

ТЕОРІЯ ДЕРЖАВИ І ПРАВА

UDC 340 125 (100)

B. S. Bachur

PhD in Law, associated professor

Odessa I. I. Mechnikov National University,

The Department of General Juridical Disciplines and International Law

Frantsuzskiy boulevard, 24/26, Odessa, 65058, Ukraine

LAW ANTAGONALITY AS A FEATURE OF CIVILIZED SOCIETY

The issue of the law as a factor that influences the formation of civilized society in Ukraine is considered. The positive and negative aspects of such kind of influence are studied. The antagonistic, but not antagonal character of the process is underlined.

Key words: society development, law antagonality, law antagonism, civilized society.

Problem statement. The difficulties in the Ukrainian state's formation for the last two ten years have been connected first of all with uncertainty of a development civilization vector. Acceptance of a diversity of new laws as a rule was dictated by need of response to concrete changes in social and economic, political and information society spheres.

The choice of the new development civilization vector is connected in many aspects with expansion of circle changes which need certain people's classification that affected on persons outlooks which don't want to remain further some «parameter that is operated by the state».

The kind stagnation's condition in which our country has been stayed during the Soviet period, has been continuing its existence with finding of independence by it, and anyway it was undoubtedly shown and in law, but exactly the law is the relations' regulator in society.

Today, more than ever earlier, it is needed the new, deeper understanding of law based new paradigm of modern science, which considerably broadens the substantial-intrinsic vision of law sphere, without being limited by the sphere of an individual's legal consciousness at various levels of his existence — ordinary, theoretical.

Analysis of recent researches and publications. There is a lot of scientific works dedicated to the mentioned issues as far as these issues were always crucial for society development. But talking about the recent studies we may emphasize the works of Ershova-Babenko Y., Shevchenko M.,

Berher P., Lukman T., Bihun V., Busova N., Tykhomyrov Y., Kampo V., Pryhozhyn Y.

Paper purpose is to discover the main nowadays tendencies of society development analyzing the process in the context of law determination that has its positive and negative aspects.

Paper main body. For the first time we come up against a situation when it seemed that objective tendencies of development of legal relations happen against absolutely other picture of world and society.

There is a situation when environment's function, function of its formation passes from nature to person, and it is necessary to notice that environment becomes more and more aggressive.

The research of environment aggressive factors revealed that «the changing mechanism of internal (intramental, intrapersonal) world and person's behavior (self-appraisal with a certain acts adequacy level in relation to itself) is under the influence of its own states. It also develops on the level of external behavior which can be as negative, deviant (offense), so positive (creativity)» [1, p. 6].

Antagonistic relations, aggressive behavior not at all promote development of internally thinking which essence is in aspiration to finding of coordination various forms of joint efforts against such relations, and at the same time understanding of these processes doesn't mean that the way to their neutralization has been found yet.

The main aspects of this problem in the field of the theory and legal philosophy are needed to be considered both in concrete and substantial plan, and in wider theoretical and methodological context.

Our legal experience within the independent state is too small to draw any conclusions, however one conclusion nevertheless can be drawn — we belonged and in some extent belong to development of legal thought as to a highly specialized, legal problem, but events in Ukraine of 2013 and 2014 years convincingly showed that this problem is all-social, all-humanitarian and common cultural.

If we force out law from habitat of real people which have absolutely different focus of interest, different world outlook installations, different personal legal experience, it is quite natural the emergence of situation at which any, even most «correct law» won't work.

It isn't also necessary to forget that fact that all our history is a fight for creation of a state or fight of the state against those who created it, the most contemporary history isn't an exception in this plan.

After disintegration of the Soviet Union, one of the main tasks for Ukraine, other former republics of the USSR, there was a creation of civil society for which the corresponding social base — middle class is certainly necessary. And before speaking about the antagonistic character of law and order, it was necessary to liquidate contradictions between the state and the personality as with development of civil society personal interests act in a contradiction with public, and civil society gradually turns into society of mass, in which communications between individuals are formal.

The latest events¹ showed that there was a threat from the state to civil society. Therefore its structures actively joined in development of new measures which would prevent anti-lawful actions, didn't break harmony between persons and the state [2, p. 282].

