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CONCEPTUAL PRINCIPLES OF LAW IN THE CONTEXT OF THE DEVELOPMENT OF THE THEORY OF THE STATE AND LAW

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Abstract: The specifics of the transformation of the system of legal and social relations, which take place in the world under the influence of globalization and integration trends, results in a change of views on the essence of the theory of state and law, as new conditions change the principles of the legal mechanism of the state under the influence of supranational forms of socio-economic and legal integration, social systems. Therefore, the study of new principles and adaptation of existing ones, on the basis of which the theory of state and law is formed and developed as a basic mechanism that ensures compliance of the legal system of the state with universal principles of law and ensures their fixation in domestic law, promotes application in legal practice and serves as a criterion for defining the state as democratic and legal.

Keywords: Legal mechanism, Methodology of law, Norms of law, Principles of law, Theory of state and law.

1 Introduction

Features of modern trends in the development of legal science are directly related to the specifics of research on the conceptual principles of state and law. These principles allow us to understand the key aspects related to updating the content and features of state and legal reality, based on the generally accepted foundations of a democratic society, ensuring the effective functioning of social and legal state, as well as effective mechanisms to guarantee and protect human rights and freedoms.

In general, it should be noted that the law in its essence is a complex phenomenon that creates a legal superstructure in society. It is permeated with certain general ideas that allow achieving the set goals and are inextricably linked with the socio-economic life of society. Accordingly, these most general ideas are considered to be its principles, without proper understanding of which it is impossible to understand the essence of the legal system or its individual elements. This determines the need for a higher level of knowledge of these principles, the definition of new methods and approaches to achieve them, and so on.

The classical ideas of many theorists of law about legal science and its general theoretical part are based on various, but sometimes ambiguous views not only on the subject of research of the general theory of state and law. However, there is an objective need to update and rethink the subject and structure of general theoretical jurisprudence not only at the expense of internal but also taking into account external factors that generate changes in the system of the theory of state and law. At the same time, a key place among them belongs to the rapid development of global interstate integration processes, which, along with the economic, social, political, and legal spheres, often include studies of the theory of state and law in science and education.

In practice, the dominant role is played by understanding the subject of the general theory of state and law as a special science that studies only the general patterns of origin, development, and functioning of the state and law. However, the same practice shows that understanding the subject of the theory of state and law only as a set of laws of state and legal relations leads to limited understanding of their essence and excludes from the research process important processes related to knowledge and reform of multifaceted political and legal reality, arising from globalization processes. It should be noted that all these features also apply to the general set of methods of the theory of state and law. In particular, in the modern legal literature, the principles of the theory of state and law are considered as static immutable postulates, while rejecting a systematic approach to their understanding as to the basis of the general theory of state and law. This approach is not objective, as it leads to a simplified understanding of the general nature and functions of the theory of state and law. Therefore, modern features of the transformation of approaches to understanding the essence of the theory of state and law require improvement and in-depth study of the specifics of global integration processes that are formed in the process of globalization and have a direct impact on political and socio-economic processes in society.

2 Literature Review

Many publications in the specialized legal literature are devoted to the study of the general principles of the theory of state and law, as well as the practical reflection of the provisions of this theory in the legal mechanism of the state. In particular, it is necessary to note the works devoted to the general theoretical understanding of the principles of the theory of state and law, set out in the classic works of T. Andrusiak [2], V. Kopieichykov [12], V. Lemak [14], S. Oleinykov [18], P. Rabinovych [21], T. Tarasiuk [29], K. Volynka [31].

In addition, it is necessary to note the specifics of scientific-informational and theoretical components of research in the theory of state and law, which is revealed in the works of such modern jurists as V. Antonov [3], Y. Boshytskyi [4], V. Campo [5], O. Kresin [10], L. Matvieieva [17], K. Shershun [22], N. Varlamova [30], M. Yatsyshyn [33], and others.

It is also worth noting the humanitarian and socio-economic aspects of the functioning of human society, which are reflected in the studies of I. Androschuk [1], M. Dziamulych [6-9; 23-24], O. Lysytska [15], L. Manchulenko [16], R. Sodoma [25], O. Stashchuk [26-28], Ya. Yanyshyn [32].

However, it should be noted that recently there has been a decline in the interest of legal scholars in developing problems of its methodology, clarifying the role of the general theory of state and law in ensuring the mechanism of functioning of the state. All this leads to various attempts to transform the subject of this branch of legal science and academic discipline. Therefore, it is important to critically evaluate the specific manifestations of this trend, as well as to offer modern theoretical models of the subject and object of a general theory of state and law, to determine patterns and principles of general theoretical science, which is a key task of modern law.

