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РІВНІСТЬ, СВОБОДА, СПРАВЕДЛИВІСТЬ: ЦІННІСНО-ПРАВОВІ ВЛАСТИВОСТІ

Анотація. У статті досліджуються проблеми ціннісного підходу до розуміння важливих соціальних пріоритетів, окреслюються ціннісно-правові властивості рівності, свободи та справедливості як основних підвалин ліберально-демократичних інститутів, основоположні засади побудови демократичного суспільства. Автором досліджуються еволюційні процеси розуміння правової рівності, свободи у праві та напрямки їх співвідношення як фундаментальних засад побудови сучасних векторів розвитку держави та права. Аксіологічний підхід загалом уособлює ставлення людини до об'єктивного предмета оцінки, до певного явища, вказуючи, як слід поставитися до цього явища, як його використати, якщо воно корисне, та уникнути – якщо шкідливе. Ціннісними критеріями у сфері права виступають його ідеали, в основі яких лежать визначені суспільні потреби та інтереси. Формування громадянського суспільства в Україні, входження України до європейського політико-правового простору можливі лише за умови засвоєння і втілення у життя фундаментальних демократичних цінностей, основою яких є рівність, свобода та справедливість. Ціннісно-правові властивості рівності, свободи та справедливості мають бути зорієнтовані на європейську модель, адже це визначальні пріоритети, еталони та ідеали завдяки яким відбувається природний процес взаємодії влади та суспільства. Це те заради чого варто жити, існувати серед різноманітних соціальних груп у демократичному суспільстві, де панують рівність, свобода та справедливість. Свобода має два джерела – змістовне (природні права) і формальне (юридичні норми), тому правове регулювання полягає в її трансформуванні в юридичну сферу. Існують два основні шляхи досягнення рівності: забезпечення рівних можливостей; забезпечення рівних результатів. У зв'язку з цим доцільно відзначати існування двох суттєвих аспектів рівності: рівність можливостей і рівність результатів. Автор пропонує власний опис зазначених парадигм, окреслює їх ціннісні основи та вектори змін в умовах сучасних глобалізаційних процесів.

Ключові слова: соціальні цінності, правові цінності, ціннісно-правові властивості, рівність, свобода, справедливість.

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EQUALITY, FREEDOM AND JUSTICE: VALUE-LEGAL PROPERTIES

Abstract *The article investigates the problems of the value approach to understanding the important social priorities, determines the value-legal properties of equality, freedom and justice as the basic foundations of liberal-democratic institutions and fundamental principles of building a democratic society. The axiological aspect of law is the level of its compliance with such value categories as equality, freedom and justice. Correct understanding and regulation of the above categories are an important pre-condition of determining and solving a lot of practical matters, in particular, the ways of resurrecting the democratic and social state. The author investigates the evolutionary processes of understanding of legal equality, freedom, in a right and directions of their correlation as fundamental principles of construction of modern vectors of development of the state and right. The author offers his own description of the above paradigms, outlines them the value bases and directions of changes in the conditions of the modern globalisation processes.*

Keywords: social values, legal values, value-legal properties, equality, freedom, justice

INTRODUCTION

The development of the modern society, law and the state are associated with the constant processes of their value disorientation. In this direction the important aspect is the correct understanding and relementation of equality, freedom and justice as necessary conditions for the development of the social state, the construction of value orientations in law and society. At the same time, value approach can not exist apart from a person because it is based on his needs and interests which are the foundation of its evaluations. Axiological approach generally represents the attitude of a person to the objective subject of evaluation, to a certain phenomenon, indicating how to treat this phenomenon, how to use it, if it is useful and avoid if it is harmful. Value criteria in the field of law are its ideals which are based on certain social needs and interests [1].

