Artículo de investigación

Theoretical and Practical Aspects of the Development of the Rule of Law State in Ukraine

Теоретичні та практичні аспекти розвитку правової держави в Україні

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Abstract

The article is devoted to the analysis of socio-cultural and institutional-legal features of the development of the rule of law state in Ukraine. It is noted that the development of the rule of law state in Ukraine involves the interaction of several socio-cultural, ideological and institutional-legal aspects, the implementation of which at present is burdened with various difficulties of an objective and subjective nature. In particular, the most significant problems that need to be addressed immediately are optimization of the Ukrainian government system and improvement of the quality of law-making, increasing the level of professionalism and civil liability of officials of all levels, overcoming imbalance in government and effective legal support of this process, implementation of the principles of the rule of law state taking into account the European tradition of democratic governance.

Keywords: Rule of law state, development of the rule of law state, legal nihilism, legal consciousness, principles of law, bicameralism, legal education.

Анотація

Стаття присвячена аналізу соціокультурних та інституціонально-правових особливостей розвитку правової держави в Україні. Зазначається, що розвиток правової держави в Україні передбачає взаємодію декількох соціокультурних, ідеологічних та інституціонально-правових аспектів, реалізація яких в даний час обтяжена різними труднощами об'єктивного та суб'єктивного характеру. Зокрема, найважливіші проблеми, які необхідно негайно вирішити, – це оптимізація української урядової системи та покращення якості правотворчості, підвищення рівня професіоналізму та громадянської відповідальності посадових осіб усіх рівнів, подолання дисбалансу уряду та ефективності правового забезпечення цього процесу, реалізація принципів верховенства права з урахуванням європейської традиції демократичного управління.

Ключові слова: правова держава, розвиток правової держави, правовий нігілізм, правосвідомість, принципи права, бікамералізм, правове виховання.

Introduction

At the present stage of the development of Ukraine, the formation of the rule of law state is the process that determines the success of other transformations. In particular, without the developed institutions of the rule of law state, further democratization of public relations in our country, productive socio-economic transformations, the establishment in the public mind of such values as justice, freedom, legal equality, security are impossible. In general, the implementation of the principles and norms of the rule of law state in domestic realities is the

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key to maintaining statehood and social stability in Ukraine.

This study comprehensively analyzes the problems of establishing the rule of law in Ukraine, the main ways to overcome them. The substantiation of the formulated hypotheses made it possible to draw conclusions about the viability of some theories of understanding the rule of law in modern conditions of the development of democracy in the post-Soviet space. Based on the foregoing, the aim of this work is to determine the theoretical and practical aspects of the formation of the rule of law in Ukraine at present stage.

To achieve the aim and objectives of our scientific research, a set of general scientific (analysis, synthesis, analogy), philosophical (hermeneutic, axiological) and special legal (comparative legal, regulatory and analytical) methods were applied. These methods were used on the basis of the principle of complementarity, and made it possible to fully consider the theoretical and practical problems of the development of the rule of law in Ukraine.

In our article, we plan to justify a number of hypotheses, the most significant of which are as follows: to build a full-fledged rule of law in Ukraine, it is necessary to optimize the system of government, improve the quality of lawmaking, increase the level of professionalism and political and legal culture of the officials, and overcome imbalances in government, improve the quality of interaction between civil society institutions and government.

Literature review

The problem of the rule of law state has been the subject of research by a number of domestic and foreign scholars. We will focus on those works that present significant ideas for our scientific exploration. Thus, J. Grant notes that the rule of law contains many ideals that are structured by two broader, overarching ideals. To such ideals of the rule of law, the researcher attributes the rule of authority and the rule of reason (Grant, 2017). P. Burgess, for his part, emphasizes that the concepts of the rule of law are often contradictory and quite confusing. At the same time, in his opinion, important elements of the rule of law are comprehension and procedural pellucidity (Burgess, 2017).

At the same time, the domestic researcher D. Geta analyzed the problems of the formation of the rule of law state in modern Ukraine, focusing on the main features of this phenomenon and reflecting on the peculiarities of their implementation in our country (Geta, 2016). In turn, A. Charnota studies the concept of "a democratic rule of law state" and emphasizes that the application of the principle of the rule of law allows legitimizing new political regimes of a democratic nature and overcoming the crisis in power (Czarnota, 2016). The importance of the scientific investigation by O. Solomin for our scientific research is that he considers the principles of the rule of law backgrounding on the norms of the Constitution of Ukraine of 1996 and focuses on their correlation (Solomin, 2013). On the other hand, M. Sellers rightly emphasizes that the existence of the rule of law state requires an independent and professional judiciary, which has the power to impartially interpret and apply laws without fear or influence (Sellers, 2014). T. Klymchuk focuses on the principles of lawmaking and the peculiarities of their implementation in Ukraine, that is extremely important for the development of the rule of law state (Kly`mchuk, 2013).