From the beginning of military operations in the East of Ukraine we constantly heard appeals about the need of compromise adoption solutions, and question even not in weather we want or don't, and in that is whether we are able to make it, without breaking the basic principles of the constitutional state, in which individual is not object, but the subject of the state and any other relations. He has full authority to demand from the government certain guarantees of the activity.

For many decades the principle of confrontation was a basis of our ideology which reflected the revolutionary type of thinking peculiar to K. Marx, F. Engels, V. I. Lenin which meant that «one party surely has to be destroyed, the victory of another was transition to a higher step» [3, p. 26].

The Maidan of 2004 year gave hope for emergence of essentially new legal policy, however not all legal ideas which sounded on it were heard by authorities in power.

In this regard axiological value of legal compliance requirement to the law increases, and as we steadily connect the law with justice steadily, in fact, we are talking about the main and supreme social value — about freedom and general forms and norms of its realization, and the pledge of it is existence in society of antagonistic balance between own and another's freedoms and rights.

Today's realities are such that law leaves on background and even care of self-preservation doesn't refrain growth of hostility, frank aggression based on discrepancy of interests as between separate individuals, social groups, as between them and state.

In an incestuous congestion of people — A. Ferguson wrote, — «we turn away from those who doesn't occupy us, and we settle in that community which most corresponds to our mood ... we become in opposition and we take part in skirmish on behalf of fraction or party, without having any material subject of dispute ... Isolation and alienation, as well as opposition, increase that abyss which emergence wasn't connected with any offense» [4, p. 58].

The history of our country developed in such a way that throughout centuries one or other part of society felt offended and if the people allocated with the power could explain the readiness for the conflict with national interests at the level of ordinary consciousness, people have not always found an explanation for the acts.

Strengthening of globalization processes also significantly influenced on attitude changes towards law, and first of all it was expressed in determination attempt of its dependence from a person «the person in the consciousness doesn't display the world, and design it ... and it is caused by subject's belonging to a certain type of culture, social, valuable contextual type of space» [5, p. 42].

¹ And not only in Ukraine, a comment of the author.

Stages of civilization process (and in ideal the creation of humanistic, liberal and democratic civilization) are stages of expansion of freedom degree of the individual, and here there are naturally two questions: a) whether we accept civilization characteristics, or it is about a new civilization; b) what is degree freedom in civilization society.

If we aspire to a certain level of the western civilization, it is necessary to notice that social and economic, religious crises happening before our eyes, anyway lead the West to a presentiment of that the civilization created by them doesn't bear in itself rescue from possible critical destructions.

Freedom degree considered as the special reaction to life and understanding of life on the one hand, on another — surely assumes a legal side of a personal freedom within the reasonable structure of social society.

«The right and the person are the interconnected phenomena, but in «fight for the right» people can show not the best qualities. From here is the law task — to be stabilizer, to promote a resolution of conflicts that stimulates manifestation in the best human qualities. The law development by people's improvement» [6, p. 26].

An internally character of law and order is possible where «the unification of a many is possible, consent of a discorded and relative uniformity of a various. He assumes such relations between social unity and its parts when the parties remaining contrasts nevertheless come to the relations of contractual balance of interests, duties and rights ... The person who is in this system feels rather comfortably to use the rights which are available to his order and freedoms for self-realization» [7, p. 75–76].

At the same time, it is hardly possible to speak about any comfort if there is no confidence in existence of legal guarantees providing certain contracts.

One of the most difficult questions for modern jurists is a question of how predictable our law is.

The existence of civil society in our realities assumes that any citizen «with a fine precision is able expect in what cases can be coercion is applied ... the legal system has to be independent of other sources of a standard order — religions, morals, and at the same time to be the power protected from any actions which is guided by reasons of momentary political expediency» [8, p. 31].

In civilization society where there are customs along with the law, traditions, religions which throughout centuries are valuable reference points for various social groups and which don't correspond to a new legal reality, need of tolerance as an internally principle of social interaction is particular important.

Sociological law and legal philosophy give the chance to look at this problem under another point of view.

