadership function not according to the subjective intention of one person or group of people, but genetically, regulating the behavior of people, ensuring the self-preservation of society and its development. It follows that the objective nature of law is inextricably link to natural law. Natural law lays the foundations for self-preservation of man and society, indicating a worthy way to improve human life.

Thus, within the framework of the natural-legal type of understanding of the law, the social and legal value of a person has its own characteristics, namely:

- in the theological theory of natural law, the role of the human is characterize by the fact that it acts as a passive performer of the will of others, leads to the

possibility of any manipulation, the direction of human behaviour in one direction or another, ignoring its own interests;

- the essence of the objectifying form of natural law theory is manifest in the fact that the image of law is associate with the legal consciousness and is reflect in the active, creative activity of man, which based on the principles of freedom inherent in man from birth, depriving her of law-abiding character as an ideal normative value model of behavior, which may not correspond to values of natural character;

- within the limits of modern theory of natural law, natural-legal views are combine with historical and sociological study of legal ideals, leads to the expansion of the list of natural rights and the inclusion in them not only of inalienable human rights, but also of a number of rights of a social, economic, political and other nature, contributes to the strengthening of human activity in order to realize and protect their needs and interests.

The natural legal type of understanding of the law determines the value of the human person not only through the expression of the realization of human rights, but also through the fulfilment of the obligations assigned to it under the natural laws of public life.

The ethical nature of human rights and duties emphasizes the issues of self-worth of the individual and implies a high level of spiritual development of society. Under such conditions, man acts as a subject who is capable of active creative activity, being influence by the mentality of the society concerned.

14.3 Content and legal regulation of the right to access the Internet

Стрімкий розвиток науки та техніки, досягнення у сфері медицини, комп'ютерних технологій в кінці XX – на початку XXI століття зумовили збільшення можливостей людини, надали їй альтернативу у виборі поведінки. Поява четвертого покоління прав людини стала логічним процесом постійного розвитку суб'єктивних прав особи. На думку О.