CONTENT OF HUMAN LEGAL VALUE WITHIN POSITIVIST TYPE OF LEGAL UNDERSTANDING

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ABSTRACT

This article examines the content of the legal value of man in the positivist type of legal understanding. It is revealed that the essence of human legal value in normative jurisprudence is conditioned by the necessity of knowledge of the law itself and the necessity of realization of human interests and needs by means of law. It is substantiated that the basis of "human-oriented" positive law should be natural law, which corresponds to the need for its humanization, recognition and real process of implementation of natural human and civil rights, which serve as an appropriate guideline and criterion for assessing positive law. It is found that knowledge of the essence of human legal value within positive law is possible only if the study of the theoretical basis of legal positivism, identifying both positive and negative characteristics, and the adoption of positive law as a relevant value for man cannot be completely arbitrary, and the value positive law is possible only in the case of its unquestionable compliance with natural law. It is proved that the use of general principles of law in the process of formation, development and functioning of the legal system is an indicator of a high level of legal culture of both rule-making subjects and persons whose activities are related to the application of law; under such conditions, the state respects the person as the highest social value, and the person, in turn, is confident in the protection of the state. It is substantiated that the study of human legal value within the positivist legal understanding inevitably leads to the unification of scientific thought efforts to state the following fact: human legal value is manifested primarily in its awareness of the importance of natural legal values and the need to reflect them in positive law, but not is limited to this, and requires consideration of the efforts of scientific thought to integrate the value aspects of legal understanding, which are due to different forms of law.

Keywords: Man, Legal Value, Positivist Type of Legal Understanding, Law, Legal Law

INTRODUCTION

Nowadays the position that “all human beings are born free and equal in dignity and rights, equal before the law” is the basic for democracy, good governance and justice, that functioning successfully in the world (United Nations, 1948; Teremetskyi et al., 2021).

In terms of development of modern science, which studies the problems of man, his place and role in the multifaceted processes of social life, one of the most important areas of scientific knowledge is the study of the essential characteristics of human legal value within the basic types of legal understanding. It should be noted that, originating from the depths of the ages, the problem of understanding the law, the role of man in relation to law and law in

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relation to man does not lose its relevance in our time. Each historical epoch has made its 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 permeated by various ideas, principles, etc., do not give us an unambiguous answer to the question of what constitutes law. It follows that the understanding of law is directly dependent on the position that a person chooses, knowing the law.

As we know, for many centuries mankind has been thinking about the values of eternal nature, which are inseparable from man and his life. This contributed to the fact that in different eras, there was a process of consolidation of these values in law, taking into account the relevant features of the development of certain countries. It should be noted that the law, being inextricably linked with the specific conditions of society, is not in a static condition. This is reflected in the fact that, first of all, eternal values under the influence of various factors change their meaning. This provision is important for clarifying the value of law for man and the value of man in relation to law, because each concept of legal understanding in its own way solves the question of the content of eternal values.

These issues become especially relevant in the context of increasing the role of civil society and strengthening its influence on law-making and state-building processes. According to N.M. Onishchenko and Parkhomenko, the approach to man should be considered not only as to an individual with relevant consumer interests, but as to a unique individual, the potential of which can be realized only in the relevant cultural and legal environment (Onishchenko & Parkhomenko, 2011). And all this is possible, according to Minchenko, by overcoming social apathy, civic amorphousness, inertia of thinking and behaviour of people, stimulating their initiative and creativity, as well as socio-legal development of a person who knows and is able to actively use their rights and freedoms, defend them by legal means (Minchenko, 2008).

It should be noted that in the scientific literature, the idea of qualitatively new human capabilities in the global world processes is quite relevant today. Evidence of this is the emergence of the concept of "International Man", under which, in the opinion of V.V. Mykhieiev, it is necessary to understand "… a new type of people who think in world categories, not confined to the interests of their village, country, region, who have a desire for mutual unification and unity" (Mykhieiev, 1999).

RESULTS AND DISCUSSION

The process of knowing the legal value of a person cannot be exhaustive. Given the fact that at the beginning of the XXI century there is a massive violation of human rights both at the level of functioning of individual countries and in the system of interstate relations, this issue does not lose its relevance today, requiring further efforts in terms of its study by philosophers, jurists, sociologists, psychologists and others.