«Alive law» (and this term is quite often used in legal literature today), is understood as changing of conduct rules which are created by people every minute in the course of their daily communication and which according to the contents aren't regulated by rules of law, and after all it is one of the main reasons for emergence of social and legal contradictions.

Sociological approach to consideration of these or those legal phenomena, allows establishing interrelation of the law with other public phenomena, to cause their causal relationship with social, political, culturological, psychological, economic, and other aspects of public life.

Without such detailed sociological approach it is very difficult to understand that qualitative distinctions between the parties aren't the basis for mutual hostility that under any circumstances it is possible and it is necessary to speak and agree, — and after all the agreement as one of emergence and implementation forms of law represents «a compromise of carriers interests of equal force ... at which the truth is a definition of freedom measures and interests differentiation» [9, p. 422].

Coincidence of personality interests, civil society and state even if it is about the constitutional social state (in this context the social state is understood as its narrower aspect — existence of the certain benefits provided to the person, systems of social services, etc.) is rather difficult task.

Readiness for a compromise assumes a certain psychological spirit as individual and society in general.

As A. Ferguson fairly notices, «it was vain to hope that we will be able to bring in people in mass feeling of unification, without having confirmed hostility to opponents» [4, p. 62]. And at what level it wouldn't be shown — at the level of the state, party, fraction, an individual — anyway the rights of other people which at this concrete moment appeared in opposition are quite consciously violated.

An internally character of the constitutional state is an ideal to which most would arrange to balanced condition in essence (intermediate between antagonism and full harmony).

The understanding of internally thinking essence depends on level of legal culture when the legal culture is understood as this or that measure of development and using of legal values, its communication with a certain level of development of legal consciousness and behavior.

In scientific literature the attention more often is paying to the fact that for the Ukrainian society this subject has the special importance today. The legal culture «as expression of achievements of the Ukrainian civilization in the legal sphere is characterized by a certain dualism... it develops into two traditions: European and Eurasian... the European assumes an active role of citizens and liability for violation of their rights, — Eurasian proceeds from a primacy of the state, and actually the official has to care of people, citizens, and other. And therefore citizens shouldn't take the responsibility for a state of affairs in state and society, and to carry out mainly advisory functions. Because the power goes from the state, and from the people — only trust to it» [10, p. 51].

These models are rather independent and in it there is no dominating one, and still in spite of the fact that Ukraine aspires to the European model, in real life prevails Eurasian one which is oriented on preservation of the existing public relations, and the situation at which to the forefront there are not antagonical, but antagonistic relations which according to the contents are unlawful.

For modern Ukraine for many years has been specific the situation when, adopting these or those laws the state seeks to order quite confused system of relationship between people who owing to a number of circumstances appeared on the different parties of barricades.

The world changes and changes promptly, today more and more obvious is an understanding of that the person needs to refuse the aggressive positions not only in relation to another, but also in relation to the inner world, many researchers state «deterioration of a mental condition of the population and, as a result, deterioration of a state of health. The European countries are seriously concerned by economic losses from the diseases caused by information and emotional overloads of mentality of the person» [7, p. 118].

Human life is always intelligent life and such categories as «sense», «values» are keys for specifics understanding of our life legal sphere, and in this plan a valuable and semantic understanding of antagonist nature of the law plays huge role.

For the XXI century an essential task is transition from aggression to a compromise, both at personal level, and at the level of the state.

The law sphere covers all spaces of people's civilization existence «represents one of concrete forms of need's expression of a civilization for self-preservation. The will of civilization community to protect against dangers of internal destruction with all definiteness is proved in the law» [7, p. 118].

Today with extraordinary speed new mechanisms of human communication and interaction appear, the interrelation and interdependence of the most different cultures and religions extends and amplifies, the processes of migration and emigration force to live together a number of people sometimes with opposite views of world around.

And as I. Prigozhin fairly noticed: «as the Universe evolves, circumstances create new laws» [11, p. 103].

The internal nature of the law gives the chance to understand that any law in the realization is modified by concrete historical circumstances, changes of the accompanying action of other laws, has borders of the action, but anyway, as Hegel noted «is narrow, incomplete, approximate», and, therefore, can be never adopted by all members of society.