According to M. Matskevych, the main task of the rule of law state is to protect human freedoms from arbitrariness by officials, state bodies, etc. It is the degree of realization of the rights and freedoms of citizens that defines a state as legal or non-legal (Macz`kevy`ch, 2014). Reflecting on the formation of the rule of law state in Ukraine, M. Durdynets studies the problem of introduction of a bicameral Parliament in our country, stating disadvantages and advantages of this step, taking into account foreign experience (Durdy`necz, 2016).

According to A. Hetman, L. Herasina and other authors of the fundamental research on legal education and upbringing, the development of the rule of law state in Ukraine should be based on systematic legal educating activity of state bodies and public organizations, which will ultimately contribute to raising the level of legal culture of the domestic society (Getman, Gerasina et al, 2013).

Analyzing the realities of the information society, a number of modern researchers point to the destructive influence of social networks on the formation of legal awareness and legal culture of the citizens, which is ultimately one of the factors slowing down the development of the rule of law in the state. In particular, it is argued that cyberspace can be seen as a space of "comfortable anomie", where comfort is conditioned by the calmness, security and

anonymity of the subject (Getman, Danilyan, Dzeban, Kalinovsky, Hetman, 2020).

Given above concise analysis of the scientific literature allowed us to formulate the purpose of the research − to analyse socio-cultural and institutional-legal features of the development of the rule of law state in Ukraine in theoretical and practical aspects.

Methodology

The methodology of this study involves the consistent use of various principles and approaches, which together make it possible to achieve the maximum cognitive effect in understanding the essential characteristics of the rule of law state.

At the first stage of the study, domestic and foreign scientific literature was analyzed, which examines the problems and contradictions of the formation of the rule of law state. Particular attention was paid to the development of this institution in modern Ukraine; groups of factors in the political and legal life of the country that impede this process were identified.

At the second stage, the authors of the article directly investigated the problems of the formation and development of the rule of law in Ukraine, which was ensured by the complex application of logical, philosophical, special legal methods and approaches. Thus, the use of methods of logical analysis and synthesis made it possible to identify the elements of the development of the rule of law in Ukraine, show their interconnection and mutual influence, and reveal the possibilities of applying foreign experience in the domestic conditions. In turn, the heuristic potential of the dialectical method contributed to the identification of contradictions in the formation of the rule of law in Ukraine and became the basis for studying the genesis of legal relations in our country.

At the final stage of our research, the method of forecasting was actively used, which was the basis for determining the tendencies in the development of the rule of law in modern Ukraine, and for predicting possible conflict situations in the legal relations of the domestic society. At this stage of the study, practical recommendations were formulated for the further development of the rule of law in modern Ukraine in the following basic areas: ensuring the quality of judicial and law enforcement agencies, a clear distribution of powers between the branches of government and its structures (to avoid duplication, double subordination), ensuring real rights and freedoms of citizens, raising the level of legislative work in the Ukrainian Parliament, observing the principles of the rule of law in all spheres of public life, etc.

Results and Discussion

Modern researchers note that the concept of the rule of law state is, to a certain extent, ideal and concentrates on the desired result of democratic rule. At the same time, the ideals embodied in the concept of the "rule of law state" are the pointers for the development of the country.

In order to achieve this goal, we should turn to the main characteristics of the concept the “rule of law” in the modern scientific discourse. According to scientists, the theory and practice of the rule of law are aimed at establishing the principle of sovereignty of people, subordination of the state to society, protection of human and civil rights and freedoms (Geta, 2016).

Continuing the aforementioned logic, the foreign researcher E. Tsiogaru argues that alongside with the evolution of the political organization of society, its main institute, that is the state, has also changed. In his opinion, the state structures during the historical progress liberalized the legal regime of functioning of individuals and legal entities. The state not only expanded the rights and freedoms of citizens, but gradually began to act in the spirit of legal norms, moving away from exercising absolute, uncontrolled power. The evolutionary embodiment of the principle of the rule of law indicated that the state exercises its political power on the basis of legal norms, using the power of an argument, but not an argument of power (Ciongaru, 2016). That is, the powers of the state as an institution of government evolved under the influence of various factors from the absolute power to the limited, which embodied into the concept of the “rule of law state”.