A positive phenomenon in the functioning of the theory of state and law is that it has lost its political color and acquired the status of a science, which does not serve the artificial values of a particular ideological model. This was especially evident in the process of cognition of law (Shevchenko et al., 2021).

Given that the legal value of man is reflected in the knowledge of law and the realization of man in law on the basis of "human-oriented" law, it is advisable to approach the process of studying the essence of human legal value in normative jurisprudence through the prism of the need to humanize positive law. The humanism of law is to ensure and guarantee the real process of realization of natural human rights. It should be noted that with the help of normative consolidation of natural human rights there is a filling of positive law with general social content, its humanization is carried out. "Today, the constitutional consolidation of human rights and freedoms as the highest value and their compliance with international law is

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one of the important features of a democratic state" (Shevchenko et al., 2020). However, human existence is characterized not only by the natural aspect, but also includes mental and social conditions that affect the "modelling" 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 subjective factors: emotions, moods, experiences, attitudes to law and the existing legal reality of those who participate in law-making.

There is no doubt that the positive influence of man on the process of law formation requires the existence of a qualitatively full personality, *i.e.,* one that would be the bearer of cultural values. As rightly noted by N.M. Onishchenko, a cultured 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, and so on. Such people strive for Beauty, Truth, Justice, Harmony, Order and Acceptance (Onishchenko, 2008).

It is advisable to pay attention to the fact that having the appropriate value potential, a person is able to be an active participant in social relations. One can agree with a number of scholars that the existence of a value-filled personality requires various spheres of human life, and the right itself, which must be considered in inseparable relationship with it. The level of awareness of the value of law, the effective process of law-making and the implementation of legal norms are all indicators of the interest of various actors in the life of law, in its implementation in the system of public relations (Shevchenko, Kudin & Loshchykhin, 2020). In this regard, issues of special importance are associated with the formation of a highly spiritual, educated and harmonious personality, able to give a positive humanistic direction in order to protect the interests of man and civil society. Man, civil society and only then – the state – such should be the sequence of values reflected in law.

The source of human rights is man himself, his needs and interests, his way of existence and development. Natural law as a set of rights and responsibilities is not of state, but of universal origin. As the basis of inalienable human rights, 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. Since, being fair, natural law cannot be realized by itself, the process of its implementation takes place precisely with the help of positive law. Therefore, positive and natural law must be considered inseparable, inconceivable without each other. Positive law should be considered as one of the aspects of law as a whole, a mandatory 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.

Given the current challenges, the natural question arises: how is the essence of human legal value reflected in the normative jurisprudence? If we characterize the classical legal positivism in general, we can trace a number of 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 law and order in society; positivism directs a person to law-abiding behaviour, making it impossible to criticize the existing legal order.

Considering the presented system of signs of classical legal positivism, we can distinguish both positive and negative features. The positive features 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 and 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 social relations. Critically evaluating the theory of J. Austin from the standpoint of the

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impossibility of its application to different legal systems, the famous modern theorist of positive law G. Hart still recognizes that his predecessor's contribution to the development of a system of views on understanding law is quite significant as establishing a distinction between positive law and morality, J. Austin not only laid the foundation of the science of law, but also freed the concept of law from a number of disastrous consequences to which it led. Positive laws, as J. Austin has shown, must be legally binding, and at the same time the law may be unjust. He noted that law as such can be immoral, in which case it will be our moral duty to disobey (Hart, 2005).

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 law and legislation 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. The view is expressed that law includes two components: natural law and positive law, the dominant element of which is natural law, as being imposes its own laws and rules of existence, the non-perception of which threatens with destruction and transformation into oblivion. The task before a person is 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 man. And those norms that contradict the laws of existence are destroyed by being (Kozlovskyi, 2005). It is worth agreeing with the opinion of Ilin, that the main task of positive law is to accept the content of natural law, to develop it in the form of a series of rules of external behaviour, adapted to the conditions of life and the needs of this time, to give these rules meaningful form and vocabulary in the consciousness and will of the people as the dominant command. Positive law is an appropriate form of maintaining natural law (Ilin, 1993).

We believe that with such a set of features inherent in legal positivism, a number of questions arise, namely: is such a right capable of protecting a person; whether it is a reliable theoretical construction, which, when implemented, will not lead to abuse by public authorities; is such a right 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 justify 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 many countries that have passed, and some are still passing the path of domination of tyranny and violence over human life.

