Legnaturalistic Law as a Basic of Legal Regulation of Safe Society Development

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ABSTRACT

The purpose of modern civilization is its secure development without which it is impossible to exist in the future. Activities in this development begin with its modeling, which is carried out through the legal regulation of this process. The basis of legal regulation is law. Without his correct understanding, it is impossible to build an effective system of legal regulation of the safe development of society. Along with this, the existing concepts of law and the practice of their implementation are not based on its essence, substance principles. The legnaturalistic concept of law which is proposed in the article is based on these basics. It is made its characteristics, it is formulated law classification on which it is built and there are given the types of laws of safe development of society.

Keywords: patterns, types of patterns, legal regulation, legnsturalistic law, safe development of society, types of laws of safe development of society.

1. INTRODUCTION

From the point of view of most specialists, the purpose of modern civilization is seen as its sustainable development. In our opinion, it is not entirely true to talk about sustainable development as the goal of modern civilization. First, any development is sustainable, because development is impossible without sustainability, and only jumps leading to uncertainty or regression are possible in that case. Secondly, any development is impossible without ensuring its safety. Thirdly, development involves an increase of development characteristics that do not always lead to a positive security result. For example, the development of physics and chemistry led to the creation of weapons of mass destruction, which can interrupt all the development of mankind.

Therefore, from our point of view, the purpose of modern civilization is its security development. This development is impossible without its legal regulation, which creates a certain model of this process. Legal regulation is a purposeful, systematic, effective activity to streamline the life of society. It consists of three stages that exist in the form of a mechanism of legal regulation. The first stage is intended to normalize certain social situations with the help of law, that is, the creation of a law. The second stage is the emergence on the basis of this law of subjective rights and legal obligations of specific subjects of law that exist in the form of legal relations. The third stage is the realization of these rights and obligations, which is carried out in the form of acts of their implementation. Thus, the basis of legal regulation is the right on which the effectiveness of legal regulation of the security development of society depends. As practice shows, there are significant shortcomings in this area that cannot be resolved without an appropriate scientific research.

Along with this, there is no scientific research on this problem in modern conditions. This indicates the relevance and novelty of the topic of the article.

2. RESEARCH METHODOLOGY

The research was carried out using methods according to its purpose, object and subject. In particular, there were used general-research methods such as: analysis - in the study of the category of "sustainable development" and synthesis - in the formation of the category "safe development". From specific scientific methods, the structural and functional methods are widely used, for example, in the study of components of legal regulation of the safe development of society. The modeling method was used in the formation of a legnaturalistic understanding of law. The classification method was used during laws characteristic. There were also used special scientific methods: dogmatic and legal – during constructing of the definition of a legnaturalistic understanding of law, comparative legal – in the study of

modern concepts of law. The systematic use of these methods made it possible to ensure the validity, objectivity and completeness of the study.

3. THE RESULTS OF THE RESEARCH

An outstanding philosopher, theorist, law sociologist B.O. Kystyakivskyi wrote in the early twentieth century: "There is no other science where there are as many contradictory theories as in science about law. At the first acquaintance with it, it seems as if it only consists of theories that mutually exclude each other. [1, p. 10].

Despite the fact that this was stated about a hundred years ago, the problem of what to understand under the law has not been solved to nowadays; theoretical and practical severity of this issue has not decreased.

Among the variety of theories, schools, types, directions of law understanding, such concepts are the most common today.

The theory of natural law. Natural and legal concept considers law as a phenomenon of nature, as one of the forms of manifestation of natural patterns according to which the world arose and exists. The right embodies justice and humanism.

Having arisen in antiquity, the theory of natural law developed in a number of modifications of the so-called "reborn natural law" (neotomism, neogegelianism, neocantiantism, phenomenology, existentialism, hermeneutics), the main differences between which are the definition of the source of natural law (the will of God, the self-realization of the objective mind and the idea of law, the "nature of things", a priori legal substance, legal values, human existence).

A modern kind of theory of natural law is a socio-naturalistic concept of law, built on social naturalism, which was proposed by researcher O. M. Kostenko. He believes that the new law, which will ensure the modernization of legal understanding, can arise only on the basis of the further development of a naturalistic worldview; new jurisprudence can develop only on the basis of new naturalism, that is, a worldview that in a new way interprets the idea of the existence of human laws. O. M. Kostenko adds that the main function of "truly scientific law is the opening of laws of social nature to implement them in the current legislation." He concludes: "Law is a way to reconcile people's public life with the laws of social nature" [2, p. 83-91].

From the theory of legal positivism, the only source of law is the state. Consequently, the law is actually identified with the legislation of the state. Positivism comes from the presumption of inviolability and unmistakability of the acts created by the state as a mean of regulating public relations. At the same time, the state is free from positive law, it has no legal obligations.