As it is known, the essential features of the rule of law are specified in its fundamental principles. The first is the principle of the rule of law, the governance of law in all areas of public life, in the relations between the state and a citizen. The rule of law state is the state controlled by the law. The main means of such control is the Constitution, which is considered as the legal embodiment of the social contract. The second principle is the legal equality of citizens who are equal before the law, have the same rights and duties, and are equally responsible for violating the current legislation, regardless of their social

background, financial status, race, nationality, confessional, and other beliefs. The existence of the rule of law also implies the implementation of the principle of the priority of inalienable human rights in relation to the right of any community (class, nation, confession, etc.), the rights of the people in relation to the rights of the state. The continuation of the above-mentioned provision is the principle of guaranteeing and protecting human and citizens' rights and freedoms, creating conditions for their full realization. The next principle of functioning of the rule of law implies the mutual responsibility of the state and an individual. In the rule of law state legal equality of not only the citizens is achieved, but also of the citizens and the state. In particular, this provides for the legal responsibility of the officials for violating the rights and freedoms of a person, the right to dispute in court the wrongful acts of the officials. Also, in the rule of law the principle of separation of state power into the legislative, executive and judicial, each of which must be relatively independent and counterbalance others (Solomin, 2013) is embodied.

Commenting on the importance of the principles of the rule of law, S. Haggard and L. Tiede state that the rule of law includes effective protection of human rights, property, concluded contracts and extends to the main civil and political freedoms that guarantee autonomy and freedom of an individual. However, in the end, such protection depends not only on the quality of laws, but also on the basic institutional mechanisms − checks and balances that restrict the powers of the governmental bodies (Haggard & Tiede, 2014).

Application of the above-mentioned principles of the rule of law in domestic realities has not become systematic and inevitable, their implementation is only partially implemented. By and large, in Ukraine, the rule of law state is only emerging. Unfortunately, this process is not deprived of significant shortcomings in the activities of the judicial and law-enforcement systems; it is characterized by a low level of protection of human rights, the adoption of laws in view of the principle of "political expediency", the lack of real equality of citizens before the law, etc. It can be affirmed that the development of the rule of law in Ukraine is taking place at extremely slow pace, first of all, according to the qualitative signs. Even the appearance of a significant number of anti-corruption bodies did not give the results expected by the society, that is, systematic overcoming of corruption in highest authoritative bodies, judicial and law-enforcement structures.

Unfortunately, the adoption of new laws and amendments to the existing legal norms does not always correspond to the principles of systematic and scientific, which, in the end, significantly impedes the development of the rule of law in Ukraine. For example, domestic lawyers state that "...today Ukraine's criminal law faced with the real threat of its uncontrolled and unsystematic reformation, the result of which may be not only its further "cluttering by scientifically unfounded and not necessarily caused by the needs of the modern social life provisions, and, in the end, it can lead to a violation of the fundamental principles on which it is constructed, the systemic ties and dependencies of its prescriptions, which, in turn, entails a significant reduction of the effectiveness of criminal law influence on crime" (Tatsiy, Tyutyugin et al, 2015).

In general, the concept of the rule of law implies that any passed law must be legal, that is, comply with the natural rights of a person, and not to contradict his fundamental freedoms.

As M. Matskevich emphasizes, human rights are the most prominent state-legal objectification of the concrete historical degrees of freedom. Every person naturally has an inalienable right to determine the volume of the relevant (material or spiritual) goods that do not contradict the interests of other people. Society and the state should promote their implementation. The formation and the development of the institution of human rights enables to reveal the type of civilization, its stages, since the relationship between an individual and the state is an important feature that characterizes the nature of a civilization, as well as the state as the legal or not legal. The catalogue of the contemporary human rights in international legal documents is the result of the accumulation of originally developed standards that became the norms for democratic states. For millennia, the search for the ways of relations between an individual and the government continued. During the development of humanity on the way of freedom, the wish to restrict the power of the state, to protect an individual from the arbitrariness of the state bodies, officials, and the wish to give a person a wider sphere for self-determination (Maczkevych, 2014) became increasingly clear.
At the same time, the adoption of adequate laws that comply with the principles of the rule of law is impossible without mastering the foundations of law-making activity by parliamentarians,

conducting qualitative legal expert evaluations of the draft laws in the scientific environment, taking into account public opinion, etc.