The issues of identification of law and legislation become especially threatening in the conditions of legal positivism. When distinguishing between legislation and law, it should be remembered that legislation is a form of law. 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 government 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.

However, despite the achievements of general theoretical science of law, modern legal practice in many countries lags far behind existing advanced scientific views. Evidence of this is the reluctance of the subjects of law to resolve specific life situations, guided primarily not by the letter of the legislation, but by the humanistic spirit of law. We are talking about the need for practical application of such universal principles of law as freedom, justice, equality, humanism, which are reflected in international legal instruments, namely: the UN Charter of June 26, 1945, in the Final Act of the Conference on Security and Cooperation in Europe of August 1, 1975 and others.

It should be noted that the universal principles of law must find their further development at the regional-continental and domestic levels. Only under such conditions can

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we talk about the effectiveness of current legislation and its positive impact on the functioning of the legal system of society as a whole. Recognizing the significant role of general theoretical legal science in the study of the principles of law, we note that the real process of resolving specific life situations often occurs by neglecting the humanistic spirit of law. For example, in the modern conditions of human existence, the problem is exacerbated, which is associated with the implementation of a number of principles, namely: the principle of respect for human rights and freedoms; the principle of territorial integrity of states; the principle of equality and self-determination of peoples. It should be noted that ignoring the principles of law, which are universal in nature, there is a process of manipulation of the rule of law both at the level of their preparation and adoption, and at the level of their implementation. Rule-making activities, especially the law-making process, depend on the interests of the authorities, leaving out of sight the problems of ordinary citizens.

It should be noted that scientists have made significant efforts in the field of thorough study of the principles of law, awareness of the need to disseminate natural legal ideas in public life and their consolidation in the system of existing regulations. Special attention should be paid to the scientific developments of scientists who emphasized the need to use progressive ideas of natural law in the formation of the constitutional and legal framework and take into account the principles of law in modernizing the legal system of society (Koziubra, 2013; Pohrebniak, 2008). It is worth agreeing with those scholars who have argued that the principle as an appropriate standard should be adhered to not because it gives an advantage or protects the desired economic, political or social situation, but because it is a requirement of justice or honesty or another dimension of morality (Dworkin, 1977); the process of emergence and development of general principles of law is influenced not only by the rules of positive law, but also morality, religion, customs, politics, scientific concepts, which changes the prerequisites of legal regulation and determines its direction for the future, and finds its expression in the judicial practice (Bergel, 1985).

Widespread use of such principles of law as justice, equality, freedom, humanism in the process of law-making would make it possible to avoid the problems associated with excessive regulation, which is a sign of the current state of law in some countries. This situation, when the rule-making subject directs its activities to the adoption of rules of law with detailed content, is evidence of excessive care of society by the state. This, firstly, has a negative impact on the development of the legal system, which is constantly accumulating a significant array of normative material. Secondly, paternalistic sentiments in society are growing, which leads to the formation of appropriate stereotypes of behaviour, which are devoid of signs of legal activity, initiative, creative approaches to addressing certain issues of public life. Thirdly, increasing the role of the principles of law in the context of legal regulation would help to create appropriate conditions for the selection of the best options for behaviour, taking into account specific life circumstances in the absence of legal norms that directly regulate public relations.

The active use of the principles of law in the process of functioning of the legal system is an indicator of a high level of legal culture of both rule-making subjects and persons whose activities are related to the process of application of legal norms. This is an indicator of the state's trust and respect for the person and the person's confidence in its protection, if necessary, by the state. The state only determines the most optimal scale of behaviour of subjects who have a wide field of choice of options for solving the relevant life situations. Respect for the person on the part of the state within the normative approach to legal understanding has quite real bases for the existence, however is not absolute under all conditions. It does not arise as a gift of the state to a person, but is the result of a long struggle of mankind for their rights and freedoms and their reflection in the norms of positive law.

The state of respect for the value of the person himself, his life and freedom is not static, but dynamic, as it requires constant control by civil society over the activities of state

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bodies. After all, the government is capable of losing its best qualities by embarking on an anti-democratic path of activity in conditions of weakening or inability to exercise control on the part of civil society. We believe that the lack of control over the activities of power structures is a direct path to the usurpation of power through the adoption of dictatorial laws.

For states whose legal system operates on the basis of the rule of law, this practice is unacceptable. The development of the rule of law, as stated in the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen, 29 June 1990), means not only formal legitimacy that ensures and upholds democratic order, but also justice based on recognition and full acceptance of the highest value of the human personality and is guaranteed by the institutions that form the structures that ensure its fullest reflection.