Recently, the classical positivist views of the law have been changing. Non-positivists believe that the law is contained not only in the legislation. One of their representatives - A. Kaufman believes that the law fulfills a kind of mission of the mediator between the real world and its genesis: "it is through the existence of law the alignment of reality and genesis is negotiated; ... therefore, the law is the compliance between the appropriate and existing being" [3, p. 112].

The Sociological approach understands the law as a social phenomenon that is independent of the state, which reflects the real patterns [4, 5] of public life. The law arises gradually directly from the practice of social legal relations in the form of customs, traditions, treaties etc. Some of these norms are recognized by the state by reflection in laws and other regulations and thus acquire the status of an official sources of law.

The Psychological School of Law determines that the main factors of the emergence and formation of the sense of law are psychological qualities of character, people's instincts, their feelings and experiences, other irrational categories. All legal norms are the product of human consciousness, they do not exist objectively, but only in the way that a person understands them for himself.

Recently, a communicative approach to understanding law, the founder of which is Y. Habermas, has become widespread. He believes that the right is the product of interaction between entities aimed at optimizing their relations [6, p. 3].

M. Van Hoek in the work "Law as Communication" notes: "This concept enables a wide pluralistic analysis, since communication can be detected at different levels and in different forms ... the emphasis here is made on the communicative process, not on fixed elements or norms". [7, p. 8-9].

In last decades, the so-called "correlative concept of law" develops. It clarifies that legal rights are interdependent (correlative): each legal right of one individual entails an appropriate legal vulnerability of some other individual, each legal right of one subject is limited by the legal rights of others" [8, p. 20].

It can be noticed that the above-mentioned types of law understanding focus on certain qualities of law. The natural type says more about the formation of law, positive – about the systems of law, sociological – about the realization of law, psychological – about the consciousness.

From our point of view, in any type of law understanding there must be legal origin that makes these understandings legal. These origins connect the type of law understanding, rejecting their wrong, or illusionary, non-existent, illegal elements. Any law understanding should be based on the ancient Roman axiom: "The law is the embodiment of goodness and justice." This is the

beginning that unites all types of law understanding. If justice is not paramount in doctrine, it is not legal doctrine. And this is the quality of law that is the basis for ensuring the safety of society. It should be emphasized that any legal doctrine can be progressive, have the right to exist, if it focuses on ensuring the safety of society.

Thus, every type of law understanding has the right to exist. But still, there must be a basis that unites them. Such a basis can be a legnaturalistic understanding of law, in which the substance of law is its foundation, the primary source, where origins are the patterns of existence of nature, society, humanity, the reflection of which should be the law.

From our point of view, according to the legnaturalistic understanding, law is a system conditioned by patterns of existence of imperative, formally defined social norms that embody freedom and justice, which are issued by authorized structures to regulate the behavior of people [9, p. 75-76].

From our point of view, the following essence features are inherent in the legnaturalistic law:

1. The law is a reflection of the patterns of human being. In other words, all patterns of both organic and inorganic existence that relate to society are a valid law. It exists regardless of whether people are aware of it or not. Law is an existing matrix independently of society, a "crystal lattice", an algorithm for its existence. It is as objective as the natural and technical patterns of human being. These patterns cause the emergence, development and existence of society, which should open these patterns for its normal functioning, reflect them in certain forms and follow them.

Therefore, it is necessary to distinguish the right as a phenomenon of reality and its reflection in legal acts, legal precedents and other forms of law. The more accurate and complete this reflection, the better life of society is organized and vice versa. In this case, law is an order, which is formed independently of society as part of the cosmic order.

In order to exist normally, society must "fit" into this matrix of law and order by displaying itself in legislation and other forms of law. The more the right coincides with law and order, the better public life is.

2. The right is the embodiment of justice.

Justice is a category of social practice and consciousness, the sense of which is the requirement of conformity between the practical role of a person or a social group in the life of society and their social position, between their rights and obligations, offense and responsibility, achievements and their public recognition. Normative regulations that do not comply with the concept of justice, although being legally issued, are not a right, but a lawlessness and arbitrariness.

It should be emphasized once again that the right as a reality is the same as the laws of existence that constitute the life of society. That is, the right by origin is the order that is created by the laws of existence of society. As a reflection of this legal order of being, the right is enshrined in certain legal forms. Thus, the right, both in origin and sense, is a legnaturalistic phenomenon, that is, a reflection of the patterns of being.

Only as a system of patterns of being the right creates harmony in society and in its relation to nature. The existence of a pseudo-right that ignores this axiom leads to the disharmony of public life in its various manifestations.

