SECTION 6. THEORY AND HISTORY OF STATE AND LAW

6.1 Reflection of the essence of the social and legal value of a person in the normative law

Of particular significance in the development of modern Ukraine and this is confirmed by the historical experience of state and legal construction both in our country and worldwide, are factors related to philosophical and methodological as well as state and legal approaches to the knowledge of the essence of law, its significance and role in the human life. Due to how we perceive the world around us and determine the place and role of a person in its multifaceted manifestations, relationships, and will ultimately depend on our vision of the role of normative legal understanding in determining the place as a whole, the role of a person in law, the role of law for a person itself.

The current state of development of Ukraine requires a rethinking of existing approaches to clarify the essence of law and its importance in the life of each individual and society as a whole. As an important socio-cultural phenomenon, law is inextricably linked to the person, acting as an important factor in protecting his interests, rights and freedoms.

The highest social value is a person. Hence the right to life, freedom, security, dignity of the individual. The human-centric dimension of law, if viewed from the standpoint of reflection and consolidation in the system of appropriate forms of law is to ensure and guarantee the real process of implementation of human rights. They serve as an appropriate guideline and criterion for assessing the positive right to conform to values of a universal nature, such as life, liberty, security, and so on. Thus, Article 3 of Section I of the 1996 Constitution of Ukraine stated that "The

human being, his or her life and health, honour and dignity, inviolability and security are recognised in Ukraine as the highest social value". Accordingly, in Section II of the Basic Law of Ukraine were recorded natural, political, social, economic, cultural and other rights and freedoms of a person and citizen in Ukraine [176, p. 536]. Consolidation of human rights in the Basic Law, constitutional acts, codified laws, their guarantee, implementation and protection constitute the mechanism of constitution of rights, at the same time – an integral element of the legal system of any democratic and legal state, including Ukraine [177, p. 346].

Given that the legal value of a person is reflected in the knowledge of law and the realization of a person in law on the basis of natural "human-oriented" law, it is appropriate to approach the process of studying the essence of socio-legal value of human law in normative jurisprudence through the prism of humanizing the positive law.

The humanism of law, if viewed from the standpoint of reflection and consolidation in the system of appropriate forms of law is to ensure and guarantee the real process of implementation of natural human rights (life, liberty, security, property, dignity). They serve as an appropriate guideline and criterion for assessing positive law. Recalling the words of the famous orator and statesman of ancient Rome Marcus Tullius Cicero, "unjust law does not create law" [178], it should be noted that it is through the normative consolidation of natural human rights is the filling of positive law with social content, its humanization.

However, human existence is characterized not only by the natural aspect but also includes mental and social states that affect the "modeling" of law, giving it a humanistic or anti-humanistic direction. In this context, it should be noted that in the process of formation of objective law, an important role is played by the subjective factors: emotions, moods, experiences, attitudes to law and the existing legal reality

of those who participate in lawmaking. That is, being in an inseparable relationship with a person, the law is a reflection of the level of his culture or anti-culture.

There is no doubt that the positive influence of a person on the process of law formation requires the existence of a qualitatively full personality, that means one that would be the carrier of cultural values. As noted by Onishchenko N.M., an educated person is a human individual who has such qualities as responsibility for the harmony of life, moral and metaphysical intuition, the ability to perceive what is useful for their society (including law) and so on. Such people strive for Beauty, Truth, Justice, Harmony, Order and Union [179, p. 14].

It is worthwhile to pay attention to the fact that having the appropriate potential a person is able to be an active participant in the social relations, filling them with qualitatively new content (values of a natural character), recognizing their own responsibility for the future of their country. The existence of a value-filled personality requires various spheres of human life, and it requires the right itself, which must be considered in inseparable connection with it. The level of awareness of the value of law, the effective process of lawmaking and the implementation of legal norms – is an indicator of the interest of various subjects in the life of law, in its implementation in the system of public relations.

In this regard, the issues related to the formation of a highly spiritual, educated, and harmonious personality capable of giving a positive humanistic right to protect the interests of a person and civil society are of particular importance. A person, civil society, and only then the state – this should be the sequence of values reflected in law.