3 Materials and Methods

Modern research related to the theory of state and law is impossible without taking into account the modern features of the interaction of the subject and object of study. In particular, in this aspect, the method of content analysis, which is used in the study of sources that are invariant in terms of the structure or essence of the content of the object under study, is important in legal research. Therefore, the use of content analysis is to converge from a variety of textual material, which reflects the general essence of the theory of state and law, to an abstract model of text content and includes conceptual and categorical apparatus, conflicts, and paradoxes. It should be noted that research using content analysis combines nomothetic research procedures with idiographic procedures.

In addition, in the process of research of theoretical aspects of state and law, it is mandatory to use the formal-legal method,

which is traditional for legal science and is necessary for knowledge of the law, as it allows studying the internal structure of state and law, their most important properties, classification of their main features and definition of legal concepts and categories, the establishment of methods of interpretation of legal norms and acts. It should be noted that the subject of study, in this case, is the law in its pure form – its categories, definitions, features, structure, construction, legal technique. All these are basic elements of the theory of state and law. Therefore, the formal-legal method acts as a special for the study of these legal and legal issues, as it is used only in the study of law. Based on this method, it is clarified which elements make up the legal norms, how its sanctions should be built, as well as – which components are mandatory for each legal act.

4 Results and Discussion

Thorough mastering of theoretical provisions on the interpretation of legal norms and principles is one of the necessary conditions for the correct clarification of their content both in their study (in particular, in obtaining legal education), and in the application or implementation. The development of the theory of state and law as science requires consideration of traditional approaches and innovations. The theory of state and law is developing rapidly, while not contradicting traditions, accumulating a significant amount of information and experience to successfully solve the problems facing it. Innovations in the theory of state and law are understood as the discovery of new political and legal phenomena, which include sensational discoveries (for example, the discovery of patterns of development of state and law), and fairly simple descriptions of new forms of state and law.

Political and legal knowledge interrupts the existence of outdated traditions, but leaves everything positive and viable, without which further development of the theoretical system is impossible. And borrowing the positive is “continuity in the interrupted”. The development of the theory of state and law is possible due to the invisible mechanisms of continuity of traditions and innovations. At the same time, the unity of the processes of differentiation and integration of political and legal knowledge is an important regularity in the development of the theory of the state and law as a science. Features of the current stage of development of legal science determine that integrative processes in the theory of state and law have an advantage over the processes of differentiation (division).

Important in modern conditions are specific methods and principles of knowledge of the state and law, which can be divided into: general (for example, the dialectical method), used in all areas of legal science and at all stages of legal research; general science (used in all legal sciences); private (characteristic of the relevant sciences); special, or specific (only for a specific science). The philosophical basis of the theory of state and law is the dialectical method, i.e. the doctrine of the general laws of development of being and consciousness. Methods that cannot be ignored during the analysis of state and legal phenomena include legal modelling, specific sociological, functional-legal, statistical method, methods of social psychology, purely mathematical methods of legal information processing, etc.

It should be noted that the successful forecasting of the development of legal reality undoubtedly depends on the optimal choice of special methods, which in the future will provide scientific validity and sufficient accuracy of the proposed proposals and conceptual methods of the theory of state and law.

At the same time, if we talk about the principles on which the theory of law is based and developed, it should be noted that in practice there are two terms «principles of law» and «legal principles». They differ from each other in that legal principles usually arise long before the emergence of the legal system and legislation. Legal principles, which are enshrined in the system of law and legislation, are transferred to the principles of law [13].

In the legal literature of the past and present, there is no single point on the definition of the principles of law, which in turn makes it possible to argue about the relevance of this problem. Despite the differences in views on the problem of principles of law, legal science in the relevant historical epochs was the only one in the proclamation of certain provisions and ideas as principles of law. In other words, the principles of law are such legal phenomena that directly link the content of law with the laws of public life, on which this legal system is built and which it enshrines. This dependence itself determines the nature of lawmaking, the content of legal norms, methods, and techniques of law enforcement [11].

The concept of the principle is much broader than its normative, legislative expression, some scholars emphasize and distinguish three components that are part of the concept of the principle: the presence of certain ideas about the field of legal awareness; enshrining the relevant provisions in current legislation; implementation of the principles of law in a particular area of public relations [30].

In particular, this concept contains a scheme: the principle originates as a certain idea, in theory, is enshrined in the system of legal norms and through them is transformed into social relations. Or vice versa: social relations are concentrated and enshrined in the law, on the basis of which the principles are formulated. Thus, the scheme of implementation, implementation of the principles coincides with the mechanism of origin and implementation of the law [34].

According to A. Kolodii, the principles of law are designed to ensure the organic relationship of the legal system, system and structure of law, norms of law and legal relations, the unity of norms, institutions, and branches of law. They characterize the content and essence of law in a concentrated form and demonstrate the foundations of the reflection of economic, political, and moral relations. The principles serve as criteria for assessing the legality or illegality of the actions of social actors, form legal thinking and legal culture, and cement the system, and structure of law [11].