The legnaturalist approach which is proposed to law understanding, the essence of which is the idea that the right is generated and is a reflection of the patterns of existence, conceptually integrates rational elements of the existing areas of law understanding that consists of natural, social, psychological, legal patterns (schools of natural law, sociological jurisprudence, psychological theory of law, legal positivism). The humanity considers such a law understanding in the universal system of the world order (human, non-spherical, cosmic) which creates harmony in society and in its relations with other structures of existence, that is, a creation of justice world which is the main sense and purpose of law.

The basis of a legnaturalistic approach to law understanding is the imperative of its content. That is, law is the duty, responsibility and other imperatives on which the law is built. Non-compliance of these patterns destroys social existence and, thus, legal norms that do not comply with these laws destroy this being.

The emphasis is on the fact that any right, even natural, consists not only of opportunities, but also of imperatives (duties and prohibitions), which was strongly insisted on by domestic researchers until the beginning of the twentieth century.

In the process of cognition people are both the object and the subject of knowledge. At the same time, the tasks are, firstly, to know yourself, and secondly, to determine the positive and negative in yourself, bad and good, and thirdly, to outline the right ways to minimize and eliminate the negative, to maintain prosperity of the positive. The positive is associated with the implementation of imperatives (duties and prohibitions) aimed at minimizing biological negative traits and creating material and intangible (spiritual) values that require the human energy. According to the law of energy conservation, a person subconsciously solves three of the above tasks to know himself in the direction of minimal energy consumption and maximum conservation. The human ignores the patterns of being until limits when it can threaten its existence. At the same time, the patterns of being are imperatives, the implementation of which generates a certain positive result, values. The right as a

reflection of patterns is also an imperative, and the individual, imitating it, creates appropriate opportunities. That is, law is the result of the exercise of an imperative (duty or prohibition).

In view of the above, the basis of the law are imperatives, that is, prohibitions and duties of human, which are generated by the laws of its existence. Human rights exist mostly to indicate spheres where prohibitions and responsibilities do not apply [9, p. 77].

4. DISCUSSION OF RESEARCH RESULTS

Experts believe: "To protect our civilization from vices, to deter it from destruction and death, to solve the problem of peace on long-suffering land ... is possible only on the basis of a new worldview paradigm, built on the basis of a person's idea of himself as a spiritual entity that lives according to the general laws of the world and cosmos, the only laws of nature with humanistic principles and rules of life on the planet" [10, p. 65].

The importance of laws and patterns in the life of mankind is evidenced by the thoughts of thinkers. Jim Allen May believed: "Progress is mainly about learning how to apply the laws and truth that have always existed." John Templeton states: "There are general principles or laws of life that lead to usefulness and happiness [11, p. 23]."

From our point of view, the law is objective, necessary, stable, repetitive systemic qualities of reality phenomena that give them order.

Among the laws of existence, we can distinguish the laws of nature and social laws, which are conditioned by the laws of nature.

The laws of nature and social laws are based on universal laws of existence (cosmos, universe), or system-wide patterns of nature and society. Experts have discovered and formulated about 30 such laws: the principle of compensation of entropy; 20 percent pattern; pattern of the pyramid; law of systemicity etc. [12, p. 323-405].

Laws are not strict constants, that is, they allow variations within certain limits: less in imperative laws and more in dispositional. The effect of laws may also have variations in accordance with the laws of space and time, but in any way, it can never go beyond it because it violates the law. Due to the variability of social law sense it has positive and negative potencies and tendencies of organization and disorganization. They conditioned by internal and external factors of the existence of laws. By influencing these factors in the laws, the negative can be minimized, the positive – be developed.

According to the social law scale, scientists divide them into general (acting in all social systems) and specific (acting in separate social systems, groups, etc.), to importance - into the main and secondary, by the measure of determinism - to causal (fixing clear causal relationships between social phenomena) and functional (reflect empirically observed and repetitive dependences between social phenomena). There are also theoretical and empirical social laws [13, p. 163].

We believe that there are substantive and subsidized laws that are not singled out by specialists.

Substantive laws are the basis for the existence of a social phenomenon. They condition its essence and can be the foundation of this phenomenon. Therefore, they are imperative. They could be given the following definition: these are integral, main, primary, natural qualities of the phenomenon.

Subsidized laws arise on the basis of substantive, conditioned by them, they are their detail and specification, in accordance with certain conditions. Therefore, they are dispositive. It should be noted that the laws of nature are the basis for the substantive and subsidized laws of society.

There are also laws of development that are dispositional in nature, the development of the phenomenon is not possible without them, and security laws that are imperative, because it is impossible to ensure the stable existence of security facilities without them. The balance of development laws and security laws creates harmony in society without which its existence and safe development are impossible.