Enduring a stage of gradual and very painful movement of various historical civilizations, it is impossible to allow the intercivilization conflict, but civilization out of person and without it doesn't exist, and each person has an interest, and in this regard the law, which nature is antagonistic, is urged to align the interests contradicting each other, calling for search of compromises, civilized forms of settling of the conflicts.

The history of law as however any another is based on judgment of times link — past, real and future.

The general vector of progress, in more considerable degree, than in the past, depends on will and intension of the people relying on historical experience.

Today it is already absolutely clear that the generalized logic of constitutional state's formation first of all becomes dismantle of the obsolete insti-

tutes of old legal system, the era providing a factor of antagonistic relations existence to the system assuming antagonal type of social legal relations.

For years of independence in Ukraine the new generation of people which, in fact, had to be deprived of this pervasive spirit of antagonism grew, but it isn't necessary to forget that in general, in our education, and in law, in particular, there was so-called «an intellectual provincialism» inherent in Soviet period and though in general, education gave the necessary level of knowledge, global vision, and forms of legal thinking were defined by interests or a class, or social groups, proceeded from features of ordinary consciousness, it is peculiar to this or that audience.

Defining a place of Ukraine in world civilization process, in our opinion, it is necessary to pay attention to that fact that at various stages various types of social and legal contradictions were inherent in it: a) antagonistic in which the aspiration of the parties prevailed to mutually denial; b) antagonal at which contrasts assume the equilibrium relations, various type of the arrangement, compromises; c) agonal, at which purpose of the parties — the mutual positive transformations conducting to unification of the parties.

The antagonism is immanent, inherent in the law as its formation and development is dialect of two of opposite bases — firmness and flexibility. Also without it development of the intrinsic nature of law would be impossible which is characterized by such categories as freedom, equality, justice, a formalization, optionality, security, normativity, etc. «The law always expresses will of the dominating people; the law expresses a measure of freedom of the individual, differentiates interests, orders public interests» [12, p. 65].

In the recent past in scientific literature the attention was repeatedly focused on the idea that new historical conditions idea of national states consigns to the past, giving way to a certain universal civilization. However the beginning of the XXI century, practically on all continents, for various reasons put in action a bit different mechanism which is possible to be expressed «national egoism».

Without simplifying a problem and without identifying a civilization with the state or the concrete people, it should be noted that real life introduced the amendments to sometimes not absolutely adequate relation to civilization measurement of the joint history.

V. A. Bachinin pays attention to that only «... mutual ethical insistence and mutual legal responsibility of the state, the personality and civil society report to social life extremely important quality called civilization» [7, p. 80].

The people who came to the Maidan in November, 2013 with the requirement of their basic rights and freedoms guarantee and wait today for establishment of legal equality for all citizens, irrespective of a property state, a religious and national identity and which is impossible in the conditions of negligence to the law, readiness to work according to the principle of «permissiveness», intolerance to another point of view which in any parameters didn't coincide with «the dominating during this period of time».

Conclusions. We already mentioned that the law is an all-humanitarian and common cultural problem, but not especially legal «... the law is that sociohis-

torical and fair measure of freedom and equality, caused by owing objective all-importance has to gain official and imperious recognition and validity. ... [T]herefore justice is actually fair because it is an abstraction of the law and expresses itself, represents the legal beginning — the principle of formal equality and people's freedom, as legal entities independent from each other and from legal form of communication» [13, p. 2].

But legal reality is of that kind that different antagonisms continue to deform moral and legal consciousness of people, for example, information war to which our country wasn't ready and which doesn't promote finding compromises, rejects any possibility of productive dialogues.

The psychoemotional condition of the most part of our society — the alarm, bitterness, and concern connected with destruction of spiritual and moral ideals, total absence of local and legal ban can lead to full degradation.

In a huge measure the ordering of internal life of the country is assigned to the law which expresses need of the civilization for self-preservation.