However, the humanization of the essence of law presupposes not only normative consolidation but also the actual implementation of the constitutional provision on the place and role of a person in public life. It is worth agreeing with the opinion of Ilyina I.A. that "the main task of the positive law is to accept the content

of natural law, to develop it in the form of several rules of external behaviour, adapted to the conditions of life and the needs of this time, to give these rules meaningful form and vocabulary to penetrate into the consciousness and will of people as the dominant command. Positive law is an appropriate form of maintaining natural law" [180, p. 58].

Based on the essence of natural law Skakun O.F. notes that it is natural law in comparison with the positive has a deeper meaning and initial significance for the standards of human behaviour. The source of human rights is a person himself, his needs and interests, his way of existence and development. A person acts as a carrier of natural rights. That is why natural law, as a set of rights and responsibilities, is not of state origin, but of a universal origin. Natural law is a product of a normal human life. As the basis of inalienable, natural human rights (the right to life, the right to liberty, the right to an equal equivalent in trade), natural law does not require for its existence any normative consolidation and reflection, does not depend on the will of the state.

However, the above does not mean that there is no relationship between natural and positive law. Because, being fair, natural law cannot be realized by itself. The process of its implementation takes place with the help of positive law. That is why positive and natural law should be considered as inseparable, inconceivable without each other, although positive law is not always a fair law [181, p. 234].

The historical experience of the development of human civilization is evidence that the government often tries to ignore natural law, giving primary importance to the positive law and its form as law. Under such circumstances, appropriate conditions are created for neglecting natural human rights. Therefore, the humanization of the content of positive law primarily meets the needs of civil society, not the state. It is the civil society that should be interested in the realization of its

own interests and the level of their reflection in law, taking an active part in the lawmaking process, exercising control over the activities of state bodies and officials.

Taking into account the existing challenges of today, which are associated with overcoming many problems of economic, social, political, environmental and other nature, a natural question arises: how is the essence of the social and legal value of a person in the normative jurisprudence displayed?

If we characterize the classical legal positivism in general, we can trace a number of its inherent features, namely:

- the positivity of law is that it arises due to the will of the state and is reflected in various forms of law;

- the right is considered as an order that is subject to mandatory execution;

- law is an instrument of the state to address various public affairs;

- the value of law follows from the value of the state, and its emergence is seen as a function of the state, the result of the will of the state and the functioning of state power, which through coercion directs its activities to ensure right and law in society;

- positivism directs a person to law-abiding behaviour, making it impossible to criticize the existing legal order.

Considering the introduced system of signs of classical legal positivism, we can distinguish both positive and negative features. The positive signs include:

- clarity and certainty of the provisions, focus on legal practice, which receives support from practicing lawyers, who, in most cases, in the process of resolving specific legal cases do not turn to the principles but rules of law;

- legal positivism directs human activity in the direction of obedience to the law, which is important for maintaining the rule of law in the system of public relations.

However, it should be noted that along with the positive features of classical legal positivism, there are also negative features, namely:

- the question of compliance of legal norms with the requirements of justice remains open;

- the identification of right and law becomes particularly threatening under the rule of anti-democratic state regimes;

- orienting a person to law-abiding behaviour, legal positivism testifies to the fact of agreement between society and the state, but if the state uses inhumane methods of exercising state power.

We believe that with such a set of features inherent in legal positivism, a number of questions arise, namely:

- whether such a right is capable of protecting a person;

- whether it is a reliable theoretical construction, which, when implemented, will not lead to abuse by public authorities;

- whether such a right is able to ensure the rule of law in society?

These issues continue to be in the field of view of modern researchers of law, most of whom are aware and substantiate the conclusion that considering the law from the standpoint of the normative approach there are conditions for establishing such legal norms that will serve the interests of those involved. This is confirmed by centuries of practice, the historical past of both our country and those countries that have passed, and some are still following the path of domination of tyranny and violence over human life.

Especially threatening in the conditions of legal positivism are issues of identification of right and law. When distinguishing between right and law, keep in mind that law is a form of right. It will be considered identical to the law only when it is fair and excludes any arbitrary prescription or claim. This is especially important in the context of awareness of the need to limit state intervention in the life of the individual and civil society. The duty of the state is to ensure the conformity of positive law to natural law, to ensure the morality of law.