Values are the fundamental properties of culture, so the law should focus on the natural values of a person [2]. Legal values are the preconditions for the entry of an individual into the sphere of law. In the process of becoming familiar with the values of law, a person acquires the features of a subject of law, realises his rights, freedoms and duties. At the same time, the dualism of the axiosphere of the law of the modern society is determined by the fact that state-legal values ensure the integrity and stability of the society, and legal values of citizens are primarily aimed at the implementation

of individual rights and freedoms. There occurs a so-called swing of the pendulum of value orientations from state-legal to individual values of freedom. The fever pitch of these value positions threaten the stability of the social system [3].

That is why the time when the world experiences the increase of aggression and significant spread of violent ways to solve socio-political problems, aspiration to develop the fundamental foundations of equality, freedom and justice which would be able to justify the moral-legal system of life values and priorities is quite natural and urgent.

The matter of axiological approach to the study of philosophical-legal phenomena was considered by O. O. Bandura [4; 5], V. S. Bihun [6], M. V. Kostytskyi [7] and the others. The problems of equality, freedom and justice as defining socio-legal values and principles were studied in the research works of A. M. Kolodiy [8], O. O. Bandura [4; 5], O. P. Vasylchenko [9] and the others. The matters of complex analysis of the value-legal properties of equality, freedom and justice as the defining goal of building and developing social ideals require further research.

2. MATERIALS AND METHODS

The axiological approach which permeates the scientific-research strategy of the research is of great importance in the research work. This allows to imagine the subject of research through the prism of its value measurement, in particular, to establish the value orientations of law in the direction of clarifying the value-legal properties of equality, freedom and justice as an important component of the axiological essence of law. The anthropological approach makes it possible to consider the value features of equality, freedom and justice as natural and permanent properties of a person as a biosocial individual that serve as a measure of all things. The process of studying equality, freedom and justice implies the need to turn to the epistemological aspect of values since the process of their studying is based on the distinction between the objective and the subjective in the perception and implementation of equality, freedom and justice in the process of thinking.

In the process of scientific research, there was used the dialectical method which allows to trace the evolution of conceptual approaches to the matters of origin, development and formation of value orientations in the society, to find out the changes in the formation and development of legal values, in particular, to trace the vectors of value formation and evolution of equality, freedom and justice. The formal-dogmatic method allowed to investigate the normative aspects of the consolidation of the ideas of the value dimension of the categories of equality, freedom and justice. The paper also uses the methods of generalisation, analysis and synthesis of the formed conceptual positions concerning the problems of applying the axiological approach to studying the legal phenomena. Applying the comparative legal method allowed to compare and contrast the value-legal properties inherent to equality, freedom and justice.

3. RESULTS AND DISCUSSION

3.1. *Vectors of development of the modern society's values*

The formation of the civil society in Ukraine and Ukraine's integration into the European political and legal space is possible only on condition of assimilation and implementation of fundamental democratic values the basis of which is equality, freedom and justice. These processes also actualise their theoretical analysis as basic social values and development goals of the Ukrainian society as an ideal [10]. Under this condition, the developing system of values can have a polyvariant character that is due to the natural needs and interests of individuals. Similar processes occur when it comes to the interaction of certain social institutions the highest degree of organisation of which is considered to be the state [11].

That is why, for a modern democratic society, Europe is becoming not so much a geographical concept but rather a value one. The European values constitute the basic foundations of the liberal democratic institutions of the Western European space which boundaries are not limited either to geographical features or belonging to the European part of the world. The values are the core of the culture of every nation, nationality and society. G. Hofstede, a modern researcher of values, is convinced that values are at the deepest level among the levers of decision-making because it is they that determine the ideological beliefs of individuals and the motivation of their actions. According to T. Parsons, a famous American sociologist, it is to the values that people turn for the final justification of their actions. The values go beyond specific situations that can be solved by an individual under the impact of interests and beliefs because they determine the main aims and meaning of life, that is why they are the most outstanding demonstration of an individual or society [12].

