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LAW IN MODERN SOCIETY'S CONDITIONS: LEGAL DISCOURSE

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INTRODUCTION

The beginning of the 21st century became another test for the whole world. The war launched by Russia against Georgia in 2008 became the first challenge for the world community, determining the possible responses (or lack of them) of international institutions of ensuring peace in the world.

It is impossible but mention the certain passive perception of the Autonomous Republic of Crimea and parts of the Donetsk and Luhansk regions annexation – parts of the territory of Ukraine by Russia in 2014, by the international community. Already at that time, it was possible to draw certain conclusions about the necessity to rethink the existing international institutions for ensuring law and order in the world.

The full-scale war launched by Russia against Ukraine further affected the world order that had developed at the beginning of this century. Russian politicians have repeatedly pointed out (threats have been voiced) the possibility of nuclear weapons using.

The state that has launched armed aggression and is a terrorism sponsor, is a member of international institutions (first of all, I mean the Security Council of the United Nations) allowing blockdecision-making. Accordingly, there is a situation when the violator of international norms himself participates in voting regarding himself and his punishment, influencing the solution of the situation.

Herewith, one cannot but mention the negative (from the point of view of the democracy development) trend towards a decrease in the level of democracy in the world and strengthening of authoritarianism, as indicated by the democracy index – the rating of states compiled annually by the non-governmental international organization Economist Intelligence and providing for their division according to various criteria (60 indicators) on the following ones: full democracy, incomplete democracy, hybrid regime, authoritarian regime[1].

The unprecedented restrictions on human rights that were introduced during the covid-restrictions (in particular, it should be pointed out the actual coercion of vaccination with those vaccines that have not passed the full cycle of tests, so they are experimental) should be added to this. In this context, it is

[1] Economist Intelligence. URL: https://www.eiu.com/n/

impossible but mention the dissemination in the mass media of the decision of the French court on the claim of the relatives of the person who died from the antiviral vaccine against the insurance company regarding the refusal to provide insurance payments. The insurance company substantiated its decision to refuse insurance payments due to the non-occurrence of an insured event. The person committed suicide because he voluntarily participated in vaccination with an experimental vaccine, aware of all the risks associated with it. The court sided with the defendant

I would like to emphasize that at the international level (in various reports of non-governmental international organizations), attempts of the authoritarian authorities to use the goal of countering covid-19 to strengthen control over society were pointed out, and assumptions about maintaining the introduced restrictions after overcoming covid were made.

Therefore, in such conditions, it is simply impossible but mention the well-known expression that marks the different meanings of law in social life: the right of force or the force of law? This issue is gaining special relevance at the beginning of the 21st century and points out to the importance of another rethinking of the role of legal means in resolving social conflicts, especially in extraordinary conditions.

Thus, in this paper I will try to present a systematic vision of the understanding, meaning and individual directions of the development of law in modern conditions. The paper is based precisely on the author's perception of such a complex social phenomenon as a law, and, therefore, quite obviously, it can cause both approval and criticism.

1. Law: in search of definition

One of the logic laws (the law of identity) requires that the thought about a certain object or phenomenon should be identical to itself. This provision assumes that it should be about the same phenomenon in the same period of time; the change of conditions should include an additional indication of this and appropriate explanations.

This is extremely important if we are talking about law. Let me remind that even today there is no single accepted understanding of law, there are lots of definitions of this concept. I would like to note that this situation is unlikely to change that is largely because of the social and cultural nature of law. Moreover, it should be noted that quite often various social phenomena are called law. Therefore, taking into account the above, it is necessary to clarify, namely: what I understand by law within the limits of the suggested discourse.

A person's presence within society is a factor in the "clash of wills" and determines the necessity for the existence of general rules of conduct, the observance of which is a possible way to avoid a "war of all against all". Such

rules ensure the possibility of progressive development of a person and society in general. So, instead of being distracted by constant wars (offensive or defensive), spending a significant amount of resources (both natural and personal) for war, the appropriate forces and resources are used to improve the life of the population.

In this context, one cannot but mention, for example, Russia and any European state. In conditions when the state spends colossal resources on the military (Russia), the standard of living of the population leaves much to be desired. I would like to emphasize that spending on the military is important and necessary, however, in the given example with Russia, a whole series of factors (authoritarianism, total corruption, etc.) are added, making "military" spending generally ineffective. And, as a result, the "second army of the world" turned out to be unable to overcome the armed forces of the state that it systematically destroyed by political and other means.

At the same time, the situation is obvious that the financial and material resources involved in prosecution of an aggressive war can do much more to improve the standard of living of the population, if these funds are used for the development of science and technology, and social infrastructure.

Realizing this, every society tries to determine the 'circle' of rules that will ensure the preservation of society itself and its further development. In this context, one should agree with F. Hayek regarding the fact that these rules are of two types:

– some try to regulate the behavior of society members, based on the desire to consolidate the model of social activity as much as possible, and to predict almost all options for the events development;

– others provide for the minimum possible limits of a person's activity determination that will allow him to realize the right to free development of his personality (these rules may not even have a clear formal expression and a clear prescription)[2].

Herewith, for those who apply the first type of rules, the illusion of the possibility of clearly predicting all possible connections of phenomena and processes and the desire to fix them in formal prescriptions is characteristic. However, this cannot be achieved, since there is no force that can grasp all these connections and adequately reflect them. I do not take into account a possible theological approach to the answer to the question of the possibility of the existence of such a substance, in particular, a transcendent one, as one that does not meet the scientific knowledge requirements.

I would like to add that authoritarian and totalitarian political regimes, seeking regulate the behavior of every society member as completely as

[2] Hayek F. A. Law, Legislation and Liberty. *A New Statement of the Liberal Principles of Justice and Political Economy*. Routledge, 1998. 244. P.8-34.

possible, are inclined to the first type. Instead, democratic regimes use the second type of human behavior regulation in society – establishing only general limits of behavior, and leaving freedom of will to the individual.

Thus, let me remind that two types of legal regulation, namely: generally permissive (Part 1, Article 19) and specifically permissive (Part 2, Article 19) are enshrined in Art. 19 of the Constitution of Ukraine. And, even, the specifically permissive type provides for the presence of administrative discretion.

It is appropriate to point out that in the Soviet state (in contrast to the states of the Western legal tradition) the administrative discretion institution did not acquire normative consolidation, and also did not become the subject of jurisprudence study because of its actual objection, which is again connected with the desire to regulate all aspects of individuals' life in detail (including public authorities) and the necessity to clearly implement the normative legal acts prescriptions (which still could not fully take into account all the diversity of social relations' and a particular individual's behavior manifestation) that led to significant bureaucracy and became a factor in the corruption development.