Based on this, it can be noted that the development of the principles of the theory of state and law corresponds to its essence as an objective system of political and legal knowledge. The following patterns of development of the theory itself can be distinguished: the continuity of forms of political and legal knowledge; a combination of evolutionary and abrupt ways of developing the science of state and law; discrete development of the theory of state and law in the accumulation of political and legal knowledge, their reassessment, changes in scientific paradigms. In this aspect, it is also important to determine that the differentiation and integration of knowledge about the state and law contribute to the systematization of political and legal knowledge, the emergence of new doctrines and theories; and also ensures the existence of new paradigms and problematic organization of political and legal research.

Thus, the principles of law – are the original, defining ideas, provisions, attitudes that constitute the moral and organizational basis for the emergence, development, and functioning of law. On the one hand, the principles of law reflect its objective properties, due to the laws of development of a particular society and its historically inherent interests, needs, contradictions, and compromises of different classes or segments of the population.

On the other hand, the principles of law reflect the subjective perception of law by members of society, their moral and legal views, feelings, needs, expressed in various doctrines, theories, areas of legal understanding. Therefore, the principles of law should be considered taking into account both the unity and features of both aspects and from the standpoint of the legal and philosophical sciences on the general idea of objective and subjective law [13].

The principles of law are not only legal but also philosophical and sociological categories, because they guide the public consciousness. Taking into account the worldview and economic

foundations laid down in the principles of law reveals their interaction with social psychology at the level of traditional culture [19].

In this aspect, it is necessary to note the basic elements of modern democracies, based on the principle of social justice of the state apparatus, when its key task is to ensure social harmony, consensus between different parts of society, the balance of different interests of all walks of life, groups and other segments. In addition, publicity, transparency, and consideration of public opinion are also important aspects of a democratic legal mechanism, when the state apparatus performs its functions openly, cooperates with various public associations and movements, studies public opinion, and takes it into account in organizing its tasks. These principles are especially important in the process of globalization and integration changes, which are intensifying in the world in the last decade.

In the understanding of the school of natural law, the principles of law determine the moral norms that exist in the very nature of social relations and have a guiding effect on positive law. This understanding of the principles of law was formed in the eighteenth century. This idea received special development during the Great French Revolution. Historical and legal school in the XIX century formed the opposite position. Its content was that the principles of law should be sought in the very texts of legal norms through logical reasoning, analysis, search for socio-economic ideas that contain the principles of law. Such a positivist understanding of the principles of law has become one of the foundations of the rule of law [20].

In this aspect, it should be noted the growing relevance of the principles of social power that ensure human society`s integrity and viability. It is under the influence of power that social relations acquire a controlled character, develop according to certain schemes, and not spontaneously, which determines the orderliness of the principles of the theory of state and law. It should be noted that social power in this aspect acts as a specific way of governing society, which is expressed in the system of public-will relations between people about the organization of their joint activities, the development of common interest, and goals achieved by various means, methods, including coercion.

Thus, it can be argued that the principles of law are not the property of the law of any one country or the law of any particular historical period. They are rooted in the entire history of law. It is important to note that the wording of some principles comes from Roman law.

Throughout the history of law, these principles have been its essence and have been applied in different historical conditions, which indicate a certain pattern. The principles are not based on any order in society, but on the legal order with its democratic and humanistic direction. Totalitarian regimes either denied the law altogether, rejected it and relied on open tyranny, or recognized the law and its principles in words, but in fact, ignored it. The principles of law contain its democratic and humanistic tradition, its historical succession [34].

However, modern research on the theory of state and law, its principles, and methods in modern conditions need urgent updating and transformation. The main problems that arise in the process of adapting classical approaches to understanding the essence of the theory of state and law to modern globalization challenges are as follows:

- The use of general scientific and other research methods of the theory of state and law outside their application, in particular by ignoring the natural relationship between the subject and method of research;
- Attempts to reduce the philosophical and specific patterns of legal phenomena outside the conceptual approaches to understanding the essence of the principles of the theory of state and law;
- Attempts to abstract the concepts of the studied legal phenomena through the use of general terminology without a specific historical essential interpretation of the meaning of these concepts.
- Recognition of the equal dependence of the studied legal phenomenon on many different factors that affect it in one way or another, thus erasing the differences between necessary and accidental connections of phenomena, there are grounds for denying the objective laws of law and the state;
- The proclamation of the equivalence of all the principles of the theory of state and law, the denial of any subordination, while it is objectively due to the diversity of different levels of study of the theory of state and law [35].