The core of the European values are liberal human rights and freedoms and democratic principles of building a law-governed and social state. The latter appeared as the principles of functioning of state and political institutions of the modern European countries and the European Union. In the modern science, value is a positive significance related to the interests of an individual, social groups and society. The importance of priority legal values is particularly acute in the need for their awareness by the representatives of the political elite: "We have something to stand together for, namely, for peace and freedom, for democracy and the rule of law, for equality, human rights and solidarity. All these European values are not just a promise. They laid down in the treaties and embodied in the legislation. These are the provisions on which we rely in our Republican worldview" [13].

That is why, the closest to the truth are the definitions of values which emphasise the ability of the phenomenon to be an aim and satisfy the interests and needs of people as well as serve social progress and personal development. Such understanding of value seems to us correct, moreover, such an approach to understanding of value is traditionally used in legal science [14].

The process of axiological understanding of law, state and society has recently acquired a global character. This is due to the penetration of legal values to the highest levels of the global value hierarchies. One of the fundamental values of an individual is the need for freedom. The latter, transforming into legal freedom, is able to overcome the "alienation" of a person in the field of law [9].

Freedom in interaction with justice and equality forms an axiological (value) basis of the law. Therefore, the law, determined and filled with universal orienting points and legal ideals, appears as an element of the common good, as a phenomenon of human coexistence.

However, one should note that freedom and justice only in their formal expression can, together with the principle of formal equality, enter into the concept of law and be components, properties and characteristics of law as a form, and therefore become the determining basis for the fundamental ideas of constitutionalism. Only within the framework of this approach, equality, freedom and justice can be interpreted as purely legal categories [15].

The Universal Declaration of Human Rights of 1948 established the formal basis of axiological properties of equality of freedom and justice and basic natural human rights at the international level. In this direction reasonable is the position of B. V. Malyshchuk who emphasises that by the above document for the first time at the global legal level it was suggested to all states of the world to recognise the system of fundamental human rights, to implement it in the national legal systems and ensure its protection and security. With the help of the Universal Declaration of Human Rights, the categories of "justice", "equality", "freedom" and "humanism" which are the aims of the moral and legal systems of social regulation received their universal legal consolidation and legal concretisation. Since then, the law has acquired a new, specific, fundamentally different from the morality of meaningful and effective means to achieve these aims [16].

The system of values performs the function of association of social groups, they determine the basis of their future existence and development. These values are not only a set of words, there is a connection between them, they complement and clarify one another. Some of them are the part of the system with its own significance, but in relation to other values obtain additional meaning.

3.2. Value-legal properties of justice

As it is known, law is a means of the society self-organising. The basis of this self-organising is the universal values (life, freedom, equality, justice, etc.) and it makes the law its own value. They have a principal meaning for understanding the essence of law. Studying these values leads to the conclusion that they are dialectically interconnected and form a certain system [17]. Justice has a special place in it. Social justice is not only the right distribution of products and benefits among people, but also the same opportunity to use social and political rights. Every person is invio-

lable on the basis of justice which society should not violate in any case. Due to this, justice rejects the idea that the loss of freedom for some people can be justified by the greater good for the others. One should take into account the interests of all members of the society, but not just individual ones, albeit groups large in size. Therefore, in the democratic society, the constitutional freedoms of equal citizens are taken as political rights guaranteed by justice. Now the problem of justice as an important legal value for our country is particularly actual, as always on the steep fractures of history, in the situation where is a frontal reevaluation of the system of values. We have an idea about value foundations, and we should create a new system of values. Justice is one of the basic principles of law through which it is possible to create the conditions of security for citizens as well as it is reliable and guaranteed space for the activity of an individual [5].

Justice, as the basic legal value, has a determining role in understanding the law, construction of its institutions, formulation of the requirements for the legal regulation of relations in the modern society. Thus, the process of convergence of justice and law is a guarantee of the effectiveness of law, therefore and confirms its value as an effective social regulator [18].