Undoubtedly, such rules of coexistence existed in the pre-state society. In the Western legal tradition, they were called archaic law. In this context, we cannot but once again draw the differences between Western and Soviet legal doctrines (between democracy and authoritarianism, totalitarianism). Archaic law is understood as "rules of behavior of kin members that: 1) were of a syncretic character (customs, religious norms, taboos, and rituals were not demarcated); 2) did not provide for the separation of rights and duties, and prohibition is the main regulation method"[3].

As I emphasized, Soviet jurisprudence, not recognizing the existence of law without the state and considering it precisely as a result of the state's activity, could not recognize the existence of archaic law, and therefore was made to make a term that would denote the rules of behavior within a pre-state society. This is how the term "mononorms" became such a term. However, this does not negate the existence of the very rules of conduct, which at that time were composed mainly because of their systematic use and maintenance by way of application of appropriate sanctions of a personal nature – removal from the tribe (kin) borders etc.

The rules of coexistence of society members change with the society development. The new social relations emergence becomes a factor in the emergence of new rules.

[3] Кучук А. М. Теорія держави і права. Частина 1. Теорія держави : навч.-метод. посіб. Дніпро : Дніпроп. держ. ун-т внутр. справ, 2018. С. 26.

Above, I noted the difference between Western legal culture and Soviet jurisprudence, between the organization of life within both democratic and non-democratic political regimes. This additionally argues for the relationship between law and society's culture; therefore, it is expedient to consider law precisely as an element of the society culture. That is why the differences between law of different societies are obvious, and this makes it possible to typologize systems of law. In the traditional system of law, customs are perceived as law; in the system of common law – law is perceived as judicial authorities' decisions; in religious systemsof law – law is understood as the religious norms, etc.

In addition, it should be pointed out that has an axiological content is inherent to law. Law, as any cultural phenomenon, cannot but possess a value component. Even in the conditions of the legal positivism prevalence, normative prescriptions formulated by public authorities reflect the values of the respective society aimed at implementing the provisions of a certain ideology (for example, the state and communism as the main value; this allows neglecting the needs of a person, his interests, and rights, etc.).

Quite rightly in this aspect the domestic lawyer V. Bigun notes that the basis for applying the axiological approach in the field of law is "the recognition of a person as the highest social value and the recognition of law as a value, the form of reflection and a way of embodying human values. The application of this approach allows us to establish the following: the regularity of the formation, manifestation and development of the value properties of the relationship between a person and law is the development and progressive realization of the humanistic nature of law. One of the manifestations of such implementation is the progress of both philosophical and legal and political and legal thought, as well as political and legal practice in the direction of recognizing and affirming a person as the "highest social and legal value"[4].

I have already noted that the issue of values, as well as the issue of law, its place and role in the society life, is actualized "in transitional periods of the society development, a transitive period of time. At the same time, this issue received special emphasis during the formation of the postmodern era, when the global crisis of virtually all social systems took place (and partly continues to take place)"[5].

Thus, the following preliminary conclusions can be drawn from the abovementioned:

[4] Бігун В. С. Людина в праві: аксіологічний підхід : автореф. дис. … канд. юрид. наук : 12.00.12. Київ, 2004. С. 4.

[5] Кучук А. М. Основи теорії правового поліцентризму : монограф. Дніпро : Дніпроп. держ. ун-т внутр. справ; Ліра ЛТД, 2017. С. 98.

1) any society, in order to ensure the proper coexistence of its members, makes a number of norms – those rules that are protected by the society for its preservation;

2) the level of society development, the peculiarities of its functioning are the factors in formation of various axiological principles, according to which the activities of society members, and the society culture take place;

3) the rules of behavior existing within the society are aimed at the implementation and preservation of the values of the respective society, thus acting as a component of the culture of this society.

4) since different social formations (societies) possess different values, then law in different social formations will be different (that does not exclude the presence of certain common characteristics);

5) law is a dynamic phenomenon, as it has a social nature, and social relations are a dynamic phenomenon and systematically change, some of them may cease, and new relations arise, etc.

It is also important to emphasize that rules are made and must be implemented. They are not a "phenomenon unto themselves". Accordingly, their presence is justified if they achieve the goal of their making (formation or formulation), and for this they must be embodied in the behavior of society members. If some rule is not implemented, then it loses normativity (or does not acquire it, if it is only formed, for example, in the normative legal act text). Therefore, law is a "living" phenomenon. And this, once again, indicates the dynamism of law.

Herewith, the following should also be noted in this aspect. Realization, "viability" of law does not exclude the consideration as law of those norms that are designed for certain atypical conditions of society functioning. Thus, in a civilized society, rules operating in extraordinary conditions, for example, in conditions of war or a state of emergency, should be made. Such norms should be adopted before the emergence of extraordinary conditions, so that, in the event of appropriate circumstances, public authorities can ensure the fulfillment of their tasks within the limits of law, without going beyond their powers and not using prohibited means. The absence of such rules before the extraordinary circumstances emergence is a factor in the possible arbitrariness of the public authorities and the making of those rules that are beneficial to it.

It is obvious that the norms determining the society members' behavior in extraordinary circumstances are not implemented under the conditions of normal functioning of society. And in this case, precisely such norms do not lose their normativity. They "await" for the circumstances under which they will be implemented.

So, for example, I will also mention the presence of norms that provide for responsibility for offenses against peace, human security and the international

legal order[6] in the Criminal Code of Ukraine, which were not actually applied (a large part of them), relevant data were not entered into the Unified Register of Pre-Trial Investigations, there were no decisions of national judicial bodies according to these norms. However, the full-scale invasion of Russia on the territory of Ukraine and the waging of a war against Ukraine made the conditions for the application of the relevant articles of the Criminal Code of Ukraine.

Therefore, the rules of conduct must operate in society, be implemented in the behavior of individuals, otherwise it will be "dead" law.

In this aspect, it is also worth mentioning the Canadian lawyer's concept of law about the impossibility of the existence of "already-law"[7]: making rules and enshrining them in the texts of normative and legal acts does not lead to making of law; law should be efficient and should be applied. "Is law really 'objective' and 'pre-existing' in society, or it functions in the objectifying realm?" – the scientist asks and outlines four directions that permit to answer the specified question:

– no objective law "exists";
– "factuality" does not lead to a possible conclusion about "law";
– "already-law" does not "exist";
– the judgment about the possibility of "obtaining" law by way of certain concepts' formulation (prescriptive texts) is illogical[8].

"Law is made in practice, and any belief in "already-law" is groundless. There is no good or bad law or "already-law", but there is a good or a bad work of lawyers, advocates and judges on interpretation and argumentation. If we make law badly, then it will be "bad"; if we do our job well as a lawyer, then law will be "good"[9], – B. Melkevik emphasizes.

In this part of the study, I do not engage in a discussion about the subjects making law, and what is the role of lawyers in this, etc. In the aspect of this research, the only important thing is that there is no "already-law" (breves made by the legislator do not become law"automatically"), law is those rules that function within the society.