A. A. Kozlovsky rightly remarks: "It is already difficult to question the conclusion that human being imposes its laws and rules of existence, the rejection of which can lead to destruction and transformation into oblivion. A person faces the task of identifying these laws and turning them into rules of their activities, into norms of behavior. [14, p. 10].

S. S. Slyvka states: "It is known that there are many laws of the living and inanimated world. Man cannot change these laws" [15, p. 88].

From our point of view, the security of society is the existence of society in accordance with the patterns of its human being. They can be classified as follows.

1. According to the objects of safety: patterns of natural objects, patterns of social objects, patterns of technogenic objects.

2. By scale: cosmic patterns, planetary (global) patterns, regional patterns, national patterns, local patterns.

3. By volume: patterns of the system, patterns of system elements.

4. By significance: substantive patterns, subsidized patterns.

5. By nature: structural patterns; functional patterns.

6. By commonness: general laws, special laws, private laws [9, p. 55].

There are other types and subtypes of patterns. These types of patterns can be detailed into other patterns. For example, social patterns can be divided into the following: local patterns, patterns of national society, patterns of regional society, patterns of world society.

Legal patterns are very important. They can be divided into the following types: general patterns, patterns of a certain type of legal system, patterns of international law, patterns of the national legal system, in which, it is possible to distinguish patterns of law structures (general, public, private, material, procedural, regulatory, security, substantive, subsidized etc.), branches of law, law institutions.

There are also state patterns that can be divided into structural ones that determine the construction of the state (patterns of the structure of the apparatus of the state, state body, structures of state bodies, etc.) and functional patterns that determine the process of activity of state structures.

It should be noted that it is impossible to form a harmonious safe society without the knowledge of social patterns, as well as it is impossible to build any technical device without knowledge of the relevant technical patterns.

Laws knowledge requires a high level of intelligence, purposeful, intense activity, a high level of science development, necessary material and intangible conditions, encyclopedic knowledge of those who learn the laws. First of all, it concerns social laws, which are possible to understand only in case of ideal condition of these requirements. Due to the lack of an adequate level of the listed requirements to social laws, only little part has been identified, as evidenced by the constant social micro- and macrocataclysms that threaten both national and global security, which are interrelated phenomena.

5. CONCLUSIONS

From our point of view, the purpose of modern civilization is its security development. This development is impossible without its legal regulation, which creates a certain model of this process. The basis of legal regulation is the right on which the effectiveness of legal regulation of the security development of society depends.

Among the variety of theories, schools, types, directions of law understanding, the following concepts are most common now: natural, positivist, sociological, psychological.

Every type of law understanding has the right to exist. But there must be a basis that unites them. Such a basis can be a legnaturalistic law understanding, where the substance of law is its foundation, the primary source,

where the beginning is the patterns of existence of nature, society, humanity, where the law should be its reflection.

According to a legnaturalistic law understanding, law is a system conditioned by patterns of existence of imperative, formally defined social norms that embody freedom and justice, which are issued by authorized structures to regulate the behavior of people

The legnaturalistic approach of law understanding, the essence of which is the idea that the law is generated and is a reflection of the patterns of existence, conceptually integrates rational elements of the existing areas of law understanding such as natural, social, psychological, legal patterns (schools of natural law, sociological jurisprudence, psychological theory of law, legal positivism).

The basis of a legnaturalistic approach to law understanding is the imperative of its sense. That is, law is the duty, responsibility and other imperatives which build the law. Non-compliance of with these patterns destroys social existence and, thus, legal norms that do not comply with this patterns destroy this human being.

From our point of view, the law is objective, necessary, stable, repetitive systemic qualities of reality phenomena that give them the order.

Laws are not strict constants, that is, they allow variations within certain limits: less in imperative laws and more in dispositional.

Any law is affected by internal and external factors of its existence. In case of influencing these factors in the laws, the negative can be minimized, the positive – be developed.

Among the laws of existence, we can distinguish the laws of nature and social laws, which are conditioned by the laws of nature. The laws of nature and social laws are based on universal laws of existence (cosmos, universe), or system-wide patterns of nature and society.

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Substantive laws are the basis for the existence of a social phenomenon. They condition its essence and can be the foundation of this phenomenon. Therefore, they are imperative. They could be given the following definition: these are integral, main, primary, natural qualities of the phenomenon.

Subsidized laws arise on the basis of substantive, conditioned by them, they are their detail and specification, in accordance with certain conditions. Therefore, they are dispositive.

There are also laws of development that are dispositional in nature, the development of the phenomenon is not possible without them, and security laws that are imperative, because it is impossible to

ensure the stable existence of security facilities without them. The balance of development laws and security laws creates harmony in society without which its existence and safe development are impossible.

From our point of view, the security of society is the existence of society in accordance with the patterns of its human being. They can be classified according to the objects of safety, by scale, by volume, by significance, by nature and by commonness.

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