In the context of our research, it is expedient to refer to the point of view of T. Klymchuk, who attributes to the general principles of law-making:

- the principle of the rule of law, according to which laws as a product of law-making should be adopted on the basis of the Constitution of Ukraine and must comply with it, and no citizen can be outside the just law;
- the principle of preventing the narrowing of the content and scope of human and civil rights and freedoms, which is aimed at preserving the qualitative and quantitative characteristics of human rights in the state;
- the principle of legality, which provides the enforcement of the rights, freedoms and legitimate interests of individuals and legal entities in the process of law-making;
- the principle of humanism, which means the necessity of creating (fixing and protecting) proper social conditions for the implementation and protection of the fundamental rights, freedoms and interests of a person with the help of the laws;
- the principle of democracy, which obliges to reflect in the laws the will of the majority of the population, and in order to achieve this goal to attract the widest of its strata;
- the principle of transparency, which envisages creating the opportunity for the public to freely and openly obtain access to the information on the implementation of law-making activities and the results of monitoring the effectiveness of the legal regulation of the laws in force, etc.;
- the principle of scientific knowledge, which requires from the participants of the legislative process to use scientifically founded approaches to the implementation of the law-making process, to take into account the latest achievements of science in determining the social need for the creation of a new law, the amendment or additions to the current one, to determine the effectiveness of the current law, etc.;
- the principle of morality, which is intended to consolidate the natural connection of legal and non-regulatory means of regulation;
- the principle of systematicity points to the fact that law-making is a legal phenomenon, which stays in conjunction with other legal phenomena of the state, its legal system and they are predetermined by them;
- the principle of the preservation of national identity, aimed at ensuring the consideration and expression of the specific interests of each nation, nationality and ethnic group living on the territory of Ukraine, to create conditions for their participation in law-making;
- the principle of the observance of international standards, which provides an opportunity to ensure the reception, harmonization and unification of the national law with international legal acts (Klymchuk, 2013).

The implementation of the principles of law-making in Ukraine is directly related to the effective work of the Parliament, its rational organization, and constant interaction with other authorities. According to the experts, the introduction of bicameralism can be the most effective way to overcome a long-term parliamentary crisis in Ukraine. In this context, the thesis, which sometimes happens in the journalistic and even specialized literature, calls into question: the bicameral parliament is an inherent characteristic of an exclusively federal state. However, on the map of Europe one can find at least 10 unitary countries with the bicameral parliament. They are Ireland, Spain, Italy, the Netherlands, Poland, Romania, France, Croatia, the Czech Republic and Belarus. Considering the gradual democratic progress of the overwhelming majority of these states, we can assume that the introduction of the bicameral parliament became a serious step in this way. That is why the “bicameral” experience of these countries may be useful for further constitutional reform in our country (Tatsiy, 2015).

Proponents of bicameralism believe that the bicameralism of the Parliament today is an objective requirement to improve its law-making and legislative activity. The complexity of legislative activity, which is determined by the high level of responsibility of its subjects to the people, as well as the growing requirements of the present day to the quality of the legal technique of normative drafting works, confirms

the expediency of the existence of the second chamber of Parliament, which would act as a professional and impartial "editor" of the draft laws adopted by the lower chamber. In many states with bicameral Parliaments, the approval of the law by the upper chamber is a prerequisite for its entry into force (Romania, Italy, the USA, and others). In addition, the upper chamber is a restraining factor for a kind of "democratic extremism" of the lower chamber of Parliament when making amendments and additions to the Constitution and constitutional acts. Senates in most bicameral parliaments of the world are the guarantors of the legitimacy of the constitutional reform (Durdynecz, 2016).

Give the due to the purely institutional factors of the development of the rule of law in Ukraine, one should pay attention to the importance of non-institutional factors in this process, in particular, the need to increase the level of legal awareness and legal culture of Ukrainian citizens. Undoubtedly, it depends on the quality of legal attitudes and values of the subjects of legal relationships, depending on the degree of implementation of the existing laws.

Undoubtedly, qualitative changes in the legal culture of our compatriots will help to overcome such a negative phenomenon as legal nihilism. It should be noted that legal nihilism destroys the foundations of the rule of law, especially when the political class, representatives of judicial and law-enforcement agencies are "infected" by it.