Again, I cannot but recall F. Hayek's thesis that the rules of human behavior to some extent do not have a clear formulation, although they are perceived by society, the members of which "feel" them. In this context, the following should be noted. There is hardly a state where all citizens of this state read at least the basic normative acts, for example, the criminal or civil

[6] Кримінальний кодекс України. *Відомості Верховної Ради України*. 2001. № 25–26. Ст. 131.
[7] Ibid.
[8] Ibid.
[9] Ibid.

codes (basic acts of criminal or civil legislation). This is without taking into account other legal acts. Moreover, it can be argued (although I am aware that this judgment has a probabilistic nature) that there is hardly a lawyer who familiarizes himself with the content of all adopted normative legal acts (not to mention people who do not have a legal education and do not work in the field of law).

However, this does not indicate that a significant part of citizens constantly commits offenses because they have not familiarized themselves with the relevant legal prohibitions and, accordingly, do not know about them. Moreover, I will point out that quite often, when committing a crime, a person tries to use knowledge in the field of law to avoid responsibility.

In my opinion, the main factor of such non breaching is the close connection between law and morality, in particular through such a category as justice. In 2004, the constitutional control agency in Ukraine, in the case of the appointment of a milder punishment by the court, indicated that justice is the determining factor of whether a law acquires the character of law. Justice allows us to distinguish between law and the law, since the law can sometimes be unjust[10].

In the same context, the term "sense of justice" of the Western legal culture should be mentioned again. Herewith, it is unlikely that studying the prescriptions of the legislation will increase the sense of justice level. D. L. Krebs asks: "How do people acquire this feeling? Where does it come from? In this section, I argue that in order to poit out about the acquisition of a sense of justice, we should identify the mental mechanisms that produce it and explain how this sense emerged and developed over the course of human evolution. Explaining the sense of justice appearance in a person helps to understand why it is created, what activates it, and why it is sometimes not capable of fair judgments and behavior"[11].

Instead, the domestic legal system still uses concepts formed mainly within the Soviet jurisprudence boundaries (or with the meanings that this jurisprudence attached to their content): legal consciousness and legal culture. Herewith, the defined concepts are usually used as identical in content. And when there is an attempt to differentiate them, the criteria for differentiation are vague and demagogic in nature.

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[10] Рішення Конституційного Суду України у справі за конституційним поданням Верховного Суду України щодо відповідності Конституції України (конституційності) положень статті 69 Кримінального кодексу України (справа про призначення судом більш м'якого покарання) № 15-рп/2004 від 2 листопада 2004 р. URL: http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=v015p710-04.

[11] Krebs, D. L. The evolution of a sense of morality. In E. Slingerland and M. Collard (Eds.) Creating Consilience: Evolution, Cognitive Science, and the Humanities (pp. 299–317). New York : Oxford University Press. P. 274.

I have already emphasized that "in domestic legal literature, legal culture is covered mainly through the prism of knowledge of legislation and legal awareness. The vagueness of the content of legal culture in the papers of domestic scientists, its constant connection with legal consciousness, lead to the formulation of the conclusion about the "non-independence" of the studied term, about its identity with legal consciousness. The argumentation of this conclusion is strengthened by the identification of law and the law which reduces it (law) to the culture of knowledge and implementation of legislation by scientists who research legal culture. Within the Western legal tradition the terms "professional ethics" and "sense of justice" are used instead[12].

I will also add that the interpretation of legal awareness and legal culture through the prism of the legal system distorts the essence of law and the sense of justice. Thus, I will recall the dictatorial laws adopted by the Yanukovych regime in the winter of 2014. According to the domestic perception of legal awareness, the implementation of these laws indicates a high level of legal awareness of law enforcement subjects. However, from the point of view of the rule of law, such an implementation is the arbitrariness of public authorities and a violation of human rights (by the way, Yanukovych's dictatorial regime was also aware of this, since the purpose of adopting such laws was to oppose civil society, to violate human rights in order to preserve the regime itself). Therefore, domestic jurisprudence should either rethink the essence of the phenomena denoted by the term "legal awareness" or use the term "sense of justice", as it is within the European legal culture.

I will also mention the well-known saying: "Jus est ars boni et aequi", as well as the presence in developed judicial systems of jury trials, that play a key role in determining the presence or absence of a LAW INFRINGEMENT. Herewith, the role of lawyers is reduced to ensuring compliance with the requirements of law during the judicial process. And I cannot but point out to the existence of such a concept as a nullifying verdict. "Thus, in the jury court of the Anglo-Saxon type there is a so-called jury nullification, this is a constitutional doctrine allowing juries to acquit defendants in a criminal trial on the basis of the "spirit and letter of the law" when they are legally guilty but deserve to be exempted from punishment, D. Nevyadomskyi notes. – Let me quote the excellent decision of the Supreme Court of the United States, adopted in 1968 in the case "Duncan v. Louisiana": "The right to a jury trial is granted to the defendant in order to prevent oppression by the state"[13].

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[12] Кучук А. М. Правова культура: необхідність зміни парадигми. *Науковий вісник Дніпропетровського державного університету внутрішніх справ.* 2019. № 3. С. 46.

[13] Нев'ядомський Д. Три головні причини, чому суд присяжних від Мін'юсту принесе значно більше шкоди, ніж користі. URL: https://zib.com.ua/ua/141541.html

Therefore, justice is carried out not in order to bring the guilty person to justice by any means, but rather to fairly punish the guilty person. This fully meets the requirements of the rule of law and indicates the essential content of the law.

Thus, as we can see, law has a close connection with morality. Moral norms do not possess such a feature as formal certainty. At the same time, being a member of society and developing, the child "absorbs" the requirements of morality, learns to behave in accordance with moral principles, "feeling" the limits of morality, justice and regulating his behavior. And besides, does it to some extent more effectively than with the help of legislation.

Therefore, taking into account all of the above, we can conclude that under law are understood the rules of behavior of the relevant society members that are closely related to morality and do not always have a textual form of reflection, moreover, they are largely implicit and require their own "finding out" (which allows them to be objectified). These are the rules of behavior that ensure the proper functioning of society and its survival, further development, protecting the axiological component of society.

2. Legal Acentrism

I have prepared a monograph on this topic, however the term "law polycentrism"[14] was used in it to denote the multiplicity of systems of law, and understanding of law, which was borrowed from the Indian legal philosopher Sinha Suriya Prakash. So this scientist in his paper "Jurisprudence. Philosophy of Law" designated a separate chapter (dedicated to the problem of the fallacy of defending a monistic axiological system, the danger of such a system, defined as law polycentrism. "First of all", the author emphasizes, criticizing the monistic system, "it ignores the fact that there are a lot of different values and not all of them harmonize with each other. Its claim that conflicting values become compatible on the basis of a single ultimate truth does not reflect the everyday experience of human life. This system is dangerous, first, because its strictly deterministic view of the moral sphere as a unified total system, which is characterized by its own single absolute truth, causes pessimism, and second, because it distorts reality, convincing us in the imagination about the existence of some universal essence containing all possible solutions and, finally, that, predicting only one correct answer, it is a convenient excuse for tyranny"[15].