Therefore, we should agree with P. Rabinovych that the avoidance of these «anomalies of the study of the principles of the theory of state and law», compliance with the above scientific postulates, axioms – a necessary prerequisite for the effectiveness of pluralism of legal science methodology [21].

On the other hand, the theory of state and law is a theory of a specific socio-legal subject, which develops modern methodological approaches to the study of state and legal phenomena, patterns of their genesis, structuring, and development. The theory of state and law translates the results of their philosophical knowledge to the level of concrete disclosure of the objective essence of these social phenomena, the realities of legal life. But the theory of state and law does not dissolve in the philosophy of law; it has its own field of research and use of results, which, in particular, act as a system of legal knowledge and legal activity.

The modern philosophy of law and the general theory of state and law continues to rethink the content of legal reality, emphasizes the need to develop a legal understanding that could avoid the a priori theory of natural law and relativism of legal positivism. In this process, different types of legal understanding interact, determining the nature of relations between the subjects of law. Of particular importance is the intersubjective approach, in particular its communicative theory, which justifies the compromise between the liberal and social understanding of justice, between personal and civic autonomy. Proponents of this concept build it on the assumption that law is a social phenomenon and is carried out only in a social context. Law acts as an integrated part of socio-cultural reality, rather than an autonomous sphere of norms and abstract ideas about the ideal (proper) law.

Therefore, overcoming the gap between the theory and practice of understanding the conceptual principles of law in the study of the theory of state and law requires expanding the interaction of philosophy, sociology, theory of state and law in studying the mechanisms, dynamics, social results of state and law. Such interaction is based on a kind of principle of complementarity in the field of social cognition, which allows preserving the theoretical value of any alternative view in the system of their integrity.

Thus, it can be argued that the formation of the conceptual principles of the state and law on the basis of universal values and democratic legal freedoms is an additional incentive for the formation of civil society. It must be understood that civil society and the state complement each other. That is, without a mature civil society it is impossible to build a democratic state governed by the rule of law because it is conscious, free citizens who are able to create the most rational forms of human coexistence.

On the other hand, the rule of law, which operates on the principles of law, is a factor that contributes to the transformation of society into a civil entity. Therefore, if civil society acts as a strong indirect link between the free individual and the centralized state will, then such a state is able to resist disintegration, chaos, and crisis and provide conditions for the realization of the rights and freedoms of the autonomous individual.

5 Conclusion

Thus, it can be argued that universal principles of law, reflecting the best achievements of human civilization in the field of law, are universal normative principles of positive law. They are suitable for use in any legal system; are the basis for the formation of both the principles of international law and the principles of national (domestic) law, as well as the principles of the law of regional intergovernmental associations, and therefore can serve as a tool for convergence of international and national law, universalization of legal regulation worldwide and guidelines for reforming national legal systems in countries wishing to enter the European legal space, including Ukraine.

It should be noted that from the moment of entering this area, the candidate countries must prepare their legal framework, first of all, the system of legislation, for the next possible effect of these principles in the national legal system and determine the proper procedure for their implementation. This should be preceded by a comprehensive study of the possibilities of legislation and various state institutions, as well as the extent to which such implementation is possible politically and economically [34].

In Ukraine, the implementation of universal principles of law in national legislation occurs through:

- Their introduction into national legislation with the consent of the Verkhovna Rada of Ukraine to be bound by an international agreement for Ukraine, where such principles have been enshrined;
- Their fixation on the normative legal acts of Ukraine, first of all in the Constitution and laws of Ukraine.

However, as practice shows, the general state of development of the principles of the theory of state and law in Ukrainian jurisprudence does not fully meet the needs of today. At the same time, three tendencies prevail in the sphere of the methodology of legal science: first, the importance of dialectical logic has strengthened; secondly, the role of socio-empirical research of legal reality is growing; third, formalized methods are important. It should be noted that the conceptual principles of the theory of state and law should be considered not only on the basis of a methodology that includes a set of cognitive methods, tools, techniques for studying the state and law. At the same time, there is a whole system of special principles and methods of studying the general patterns of origin, formation, and development of state and legal phenomena, philosophical approaches.

Therefore, only the compliance of the legal system of the state with universal principles of law, their fixation in domestic law, and application in legal practice is the criterion for defining the state as democratic and legal. This is what determines the implementation of these principles in the national legislation and legal practice of many countries.

That is why, in practice, one of the most important problems of state law is the problem of ensuring respect for human and civil rights and freedoms. The emphasis on human rights in characterizing the rule of law is not accidental. In particular, human rights are an integral part of the law; their existence outside the law and without the law is impossible, just as law is inconceivable without human rights. The system of legal norms cannot claim the status of law if it does not guarantee freedom and equality through human and civil rights. That is why human rights are traditionally considered in the legal literature in the context of the rule of law and the rule of law.

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