In fact, the opinion of V. S. Nersesiants is of particular importance in this direction. "Justice is an internal property and the quality of the law, the category and characteristics of the legal character but not extra-legal". In his opinion, law is "always fair and is the bearer of justice in the social world. Moreover, it is law that is fair After all, justice is fair because, actually, it embodies and expresses universal legitimacy, namely, the essence and bases of the right, sense of the legal principle of the general equality and freedom" [19].

Ideals are necessary for people to delineate the vectors to them, to be orienting points and higher goals, to inspire and fill the life of other people and companies deep with spiritual meaning. The ideal of justice in law has always been attached great importance and justice was equated with law. It is known that in the Latin language law is denoted by the word "jus" which derives from "justitia", that is, "justice". The ancient Greeks believed that the principle of natural justice permeated the existence that means that everyone should live in accordance with this principle and this way harmony will be ensured in relations between people. A similar principle was laid in the basis of law by the ancient Romans. They called it *aequitas*, that is, the principle of fair equality or equal justice. The Roman lawyers believed that law is not *aequitas*, but strove to approach the ideal of justice. The principle of justice in law was developed by the European philosophical-legal thought according to the new realities of life in the era of the European modernity. However, this principle is one of the basic principles of the European legal humanism [20].

It is well known that everyone has his own idea of justice, everyone has his own truth and he has the right to protect it. Such an idea of justice arises from the unique

nature of a person as well as unique conditions of his life and development. Such a view of justice can be justified from the moral standpoint, although in this perspective an extremely selfish position is unlikely to be justified, most likely, it will be condemned. In the moral dimension, it is especially important to maintain an equal measure and a balance in relations between people. Within the framework of natural law concepts, which always appeal to moral values and principles, the aim of justice is well traced – it demonstrates itself in maintaining an equal degree of balance in legal relations [20].

3.3 Value-legal properties of freedom

An important value-legal property of justice is its close interconnection with freedom as one of the key categories in the modern legal paradigm. Freedom, as a state of an individual, in the society is one of the controversial problems of legal science because it always belongs to the highest social and political-legal values. In this direction, based on historical and democratic principles one can distinguish three main posts of the modern value dimension: equality, freedom and justice [21]. At the same time, it is freedom that is given a crucial importance because it is of the highest value for both an individual and the society as a whole.

When considering the value-legal properties of “freedom” it is necessary to clearly trace its close interconnection with the law. The very value of law is related to its essential characteristics. It consists in the fact that the law is the embodiment of the idea of freedom, equality, tolerance, humanism and justice that actually constitute its essence. Directly as a phenomenon that opposes arbitrariness and lawlessness, at the same time, it provides space for ordered social freedom and activeness. Law has a significant place in the social life. In other words, in the ideal, law (the idea of law) is the value of ordered social freedom, justice and consensus.

Law is means of ensuring (guaranteeing) freedom and means of its restriction. On the one hand, it is in law that freedom gets its most concentrated expression in which it actually materialises, objectifies, exists in specific legal forms, principles and institutions. On the other hand, the law does not enshrine the absolute freedom of the entities of law, but only its specific measure which is objectively conditioned and determined taking into account the system of the relevant conceptual framework.

The law is a common scale for the implementation of freedom in the common life of people. The law does not eliminate all differences between different individuals due to their abilities and specific life circumstances, but only formalises and orders these distinctions on the only basis, fixing equal opportunities of getting these or those benefits, and providing them with the same legal procedure of the implementation for all. The value of law as a phenomenon which essence is justice is that it is both a means and a result of the search of a reasonable balance and proportionality between personal freedom and the common good", misconduct and punishment, costs (losses) and the acquisition.

In the system of value-legal properties of freedom the doctrinal significance acquires the concept of legal freedom which determines not the framework of human behaviour, that is, one should do only what is stipulated by objective law, but the boundaries of freedom itself which is outlined by legal norms and which exists regardless of whether it is enshrined in the legislative way or not. In this direction, appropriate is the position of A. M. Kolodiy who notes that a person's freedom is his ability to act within the framework of the current legislation at his own discretion [8].