[14] Кучук А. М. Основи теорії правового поліцентризму : монограф. Дніпро: Дніпроп. держ. ун-т внутр. справ; Ліра ЛТД, 2017

[15] Sinha S. P. *The Fission and Fusion of Is-Ought in Legal Philosophy***,** 21 VILL. L. REV. 839 (1976). URL: https://digitalcommons.law.villanova.edu/vlr/vol21/iss5/2

Instead, in this paper I use the term "law acentrism" for the following reasons. The presence of the word "center" in the first term base subconsciously directs thought to search for such "centers" of law. In addition, the use of the word "center" also implies the separation of the "periphery", which is not entirely correct in the context of systems of law study.

Thus, from the above, it becomes clear that in this part of the paper I will focus on covering the phenomenon of the multiplicity of law, the presence of different perceptions of law by different societies.

I would like to note that one of the first attempts to determine the factors of differences in law of different nations, in my opinion, was made by representatives of geographical determinism.

Thus, above I indicated the social nature of law. Law is a phenomenon of the respective society that lives and develops in certain "geographical" conditions. Efforts to adapt to environmental conditions, and to turn the environment into a benefit for oneself – all this affects the priority rules made within this society. Peculiarities of everyday life largely determine a person's perception of the world. Thus, in this aspect, it is worth agreeing with the American legal philosopher L. Fuller that, for example, the normative system of an illiterate society will necessarily differ from the normative system of a society where adults have writing skills and where the printed word is a means of communication. The noted author also emphasized the essential differences between law of states with limited water resources and those without limited water resources: "among other points of divergence, the legal systems of the first type will necessarily deal with permanent crises caused by drought, and the legal institutions of the second will be deprived of such challenges. Other considerations of climate, geography, technology, culture, and past history must be taken into account in the design of any system oa law"[16].

As noted by domestic scientists, "geographical determinism originated in ancient times. Opinions relating the degree of states' and civilizations' development to the features of their geographical position, climate and soil can be found in the writings of Plato, Aristotle, Democritus, Epicurus, Hippocrates, and Thucydides. Fully formed geographic and deterministic concepts of the society development were expressed by J. Beaudin and S. Montesquieu"[17].

Without going into a detailed discussion about the determinability of geographic parameters for the essence and content of the system of law, I will emphasize their importance, noting a certain leveling of the specified criterion (geographical) regarding the essence of certain legal phenomena and

[16] Фуллер Лон Л. Анатомія права / пер. з англ. Н. Комарова. Київ : Сфера, 1999. С. 64.

[17] Мальський М. З., Мацях М. М. Теорія міжнародних відносин : підручник. 3-тє вид., перероб. і доп. Київ : Знання, 2007. 461 с. URL: http://politics.ellib.org.ua/pages-cat-57.html

processes. Thus, I will mention, in particular, human rights that are mainly considered as natural, inalienable and integral capabilities of a person, which are inherent to him regardless of the place of birth, place of stay, etc. At least the majority of societies perceive exactly this understanding of the specified legal phenomenon. This is the approach used by the authors of the Universal Declaration of Human Rights in 1948, Art. 1 of which proclaims: "All people are born free and equal…"[18].

Evaluating the role of the Universal Declaration of Human Rights, a foreign researcher points out that "as a common standard of achievement for all states that have signed the document, the Universal Declaration of Human Rights is an essential cornerstone in the modern human rights' history, based on ancient modern philosophy, responses to the terrible crimes of the World War II and different visions of future human rights standards. Despite the differences of opinion of many drafting parties and states, the Universal Declaration of Human Rights ultimately transcended the conflict, forming the basis of a moral compass for all humanity"[19].

Although not all states accept the given understanding of human rights. So, for example, within the framework of the Cairo Declaration on Human Rights in Islam, a slightly different vision of the specified legal phenomenon is laid out. Thus, for example, according to the provisions of this international act "a man is responsible for the wealth and well-being of the family" (paragraph b, Article 6), "Islam is a religion of pristine purity. It is forbidden to resort to any form of coercion of a person or to use his poverty or ignorance to convert him to another faith or atheism" (Article 10)[20].

One cannot but mention another international act adopted by the Association of Southeast Asian Nations – the Declaration of Human Rights, 2012 indicating a number of factors that determine the content of human rights: " implementation of human rights should be considered at the regional and national levels, taking into account various political, economic, legal, social, cultural, historical and religious prerequisites"[21].

In the same context, it is worth mentioning once again that when the Universal Declaration of Human Rights was adopted, not all states supported its adoption, taking into account a number of completely predictable factors,

[18] United Nations. Universal Declaration of Human Rights. Retrieved from https:// www.un.org/en/about-us/universal-declaration-of-human-rights

[19] Duan F. The Universal Declaration of Human Rights and the Modern History of Human Rights. URL: https://ssrn.com/abstract=3066882

[20] Cairo Declaration on Human Rights in Islam,Aug. 5, 1990, U. N. GAOR, World Conf. on Hum. Rts., 4th Sess., Agenda Item 5, U. N. Doc. A/CONF.157/PC/62/Add.18 (1993) . URL: http://hrlibrary.umn.edu/instree/cairodeclaration.html

[21] ASEAN Human Rights Declaration. URL: https://asean.org/asean-human-rights-declaration/

in particular, it is about religious and political factors[22], although it is worth adding a higher-level factor to them, which conditionally can be called axiological or mental (worldview).

At the same time, I cannot but point out that a civilization that does not recognize a person as the fundamental value cannot make the proper conditions for the development of all people in accordance with the principle of equality and justice (in this context, I will mention that justice was emphasized above as the essence of law; it is hardly whether the existence of immoral law is possible). A person, human dignity and human rights should be at the core of the system of law. Only such law can be just.

In this aspect, it is worth pointing out that a comparison of the Western legal culture, which is based on the specified values, and others in the aspect of a person's evaluation of his life indicates significant achievements of the Western culture itself. Various ratings of democracy, rule of law, and freedom, etc. indicate the correctness of such a conclusion as an additional argument.

Although, each civilization defines its own axiological basis and, accordingly, forms the rules of coexistence based on the hierarchy of its own values. That is why there are different systems of law. In this context, one can largely agree with the representatives of the historical school of law, who emphasized the close connection between the content of law and the people's customs, the "people's spirit", etc. As I have already noted, "a similar understanding of law allowed the German historical school, likening law to language, to consider it as an organic phenomenon of the national spirit, which, accordingly, should not develop artificially and arbitrarily, but in an evolutionary way, that is as people's needs and consciousness develop"[23].