As for the theoretical basis for justifying the need to identify right and law, in this context, the views of Bentham D. played an important role, who believed that to distinguish between right and law – is the same as giving the law illegal content. His negative attitude towards such values as freedom and human rights, the assertion that "natural, inalienable, sacred rights" never existed, and that citizens who demanded them would only ask for anarchy [182], ultimately led to levelling of value of the person.

However, when critically evaluating D. Bentham's views, it is worth remembering that it is somewhat "smoothed out", losing sharp corners, considering his contribution to the study of the relationship between legal reality and the theory of law and morality. This is manifested in the belief of Bentham D. that effective morality is not based on orders and prohibitions, but on the analysis of interest. He argued that forcing a person to act in a certain way is possible only by showing him that it meets his needs. Based on this, it is interest that is the dominant means in the process of formation and existence of effective morality and effective law.

In our judgement, it is necessary to support the typology of D. Bentham's interest, which distinguishes two types: interest in oneself and interest in others. From the standpoint of knowledge of human values in law and human rights, this can be reflected in the need to reflect in law the interest of both general social and individual actors, which does not contradict the requirements of the common good and benefit to mankind. This state is due to the laws that a person must follow in an effort to preserve themselves and create the right conditions for existence, of course, if it is not devoid of common sense.

Based on the above, we can say that the perception of positive law as a relevant value for a person cannot be completely arbitrary. Positive law should be considered only as one of the aspects of law as a whole, the obligatory component of which should be its natural component.

That is, we are talking about the fact that the value of positive law is possible only in the case of its unquestionable compliance with natural law. From such positions, law includes two components: natural law and positive law, the dominant element of which is natural law, because "being imposes its own laws and rules of existence, non-perception of which threatens to destroy and turn into nothingness. A person faces the task to identify these laws and turn them into rules of their activity, into norms of behaviour. In this way, the rules of existence become the rules of a person. And those norms that contradict the laws of existence are destroyed by being. They do not contribute to the survival of the individual and society, uncompetitive with the massiveness of life. Therefore, the rules of behaviour, the norms associated with being, are determined by it. Law, which is based on norms, is ontological, it is rooted in being" [183, p. 35], in natural laws, without taking into account and reflecting which any normative array cannot be considered as a right.

On the basis of classical legal positivism, the English lawyer D. Austin developed his ideas, considering law as a "sovereign's command" and rejecting the views on the contractual origin of law, which at that time were peculiar to the supporters of the natural law school. His definition of law was completely devoid of any philosophical and ethical meaning and was reduced to the understanding that law is a norm that is "established to govern one intelligent person by another intelligent being who has power over the first". The question of which laws the positive law deals with was not considered at all. That is, it was not about the qualitative characteristics of the normative material, the quality of the legislation itself from the standpoint of compliance with its natural human rights.

Considering the legal positivism, it is impossible not to recall the peculiarities of its development in the second half of the nineteenth – early twentieth century. According to the position taken by its most prominent representatives, K. Bergbom and A. Esman, there is only positive law. It is reflected in the norms adopted by the

state. As for natural law as a criterion for assessing the right of the positive, the fact of its existence they denied. K. Bergbom and A. Esman also rejected the question of knowledge of the essence of law and critical remarks addressed to him.

Based on the system of basic features of legal positivism (understanding of law as a set of rules that do not require justification; the rule of law is a once and for all established rule of conduct; law is an order of power; enforcement is carried out by coercive force; identification of right and law), it is safe to say that its representatives were far from realizing the need to recognize and enshrine in law the socio-legal value of a person [184, 187-188].

Conclusions. The essence of the social and legal value of a person in normative jurisprudence is due to the need to know the law itself and the need to realize the interests and needs of person through law.

The basis of "human-oriented" positive law should be natural law, which meets the need for its humanization, recognition and real process of implementation of natural human rights, which serve as an appropriate guideline and criterion for assessing the rules of positive law.

Knowledge of the essence of the social and legal value of a person within the framework of positive law is possible only if the study of the theoretical basis of legal positivism, identifying both positive and negative characteristics. Based on this, we can conclude that the perception of positive law as a relevant value for a person cannot be completely arbitrary. Positive law is only one aspect of law in general, of which its natural component must be a mandatory component. The value of positive law is possible only in the case of its unquestionable conformity to natural law.

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