An individual's freedom is freedom within the limits outlined by the law and the Constitution of the state based on it. However, the principle of freedom applies to all subjects of legal relations including an individual and the state. The freedom of an individual is the ability to do anything that is not expressly prohibited by law". Unlike the freedom of an individual, the freedom of the state, its authorities and other subjects (legal entities under public law) consists in the possibility of doing only what is expressly stipulated by law". Besides, the state's sovereignty allows to speak about its freedom in the world community. The common feature between these freedoms is that none of them can be unlimited. The law provides not only "freedom for" – for vigorous activity and effective self-expression of an individual, but also "freedom from" – from restrictions and interference in the life activity of an individual [22].

Freedom in the form of vital interests of an individual acquires a certain meaning. And thanks to this, gets a reasonable basis to perform the role of a methodological orienting point for a legislator.

So, according to the analysis, freedom has two sources – substantive (natural rights) and formal (legal norms). That is why legal regulation consists in its transformation into the legal sphere.

Freedom, in the result of its special value to provide individuals with the opportunity to meet their diverse needs, is not able to be formed only from restrictions, that is, its primary source can not be the permission on the principle of "less freedom means more freedom". To ensure the freedom of everyone, one should determine and preserve the boundaries of the existing freedom, that is, the principle "from the disorder of freedom to its ordering" should operate. Thus, the determination of the freedom's boundaries is the identification of its content characteristic features which determine its boundaries. In this case, the legal determination of freedom is properly secured, that is, law not only determines the boundaries of an individual's possibility, but also enables him to preserve, protect and restore everything within the boundaries of his freedom. Law, being the most effective social regulator, determines these boundaries best. One should emphasise that characterising the designated value-legal property of freedom, law should not limit it, but, on the contrary, it should provide it with informative content. So, the aim of law is to determine and preserve freedom. At the same time, the value of law lies in the trinity of freedom, equality and justice. Therefore, the demand for equality is closely connected with the ideas of justice and freedom.

3.4. *Value-legal properties of equality*

The problem of equality in law was and is the object of research of thinkers of all ages. Thus, at the general theoretical level, the doctrine of equality as a category of law was studied in the research works of such prominent ancient thinkers and philosophers as Socrates, Plato, Aristotle, Democritus, Marcus Aurelius, Seneca, etc, and such medieval thinkers as Thomas Aquinas, Niccolo Machiavelli, Thomas More and Tommaso Campanella. As a political and legal principle, equality was studied in the research works of almost all philosophers of Enlightenment – Voltaire, Rousseau as well as the representatives of the German classical philosophy – Kant, Hegel, the figures of the French Revolution and many others, in particular, Friedrich Nietzsche. Among the domestic prerevolutionary philosophers and scientists who developed the issues of equality in law, one should call, first of all, M. O. Berdiaiev, P. I. Novhorodtsev, I. Ya. Franko [23]. The disputes on the role of the category of equality in law and society are still ongoing.

At the current stage of legal science development a generally recognised is the thesis the main aim of which is that according to the essence of justice, human relations should be formed in the sense of equality. However, the concept of justice is not limited to the requirement of equality which forms only one of its aspects, namely, formal justice. One of the leading modern concepts is also the dilemma of "freedom against equality". Freedom and equality can coexist as both complementary and conflicting values. The character of relations between them is determined, first of all, by the concept of equality which is implemented in legal policy. However, the principle of "equality in freedom" should be the starting point in these relations. The requirement of a measure of freedom that is applied equally to everyone can be transformed into the following logical chain: freedom (in legal and social sense) – right (as a measure of freedom) – equality (equal measure regarding everyone) [23].

Correct understanding, reglementation and singling out the priority value-legal properties of equality are a necessary condition for clarifying and solving many practical issues, in particular, the ways of development of a democratic and social state.