It is also appropriate to indicate that the historical school of law is closer to the truth than legal positivism that has been used within our state for a long time (the provisions of which still prevail, in particular, in legal practice, despite the enshrining of the natural school of law provisions in legislation). Thus, pointing out the shortcomings of legal positivism, the founder of the historical school K. F. von Savigny noted that since according to positivism the emergence of law is connected with the issuance by public authorities, then the subject of jurisprudence is purely the content of legislation. Therefore, all law is "accidental" and "changeable", since the stroke of a pen can destroy an existing law and make new law, which can be significantly

[22] Кучук А. М. Прийняття Загальної декларації прав людини: історичний аспект. *Консенсус.* 2021. № 1. https://doi.org/10.31110/consensus/2021-01/106-114

[23] Кучук А. М. Основи теорії правового поліцентризму : монограф. Дніпро: Дніпроп. держ. ун-т внутр. справ; Ліра ЛТД, 2017. С. 158.

different from the previous one, and the existence of law can fully depend on the will of one person (the ruler)[24].

Quite correctly, O. Terzi and G. Arakelyan point out that the people, its history and traditions are the central category of the historical school of law. The concept of the national spirit, the spirit of history, became a cornerstone concept. Folk spirit emerges from tradition and is formed (develops) over a long period of time. Herewith, it (the spirit) acts as an important factor in law-making[25].

Although, under the historical approach to the understanding of law, individualism and the person as such is leveled to a certain extent, since the priority is given to the collective formation – the people. But in any case, this school of law quite correctly pointed out the existing connection between law and the culture of the respective people, the mental component of law, and the interaction of law and language. And although these ideas were expressed relatively long ago, for Ukrainian society they acquired special significance due to the full-scale invasion of Russia under the fictitious pretext of protecting those who speak the Russian language (for which a special term was invented in Russia and introduced into the social discourse in Ukrainian society).

In this aspect, it is worth mentioning the actualization of such a direction of scientific research in the field of law as legal linguistics in recent years. Herewith, it should be noted that its subject is not so much the form of the text as its content; moreover, the text itself is understood not simply as a collection of words and punctuation marks, but as a complete discourse. Thus, it is worth pointing out that a significant part of legal norms, especially in the field of human rights, has an implicit nature and requires its "disclosure". A legal text contains a number of meanings that are read "outside the text". Within the traditional perception of legal phenomena, the described can be associated with the expanding and restrictive methods of legal norms interpreting, when the actual content of the prescription is wider or narrower than the verbal designation of the corresponding rule.

Considering the above, one cannot but mention O. Minchenko's monographic study devoted to legal linguistics as an integral part of modern jurisprudence. Herewith, the author covers this issue within the framework of various systems of law[26]. Quite rightly, the domestic scientist notes the role

[24] Schüler von Savigny Alternative Konzepte zu und Gegner von Savigny Kritische Quellenausgaben des 19. Jahrhunderts. URL: https://www.vico-online.net/data/news/news_8_doc1.pdf

[25] Терзі О. С., Аракелян Г. А. Формування історичної школи права. *Наука. Релігія. Суспільство*. 2012. № 3. С. 28.

[26] Мінченко О. В. Загальнотеоретичні та методологічні засади системи юридико-лінгвістичних знань. Київ : Нац. акад. прокуратури України, 2019. 382 с.

played by language in the legal sphere: "Theoretical and practical issues of the effective functioning of law are solved through the prism of language. Law without language is unthinkable. Law is language; system-forming factors of law and order and the state are law and language"[27].

Thus, I will also mention Sapir-Whorf's hypothesis regarding the relationship between language and thinking, however, this issue should become the subject of a separate study, especially considering the status of the Ukrainian language in Ukraine.

Legal linguistics is also based on legal semiotics knowledge. Symbols in law play an important role, possessing an axiological component.

It is appropriate to emphasize the problems of legal terms translation, one of the factors of which is the social and cultural nature of law excluding the possibility of word for word translation. In this aspect, we should once again mention the translation of the English rule of law doctrine as the rule of a law, and a little later as the rule of a legal law and finally as the rule of law.

I have already mentioned the translation of the René David's paper "Les grands systemes de droit contemporains" not as "Grand Systems of Modern Law" (let me emphasize once more – SYSTEMS of LAW), but as Grand Legal Systems of Modernity. The same is with Raymond Leger's paper "Les grands systemes de droit contemporains: une approche comparative" – instead of "Grand Systems of Modern Law", the paper was translated as "Grand Legal Systems of Modernity: Comparative and Legal Approach". Thereafter, there are no "law systems" together with system of law, law and legislation system made within the Western legal culture. Law as a system of social regulation is itself the systems of national law, grouped according to certain features. It is illogical to make again "legal system" and system of law reduce to the legislation system, since the essence of law concept is "ruined". Law turns to be insensible. Thus, it was right for the soviet jurisprudence and, moreover, it was the aim of such understanding of law that was dependent upon the public authorities' will, fixed in the law. The law was the basis of social relations' regulation, discourse on law changed into scholastic discussion.

However, in democratic societies there is hardly a necessity for the presence of so many "systems" – terms that denote the same phenomenon (although herewith scientists in numerous dissertations try to distinguish between them, and this leads to dogmatization of the field of law and ultimately acts as a factor that legal normativism prevails in many spheres of legal activity even today).

[27] Мінченко О. В. Загальнотеоретичні та методологічні засади системи юридико-лінгвістичних знань. Київ : Нац. акад. прокуратури України, 2019. С. 5.

In addition, it is worth pointing out that systems of law are the result of division of the concepts, that is, they are the result of human thinking, when the national law of several societies is analyzed, a certain criterion by which the national law of different societies is united into one group is determined. Accordingly, the system of law does not exist by itself as an objective phenomenon, that is, there is no system of law as unions of states with established agencies, institutions that direct, coordinate functioning and development of law, form a single, common vision of law within this system of law, etc. The system of law is the result of mechanistic combination of national law of different states into one group. It is not difficult to make sure of this by looking at the scientific legal literature on this topic: different authors call different systems of law, indicate their different number, etc.

I do not deny the possible scientific significance of such a division of systems of law, however, quite often you can hear, for example, that Ukraine belongs to the continental law system and therefore judicial precedent, as a source of law, cannot be applied in it. The state's belonging to a specific system of law does not make requirements for national law, on the contrary, the content of national law is the basis for assigning it to the appropriate group, since, as I have indicated, the presence of an appropriate system of law is the result of human thinking. Therefore, the application or non-application of judicial precedent as a source of law in Ukraine has nothing to do with the assignment of its national law to one of the systems of law by individual scholars.