References

1. Ершова-Бабенко И. В. Психосинергетические стратегии человеческой деятельности (концептуальная модель) [Текст] : Монография / И. В. Ершова-Бабенко. — В. : NOVA KNYHA, 2005. — 360 с.
2. Шевченко М. Д. Курс лекций по философии и философии права [Текст] // М. Д. Шевченко. — М. : Изд-во «Щит-М», 2009. — 392 с.
3. Шинкарук В. І. Марксистсько-ленінська філософія у світлі «останніх рішень» [Текст] / В. І. Шинкарук. // Філософська і соціологічна думка. — 1995. — № 4. — С. 23–27.
4. Фергюсон А. Опыт истории гражданского общества [Текст] : перевод с англ. / Под ред. М. А. Абрамова / А. Фергюсон. — М. : РОССПЭН, 2000. — 392 с.
5. Бергер П., Лукман Т. Социальное конструирование реальности [Текст] : трактат по социологии знания / П. Бергер, Т. Лукман. — М. : Медиум, 1995. — 323 с.
6. Бігун В. С. Антропологія, аксіологія та соціологія права. До питання про праворозуміння [Текст] / В. С. Бігун // Часопис Київського університету права. — 2005. — № 4. — С. 26–28.
7. Бачишин В. А. Філософія права и преступления [Текст] / В. А. Бачишин. — Харьков : «Фолио», 1999. — 607 с.
8. Бусова Н. А. Модернизация, рациональность и право [Текст] / Н. А. Бусова. — Харьков : «Прометей-Пресс», 2004. — 352 с.
9. Тихомиров Ю. В. Диалектическая философия [Текст] / Ю. В. Тихомиров. — Одесса : «Феникс», 2007. — 440 с.
10. Кампо В. М. Суспільство і право [Текст] : роздуми українського вченого-конституціоналіста / за заг. ред. Є. В. Бурлая. — К. : Вид-во Акад. муніципального управління. Тов-во конституційного права, 2007. — 74 с.
11. Пригожин И. Креативность в науках и гуманитарном знании: исследование отклонений между двумя культурами [Текст] : Синергетическая парадигма. Человек и общество в условиях нестабильности / И. Пригожин. — М. : Прогресс-Традиция, 2003. — С. 99–105.
12. Тихомиров Ю. В. Основы философии права [Текст] / Ю. В. Тихомиров. — М. : Вестник, 1997. — 603 с.
13. История права: Англия и Россия [Текст] : рук. авт. кол. В. С. Нерсесянц, У. Батлер. — М. : Прогресс, 1990. — 304 с.

Б. С. Бачур

Одеський національний університет імені І. І. Мечникова,
кафедра загальноправових дисциплін та міжнародного права
Французький бульвар, 24/26, Одеса, 65058, Україна

АНТАГОНАЛЬНІСТЬ ПРАВА ЯК ОЗНАКА ЦИВІЛІЗОВАНОГО СУСПІЛЬСТВА

Резюме

У статті розглядається проблема права як чинника, який впливає на формування цивілізованого суспільства в Україні. Вивчено позитивні та негативні аспекти такого роду впливу. Підкреслюється антагоністичний, а не антагональний характер процесу. Був зроблений висновок про те, що різного роду антагонізми в правовій реальності сучасного суспільства продовжують деформувати моральну і правову свідомість людей, одним із наслідків чого стала нинішня інформаційна війна.

Ключові слова: розвиток суспільства, антагональність права, антагонізм права, цивілізоване суспільство.

Б. С. Бачур

Одесский национальный университет имени И. И. Мечникова,
кафедра общеправовых дисциплин и международного права
Французский бульвар, 24/26, Одесса, 65058, Украина

АНТАГОНАЛЬНОСТЬ ПРАВА КАК ПРИЗНАК ЦИВИЛИЗОВАННОГО ОБЩЕСТВА

Резюме

В статье рассматривается проблема права как фактора, который влияет на формирование цивилизованного общества в Украине. Изучены положительные и отрицательные аспекты такого рода влияния. Подчеркивается антагонистический, а не антагональный характер процесса. Был сделан вывод о том, что различного рода антагонизмы в правовой реальности современного общества продолжают деформировать моральное и правовое сознание людей, одним из последствий чего стала нынешняя информационная война.

Ключевые слова: развитие общества, антагональность права, антагонизм права, цивилизованное общество.