As B. Ganba notes, the social danger of elitist legal nihilism is as follows:

1) in accordance with the Constitution and the current legislation, the ruling elite is endowed with a wide range of state-authoritative powers, which may lead to (and leads to) the violations of the rights and freedoms of ordinary citizens as a result of corruption, populism and protectionism, etc.;
2) the representatives of the elite during the exercise of state-authoritative powers have the right to take cardinal and deep in volume decisions in the field of law-making, executive-regulatory, control and supervision spheres, and therefore the consequences of the manifestation of legal nihilism here are more dangerous not only for an individual, but also for the society and the state as a whole. Thus, making the conflicting, and sometimes directly opposing laws, entails the neutralization of legal prescriptions or their "selective" application in the own departmental or group interests (Ganba, 2011).

Legal nihilism is the basis of such negative phenomena as bribery, corruption, nepotism, patron-client relations, which do not correspond to the very nature of the rule of law. The problem of overcoming legal nihilism is relevant to various types of social systems, but it is particularly acute when it comes to transition from one political-legal regime to another. The degree of rooting and distribution of legal nihilism is one of the indicators of the deformed public legal awareness, the presence of antivalues in it.

The analysis of the situation in Ukraine and awareness of the sources of legal nihilism in our country give us an opportunity to identify the following priority directions of its overcoming: purposeful anti-corruption policy and its effective implementation; effective implementation of reforms in all spheres, primarily in the field of public administration; enhancing the authority of the law and public confidence in it by strengthening law and order and state discipline of officials; the development of high legal activity of citizens, increasing the level of legal consciousness, legal and aesthetic culture (Shytyi & Bondarenko, 2017).

Thus, elimination of legal nihilism and the maximum practical realization of the principles of the rule of law requires the comprehensive and systematic use of a large number of means, one of the most important of which is legal education and upbringing. Successful overcoming of legal nihilism by legal means is possible only when the state will be able to ensure the inevitability of punishment for the committed offenses, and will seek the purification the law-enforcement and judicial authorities from corruption. In its turn, the formation of a value-based political and legal leverage of the European format during legal-upbringing measures will help to dispel myths about the activity of the authorities, increase the level of effectiveness of interaction of civil society and power structures, increase the real possibilities of local self-government bodies, etc. (Tatsiy & Danilyan, 2018).

According to the authors of the monograph "Legal Education and Upbringing in Contemporary Ukraine", considering the prospects of legal education and upbringing in our country, the following tasks should be highlighted in relation to its optimization: the

development of a substantiated state legal policy, and on its basis - the conceptions of legal education of the population; creation of a multi-stage legal education system in the country - an updated legal literacy, including systematic and operational improvement of the professional qualification of lawyers with an emphasis on improving the methodology for the implementation of their educational and upbringing functions; raising general morality of the citizens; differentiated, according to various social, professional and age characteristics of the population, promotion of legal knowledge (in particular, through the mass media); awakening of the interest in the population to legal knowledge and ensuring their availability; application of methods of advertising and public relations; development of family legal education, etc. In the process of organization of legal education and upbringing it is important to use the whole complex of actions of the subjects of legal education and upbringing to ensure effective influence on all social and demographic groups. This influence should be, firstly, professional; secondly, the organization of legal education must be provided with proper financing; thirdly, it is necessary to stimulate legislatively the activities of public organizations that would carry out legal education and upbringing of the population; fourthly, the greatest attention in legal-upbringing work should be paid to the youth, especially the least socially protected part of it: to the children from disadvantaged families, children, deprived of parental care, orphans, since it is among the representatives of these young people that the highest level of deviant behaviour is observed (Getman, Gerasina et al, 2013).

Thus, the scientific novelty of the work lies in revealing the essence and content of ideological and institutional-legal determinants of the development of the rule of law state in Ukraine in the problematic area of their practical implementation.

Conclusions

It should be noted that the development of the rule of law state in Ukraine involves the interaction of several socio-cultural, ideological and institutional-legal aspects, the implementation of which at present is burdened with various difficulties of an objective and subjective nature. In particular, the most significant problems that need to be addressed immediately are optimization of the Ukrainian government system and improvement of the quality of law-making, increasing the level of professionalism and civil liability of officials of all levels, overcoming imbalance in government and effective legal support of this process, implementation of the principles of the rule of law state taking into account the European tradition of democratic governance. In a worldview and sociocultural context, there is an urgent need to form democratic legal consciousness and legal culture as a basis for overcoming legal nihilism, corruption, legal infantilism and other negative social phenomena.

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