It is appropriate to emphasize that the doctrine of systems of law confirms the differences in the national law of different states. Comparative jurisprudence just tries, by analyzing national law, to single out some common characteristics allowing the formation of groups within which law of individual states will be located. Such a combination will make it possible to study national law by individual features (although it does not give a general idea of a specific national law).

It should be added that René David's theory was formed at the beginning of the second half of the 20th century, during the period when the system of international institutions, still functioning today, was being formed. At the same time, I would like to emphasize that this was only the initial stage of the international system creation and, accordingly, the scientist could not take into account the impact of this system on national law to the full extent, as it can be done in the current period of social development. In addition, at that time, the European Union, an international organization that significantly influenced and influences today the national law of European states (and not only), was not formed.

At that time, the activity of the European Court of Human Rights, the practice of which has the properties of a judicial precedent and which significantly affects national law, demanding the Convention on the Protection of Human Rights and Fundamental Freedoms provisions implementation, did not acquire such importance as it does today.

In the same context, it is worth emphasizing that the United States of America ratified only one of the two international covenants adopted in 1966 – the International Covenant on Civil and Political Rights, without joining the International Covenant on Economic, Social and Cultural Rights. Different perception of the theory of human rights is the reason for this.

That is why one can agree with the thesis that the American doctrine of civil rights differs from the European doctrine of human rights, although they are similar.

The results of a comparison of the understanding of the right to freedom of expression in European legal culture and in American law are quite informative in this aspect. Thus, for example, the concept of hate speech as a phenomenon that makes it possible to restrict freedom of expression is not inherent to the latter.

"If European standards provide for a number of restrictions on the right to free expression and freedom of the press, the approach to freedom of mass information in the United States of America is significantly different, where such freedom is provided for by the First Amendment to the Constitution and is practically unlimited. The right of the press is absolutely free to publish materials, make editorial comments, criticize, and inform is rightly considered a fundamental principle of the American democracy"[28].

One cannot but mention also in this aspect the decision of the European Court of Human Rights in the case of Otto-Preminger-Institut v. Austria regarding the different perception of morality and religion not only in different societies, but also within the boundaries of an individual society. "As in the case of 'morality', it is impossible to define across Europe a single concept of the religion importance in society (see the decision in the case of "Muller and others v. Switzerland" of May, 24, 1988, Series A, No. 133, p. 20). paragraph 30 and paragraph 22, paragraph 35); even within the same country such concepts may differ. For this reason, it is impossible to arrive at an exhaustive definition of what constitutes permissible interference with the exercise of the right to freedom of expression, if such expression is directed against the religious feelings of others"[29].

[28] Середюк-Буз В. В. Американська парадигма обмеження свободи масової інформації. *Форум права*. 2011. № 3. С. 717.

[29] Case of Otto-Preminger-Institut v. Austria, Application no 13470/87. 20 September 1994. URL: http://hudoc.echr.coe.int/eng?i=001-57897

As we can see, the above confirms the position of the historical school of law about the close connection of law with the people, their language, and culture. Law cannot be considered formally, outside the influence of culture; law is social and cultural phenomenon and it should be studied as such. Accordingly, it becomes clear that it is not possible to make law by issuing a normative and legal act. Law is a "living" and dynamic phenomenon.

Each culture creates its own system of social relations regulation based on the values of the corresponding social formation, and, therefore, differs from the national law of other social formations.

For the purpose of a generalized understanding of law (during which the method of abstraction is used that involves a departure from the non-essential features of the phenomenon under study; and in the context of comparative jurisprudence – a departure from the features that are essential for national law), national law of different states is combined into certain groups (the concept of law division takes place) according to certain similar characteristics. Separate systems of law are the result of a logical operation, not a separate ontological entity, and therefore cannot determine, for example, what sources of law are used in national law.

3. Human Rights as A Component of Modern Law

Human rights are the cornerstone of law. Above, I indicated the different perception of this legal phenomenon within different systems of law. However, I would like to emphasize that in any case (in different legal cultures) the existence of such a legal phenomenon, interpreted as the capabilities of a person, is recognized. The "filling" of this phenomenon, and its source, etc. is different.

In general, it should be noted that the theory of human rights, applied within the framework of Western legal culture, began to take shape at the end of the first half of the 20th century and took shape during the second half of the 20th century. This process is connected with the end of the World War II and with the efforts of the international community to make a system of law and institutions that will not allow in the future such massive violations of human rights as happened during the war, when millions of people were annihiated, people's homes and social infrastructure were destroyed etc.

In this context, it is worth mentioning the Magna Carta as one of the first documents that had a significant impact on the field of law. According to the Britannica website, Magna Carta is "a document guaranteeing English political liberties, drafted in Runnymede, a meadow by the River Thames, and signed by King John on June 15, 1215, under pressure from his rebellious barons. By declaring the sovereign as the subject to the rule of law and

documenting the liberties enjoyed by "free people", it provided the foundation of individual rights in Anglo-American jurisprudence"[30].

Herewith, the significance of the Magna Carta for modern times is also emphasized, in particular, this document is considered as the basis for the formation of the due legal procedure concept, the right to petition, habeas corpus, and limitation of public power, etc.

And we cannot but agree with this. Indeed, Magna Carta does not lose its relevance even today, laying the foundations for the development of law and human rights. The document also discussed the reform of the justice system and legislation, and control over the public authorities' activities.

Much later, in 1710, the provision on limiting power and subordinating it to established rules is reflected in another document known to the Ukrainian society called the Constitution of Pylyp Orlyk: "Therefore, it is finally decreed that His Highness the Hetman shall not be tempted by any, even the largest, gifts and respects, he did not give colonel, or other military or civil positions to anyone in the governments for bribes, and he did not forcibly appoint anyone to the government. …The colonels will also have to follow the same law and not allow hundreds of centurions and other officials without free election for some respect. And they should not be fired from governments because of their own grievances"[31].

One cannot but mention the Déclaration des Droits de l'Homme et du Citoyen (1789), which emphasizes that it is disdain for human rights that is the cause of social misfortunes and corruption of public authorities. And the adopted Declaration should serve as a reminder that a person has rights; the indispensability to consider human rights when making social decisions[32].

Herewith, the purpose of political associations is declared to be the preservation of human rights (that are interpreted as natural and inalienable), namely: freedom, property, security and resistance to oppression[33].