Equality is one of the thorny concepts of past and present legal thought. Equality is a concept that means the same position of people in the society, but has equal content in different historical periods. The concept of "equality of all people" means their equal personal dignity. In this sense, people are equal because they are individuals without regard to their race, gender, skin colour or beliefs. That is why we talk about equal rights of people – the rights that are natural and inalienable (for example, the right to life) as well as the rights guaranteed by the current legislation [24].

As one of the fundamental values of the modern society and law, equality is a necessary way of social existence of freedom as any other effective form of existence and expression of freedom in social interaction of people, except legal, is difficult to imag-

ine [19]. This is due, in particular, to the fact that freedom, not being introduced into a single common measure determined by the mutual and equal restriction of freedom of all participants of social communication, will inevitably turn into lawlessness when its only guarantee is power which in this case actually can no longer guarantee anything, because there is always a real possibility of its suppression by an even greater force. So, formal equality is a basic and universal principle of legal regulation which comprehensively determines the content of the rule of law since it embodies the requirements both for the content of positive law and for the forms and methods of its establishment and protection. Besides, the principle of formal equality can be concretised in one or another life situation in the consistent system of formally determined rules of conduct, that is, legal norms (positive law) [25].

In the modern literature, there are generally two main ways to achieve equality: ensuring equal opportunities and equal results. In this regard, it is reasonable to note that there are two essential aspects of equality: equality of opportunities and equality of results. The equality of opportunities is the idea that every individual should be guaranteed the same chances to make progress in life. This idea was especially actively discussed in the era of bourgeois revolutions: it was expressed by the phrase "la carrere ouverte aux talents» (from French - a career open to talents) and concerned artificial barriers which required to be eliminated, having abolished all privileges and provided state assistance to ensure equal opportunities for everybody to have better conditions. So, for this type of equality, individual achievements are a priority based only on a person's abilities, but not on his origin, nationality, skin colour, religion, sex, etc., and ensuring free competition when everyone is on equal footing and plays by the same rules. The equality of results is the idea that the society and the state should guarantee equality of people through the redistribution of social benefits or the introduction of so-called positive discrimination. This type of equality is possible only provided that free competition, which is the basis of equality of opportunities, is restricted. Both of these aspects of equality are demonstrated in the sphere of legal regulation. Thus, the concept of equal opportunities is embodied primarily in the general legal principle of equality before the law [23].

CONCLUSIONS

Axiological approach generally represents the attitude of a person to the objective subject of evaluation, to a certain phenomenon, indicating how to treat this phenomenon, how to use it, if it is useful and avoid if it is harmful. The value criteria in the field of law are its ideals which are based on certain social needs and interests.

The formation of the civil society in Ukraine and Ukraine's integration into the European political and legal space is possible only on condition of assimilation and implementation of fundamental democratic values the basis of which is equality, freedom and justice.

The European values constitute the basic foundations of the liberal democratic institutions of the Western European space which boundaries are not limited either to geographical features or belonging to the European part of the world. The values are the core of the culture of every nation, nationality and society.

Law is a means of society self-organising. The basis of this self-organising is universal values (life, freedom, equality, justice, etc.) which the law makes its own values. They are fundamental for understanding the essence of law. Studying these values leads to the conclusion that they are dialectically interconnected and form a certain system.

Justice, as the basic legal value, has a determining role in understanding the law, construction of its institutions, formulation of the requirements for the legal regulation of relations in the modern society. Thus, the process of convergence of justice and law is a guarantee of the effectiveness of law, therefore, it confirms its value as an effective social regulator.

Freedom has two sources – substantive (natural rights) and formal (legal norms), therefore, legal regulation consists in its transformation into the legal sphere.

There are two main ways to achieve equality: ensuring equal opportunities and ensuring equal results. In this regard, it is worth noting that there are two essential aspects of equality: equality of opportunities and equality of results.

The mentioned value-legal properties of equality, freedom and justice should be focused on the European model because these are the determining priorities, standards and ideals, thanks to which there is a natural process of interaction between the government and the society. This is what it is worth living for, to exist among different social groups in the democratic society where equality, freedom and justice prevail.

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