Thus, considering the legal value of man within the framework of positive law, it is advisable, first of all, to address the origins of the law-making process, which, in our opinion, are inextricably linked with the qualitative characteristics of those involved in the preparation and adoption of relevant rules of law. After all, the assertion of the legal value of a person in positive law is closely related to the theoretical and practical potential of the subjects of law-making. This is especially evident in the context of legislative activity. We are talking about the level of legal thinking, legal consciousness and legal culture of the people's deputies. This category of persons should be subject to special requirements regarding the quality of their knowledge, skills and abilities in the legal field. That is, it is about the need for lawmakers to achieve a high level of legal knowledge and practice of its application.

In the process of resolving this issue, it is necessary to proceed from the existing in the theory of law scientific views on the legal culture of the individual. Characterizing the structural elements of legal culture in relation to legislators, we note the following: firstly, the legal ideas of this category of persons constitute an appropriate image of law in a generalized form, which arose as a result of assimilation of various information about him. The specificity of such ideas is that we cannot recognize them as a clear system of knowledge about the law, because the legislature represents the most diverse categories of the population who have different levels of education, pursue different goals and show different levels of interest in their activities. It should be remembered that any knowledge is only a relevant part of the holistic view that the subjects may have about the functioning of law, the legal system of society as a whole. Secondly, the knowledge itself is not once and for all defined, constant, but is in constant motion, subject to change, addition, and so on. Their level depends on the type of thinking, the person's ability to accumulate and process relevant information.

In the context of the implementation of the law-making form of state activity, the relationship that exists between the state and law is clearly traced and the influence of factors not only objective but also subjective on the process of law formation is manifested. The essence and purpose of the state itself determines the nature of law. By establishing the rights and responsibilities of participants in public relations, the law not only brings order to society and the state, but also creates the preconditions for the further development and functioning of all institutions of the state and legal system. As for the further development of state and legal institutions, there may be well-founded objections, namely: no development of law can be discussed in the conditions of non-democratic political regime. Under such conditions, the law is not based on the objective laws of society, but on the voluntaristic sentiments and beliefs of the authorities.

Under such conditions, the law-making activity of the state is openly subjective. This can be traced to the example of Germany, where, as noted by Mashkov, between 1918 and 1949, the position on the rights of national minorities changed three times, that is, to formal equality on national grounds: from the prohibition of racial discrimination provided by the Constitution of the Weimar Republic – and to the proclamation of racism and nationalism, which were recognized as basic principles of social and state practice of Hitler's Germany – and back to their prohibition (Mashkov, 2011). Man-made model of legal understanding and

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qualitative filling of its values, which humanity has developed over a long period of struggle for their rights and freedoms – this is the way that will build a truly objective picture of the vision of law, to clarify the role of man in his knowledge and creation, the real embodiment of law in the system of social relations and, ultimately, to recognize it as the basis of state-building processes.

CONCLUSION

The essence of the legal value of man in normative jurisprudence is due to the need to know the law itself and the need to realize the interests and needs of man through law. The basis of "human-oriented" positive law should be natural law, which corresponds to 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 human legal value within positive law is possible only if the study of the theoretical basis of legal positivism, identifying both positive and negative characteristics, and the adoption of positive law as a relevant value for man cannot be completely arbitrary. The value of positive law is possible only in the case of its unquestionable conformity to natural law.

The use of general principles of law in the process of functioning of the legal system is an indicator of a high level of legal culture of both rule-making subjects and persons whose activities are related to the process of application of legal norms. Under such conditions, the state respects the person as the highest social value, and the person, in turn, is confident in the protection by the state.

The assertion of the legal value of a person in positive law is closely related to the theoretical and practical potential of the subjects of lawmaking in general and lawmaking in particular. The use of philosophical-methodological and state-legal approaches, which consider a person as a goal of social development - is a way to qualitatively fill the legal positivism and its perception as an important component of knowledge of law.

The study of human legal value within the framework of natural law and normative legal understanding inevitably leads to the unification of scientific thought efforts to state the following fact: human legal value is manifested primarily in its awareness of the importance of natural legal values and the need to reflect them in positive law, but is not limited to this, and requires consideration of the efforts of scientific thought to integrate the value aspects of legal understanding, which are due to different forms of law.

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