A few years before the adoption of the French Declaration, the Declaration of Independence of the United States of America was proclaimed, which stated that "we hold the truths to be self-evident, that all people are created

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[30] Magna Carta. England 1215. Britannica. URL: https://www.britannica.com/topic/Magna-Carta

[31] Договори і постанови прав і свобод військових між Ясновельможним Його Милості паном Пилипом Орликом, новообраним гетьманом Війська Запорізького, і між генеральними особами, полковниками і тим же Військом Запорізьким з повною згодою з обох сторін. Затверджені при вільному обранні формальною присягою від того ж Ясновельможного Гетьмана. Підтверджені 5 квітня 1710 року від Різдва Христового. URL: http://static.rada.gov.ua/site/const/istoriya/1710.html

[32] Déclaration des Droits de l'Homme et du Citoyen de 1789. URL: https://www.legifrance.gouv.fr/contenu/menu/droit-national-en-vigueur/constitution/declaration-des-droits-de-l-homme-et-du-citoyen-de-1789

[33] Ibid.

equal, that they are endowed with certain inalienable rights, among which are life, liberty, and the pursuit of happiness by their Creator"[34]. This document indicates the task of public authority, which consists in ensuring these rights, as well as the right of the people to protest if the government does not fulfill its purpose, the constituent power of the people and, accordingly, the primacy of popular sovereignty, as well as the idea that later was called the vertical dimension of human rights.

In this part of the research, one cannot but mention the Universal Declaration of Human Rights. Above, I noted some historical aspects of its adoption; now I will focus on this international instrument in more detail. And in this aspect, I cannot but citing S. Holovaty's thesis that when adopting this document, the developers took into account previous experience in the field of law and deliberately changed the terminology. In particular, human rights (or the rights of a person and a citizen, as stated in the French declaration) have been replaced by human rights, in order to further emphasize the attributes of these rights, the inalienability of human rights, and their natural character"[35]. "The crucial fact remains unconsidered that the drafters of the UN document just in 1948 themselves abandoned the English phrase "the rights of man" introduced in the second half of the 18th century, the literal (mirror) translation of which is in Ukrainian, as well as in Russian, and French languages are, respectively: rights of a man / rights of a man / les droits de l'homme. The term "the rights of man" itself is a derivative. It entered the English language through a literal mirror translation at the time from the French expression "les droits de l'homme", which was first officially recorded in the French Declaration of the Rights of Man and Citizen in 1789"[36] – emphasizes the domestic scientist.

Therefore, it is not just about changing the term, but about a different approach, which is the basis of the theory of human rights. I would like to add that until now human rights were considered mainly as an internal state phenomenon – something that does not go beyond the borders of a specific state. Therefore, in this context, one can accept the thesis that human rights depend on the state, on the level of its development, and on their enshrining in legislation.

Since the adoption of the Universal Declaration of Human Rights, we are talking about human rights as a universal category that is not limited to the territory of a single state; it doesn't matter in the territory of which state a

[34] Declaration of Independence: A Transcription. URL: https://www.archives.gov/founding-docs/declaration-transcript

[35] Головатий С. Про людські права. Лекції. Київ : Дух і літера, 2016. 760 с.

[36] Лекція доктора юридичних наук Сергія Головатого: «Розуміти людські права за західною правничою традицією». *Право України*. 2017. № 4. С. 126–141, с. 128.

person is, he does not "lose" the rights that belong to him by nature. This was the main idea reflected in the content of the analyzed international instrument.

It is from this time, in my opinion, that the idea of the vertical dimension of human rights took shape (it is this characteristic that is difficult to understand for Ukrainian society, including the legal community). Human rights are those requirements that apply not to other persons (natural or legal), but to the state. The state has the duty to provide these natural, inalienable capabilities of a person. At the same time, this is a one-way relationship: a person has only rights, and the state has only duties. Human rights do not (and cannot) provide for human responsibilities; responsibilities rest with the public authorities. To some extent, human rights should be perceived as a "given" / a "tribute" for the state: the state cannot neglect human rights, they exist and the state must ensure them (herewith, human rights determine the limits of the state's activity). Accordingly, the state cannot determine which rights it will provide and which it will not. Hence the conclusion is made that it does not matter whether human rights are enshrined in legislation or not. In this context, the example of the Federal Republic of Germany is noteworthy, the Constitution of which does not establish the right to education (and if there is at least Article 7 regarding school education, according to which the entire school system is under the supervision of the state[37], then university education is not mentioned). But we cannot conclude that there is no right to education in the Federal Republic of Germany.

Taking into account the above, I cannot but note that the vertical dimension of human rights is reflected in the text of the Constitution of Ukraine. Thus, according to Art. 3 of this act of the constituent power of the people "Human rights and freedoms and their guarantees determine the essence and direction of the state's activities. The state is responsible to a person for its activities. Affirmation and provision of human rights and freedoms is the fundamental duty of the state"[38]. As we can see, it is about the obligation of the state to ensure human rights, as well as the subordination of the state's activities to human rights.

It should be added that in accordance with part 1 of Art. 22 of the Constitution of Ukraine "The rights and freedoms of a person and a citizen, enshrined in this Constitution, are not exhaustive"[39]. And although the given prescription combines two phenomena of different legal nature – human rights and citizen's rights – the key point is precisely the thesis that there are other

[37] Grundgesetz für die Bundesrepublik Deutschland. URL: https://www.gesetze-im-internet.de/gg/BJNR000010949.html

[38] Конституція України від 28 червня 1996 року. *Відомості Верховної Ради України*. 1996. № 30. Ст. 141.

[39] Ibid.

human rights besides those mentioned in the text of the Constitution of Ukraine.

The abovementioned points out to another aspect that I should cover. The vertical dimension of human rights determines that the violator (potential subject of violation of human rights) is the state itself, but not other people. Since it is the state that must ensure human rights, it is the state that is responsible for the violation of human rights. Therefore, it is incorrect to call state bodies as law enforcement bodies (it is them – and only them – that might be violators of human rights). I would like to add that the term "law enforcement body" is a euphemism for punitive agencies. With the collapse of the Soviet state, its "penal system", continuing its activity, had to be "democratized", and therefore could not be called penal. Herewith, taking into account the prevalence of legal positivism (which was pointed out above), there was an identification of the law and law, and, therefore, the bodies that protect the provisions laid down in the prescriptive texts were called law enforcement.

This term is not characteristic of the Western legal culture, within which the theory of human rights I am analyzing was formed. Moreover, Western law tries to avoid excessive terminological "clogging" of the system of law with terms that do not have a clearly defined scope. There are separate state bodies each of which have clear powers and operate within clearly defined boundaries.

It is also appropriate to point out a certain consistency of the domestic legislator in the introduction of Western concepts into national law. Thus, when making changes to the Constitution of Ukraine (in the part related to the subject of this study), the parliament used the term "agencies maintaining law and order" that correctly reflects the essence of those agencies that are called law enforcement in the domestic system. That is why it is advisable to make changes to the national legislation in the context of excluding the following terms: "law enforcement agencies", "law enforcement activities" as those that distort the understanding of law and human rights.

At the same time, one cannot but point out certain trends in the adjustment of the verticality of human rights concept. Thus, my colleagues and I pointed out certain aspects of these problems[40]. We have mentioned the following: "Business in modern society plays crucial role, becoming a factor that significantly affects the human rights implementation. And this makes it necessary to rethink the established theory of human rights in terms of the addressee of the demands: if in the classical sense, human rights are addressed to the state, which has the duty to respect, protect and ensure human rights,

[40] Kuchuk A., Orlova O. Ivanii O. Business and Human Rights: Dialectics of Interaction. *Advances in Economics, Business and Management Research*. 2020. Vol. 129. P. 56–62.

then, in the modern dimension business is increasingly becoming such an addressee more and more[41].

At the international level, a number of statements that partially regulate this issue were adopted. Thus, I will remember the following:

– Guiding Principles of the United Nations Organization on Business and Human Rights. According to this document, "Businesses must respect human rights. This means that they must avoid encroachments upon human rights and must combat the negative impact on human rights to which they are related"[42].

– OECD Guidelines for Multinational Enterprises. In accordance with this act, companies should observe, in particular, the following: respect internationally recognized human rights in their activities[43]. These guiding principles provide for transnational corporations should respect internationally recognized human rights in their activities; refrain from discrimination or disciplinary action against employees. In addition, transnational corporations must respect human rights, avoid human rights violations, and resolve conflicts in which they find themselves due to adverse effects on human rights[44].

The specified international acts can be considered as certain standards of human rights perception by business.

It is also worth emphasizing the following. Although the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Court of Human Rights contain a reference to "person", the subject of an appeal to the Court can be both a natural person and a legal entity (however, a legal entity of a non-state form of ownership or a non-governmental organization, since the state cannot appeal to itself). Therefore, a certain part of the business can apply for the protection of their "human rights". In general, let us note that the share of such cases in the Court is small, but such cases are not a solitary instance[45].

Therefore, as we can see, the theory of human rights, like society itself, does not remain unchanged and is a dynamic phenomenon. In this aspect, I will note the thesis about the implicit nature of human rights norms. The example of the Convention for the Protection of Human Rights and Fundamental Freedoms and the practice of the European Court of Human

[41] Kuchuk A., Orlova O. Ivanii O. Business and Human Rights: Dialectics of Interaction. *Advances in Economics, Business and Management Research,* 2020, volume 129. P.56-62.

[42] Guiding Principles on Business and Human Rights. URL: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

[43] OECD Guidelines for Multinational Enterprises. URL*:* https://mneguidelines.oecd.org/mneguidelines/

[44] Ibid.

[45] Kuchuk A., Orlova O. Ivanii O. Business and Human Rights: Dialectics of Interaction. *Advances in Economics, Business and Management Research,* 2020. Vol. 129. P. 56–62.

Rights is quite indicative in this aspect. So, in particular, Art. 3 of this Convention is quite concise: it contains one sentence of 15 words (in the English version)[46]. But the very content of this norm is revealed in numerous decisions of the European Court of Human Rights reflecting the material and procedural aspects of the state's fulfillment of its obligations under this norm, the doctrine of "minimum level of cruelty", etc. Moreover, in practice, the criteria for distinguishing, namely: 1) torture; 2) inhuman treatment; 3) degrading treatment, are given. The article itself does not contain any indication of their distinction.

Or we should mention Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms enshrining the right to respect for private and family life. The drafters of this Convention hardly predicted that the reputation of a person, the life of embryos, and the possibility of giving birth at home rather than in a medical institution, and much more could fall under the protection of this article.

In this aspect, it is worth agreeing with O. Minchenko regarding the fact that "a legal text is not a text in its classical linguistic sense, but is part of a legal discourse; the implicit nature of the text of individual normative legal acts causes the insufficiency of the interpretation of a single word, the value system of society, the international law, etc. is important. Law is possible under the condition of communication, and therefore law should be considered only through the appropriate social context"[47]. And with regard to the practice of the European Court of Human Rights, the aforementioned scientist quite rightly notes that "the practice of the European Court of Human Rights inter alia reveals the content of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms; the decision of the Court is a peculiar component of the Convention. At the same time, the decision of the European Court of Human Rights, based on the Convention … should be adopted ex aequo et bono"[48].

These provisions are especially important in the context of human rights implementation, their provision by public authorities that must always proceed from human rights and their best provision, when making a decision.

I would like to emphasize that we are talking about the Western legal culture. Since there is a different perception of law within Eastern culture, a different meaning is attached to human rights. At the same time, I would like to point out that this is in no way a reason to recognize one of the cultures as

[46] Convention for the Protection of Human Rights and Fundamental Freedoms. URL: https://www.echr.coe.int/documents/convention_eng.pdf

[47] Мінченко О. В. Загальнотеоретичні та методологічні засади системи юридико-лінгвістичних знань. Київ : Нац. акад. прокуратури України, 2019. С. 59.

[48] Ibid. С. 239.

superior or inferior, correct or incorrect, etc. Each culture has its own worldview and, accordingly, the definition of social values. Understanding of this is the basis of the dialogue of cultures: being aware of one's own peculiarities (positive and negative aspects of functioning), one can determine in which direction it is appropriate to develop, and share one's experience.

The issue of the values of a particular society is purely its internal issue, however, if it affects neighboring cultures and also endangers the security of the whole world, then this problem already goes beyond the borders of the domestic state and requires an adequate response of the international community, bringing all the guilty parties to justice.

CONCLUSIONS

Thus, at the turn of the centuries, radical changes took place affecting all spheres of society life, including law. In conditions of a transitive society, the reassessment of legal phenomena becomes important. The study of law in modern conditions should proceed from the social and cultural nature of law, from the recognition of the importance of the value component of law.

SUMMARY

The topicality of the study is determined by the permanence of the issue of understanding law, human rights as those phenomena that determine the rules of human coexistence in society, and ensure law and order. Additional factors of relevance are the challenges of the postmodern era that have affected all spheres of human life, including the realm of law.

It is indicated that even today there is no single accepted understanding of law, there are lots of definitions of this concept. Quite often various social phenomena are called law.

It is emphasized that an axiological meaning is inherent to law. Like any cultural phenomenon, law cannot but possess a value component. Even in conditions of legal positivism prevailing, normative prescriptions, formulated by public authorities, reflect the values of the respective society.

It is noted that law is understood as the rules of behavior of the members of the relevant society that are closely related to morality and do not always have a textual form of reflection, moreover, they are largely implicit and require their own "finding" (permitting them to be objectified). These are the rules of behavior that ensure the proper functioning of society and its survival, and further development, protecting the axiological component of society.

Law cannot be considered formally, outside the influence of culture; law is a social and cultural phenomenon and it should be studied as such. Accordingly, it becomes clear that it is not possible to make law by issuing a normative legal act. Law is a "living" and dynamic phenomenon.

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