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INTERACTION OF HUMAN CONSUMPTION, HUMAN RIGHTS AND POSITIVE RIGHTS: THE CURRENT PERIOD

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SUMMARY

In this article there are displayed the scientific researches of the second half of 20th – beginning of 21-th century of the problem of interinfluence of human rights, their needs and positive law. It is stressed that the latest social and legal philosophy develops under the sign of crisis of classical rationalism, which reflected on the research of given issue. Need, anthroposocial approaches to the understanding of given issues are shown.

According to the required approach, the essence of social phenomenon is in those useful their sides, which can be used by the individual and society to meet their needs.

According to anthroposocial approach, law can be defined as a natural way to distribute by the society the human-made socially useful product into two unequal parts, designed to meet individual's private and public needs.

Key words: human needs, human rights, positive law, need approach, anthroposocial approach.

ВЗАИМОДЕЙСТВИЕ ЧЕЛОВЕЧЕСКИХ ПОТРЕБНОСТЕЙ, ПРАВ ЧЕЛОВЕКА И ПОЗИТИВНОГО ПРАВА: СОВРЕМЕННЫЙ ПЕРИОД

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АННОТАЦИЯ

В статье отражены научные исследования второй половины XX – начала XXI века проблемы взаимовлияния прав человека, его потребностей и позитивного права. Отмечено, что новая социальная и правовая философия развивается под знаком кризиса классического рационализма, который отразился и на изучении этой проблемы. Показаны потребностный, антропосоциальный подходы к пониманию такой проблематики.

Согласно потребностному подходу, сущностью социальных явлений являются те полезные их стороны, которые могут быть использованы человеком и обществом для удовлетворения их потребностей.

Согласно антропосоциальному подходу, право можно определить как естественный способ распределения социумом изготовленного человеком общественно-полезного продукта на две неравные части, предназначенные для удовлетворения его частных и публичных потребностей.

Ключевые слова: человеческие потребности, права человека, позитивное право, потребностный подход, антропосоциальный подход.

Problem setting and the topicality of the researched subject is conditioned by the fact that the mutual influence of the human needs, human rights and positive right are an integral part of human life. They determine the rhythm of human life and society in general. Therefore, it is no wonder that this issue has long been of interest for different thinkers.

The research status. Different philosophers and legislators of antiquity (Plato, Aristotle), of Middle Ages (Saint Augustine, Thomas Aquinas) and modern ages (F. Bacon, Diderot, P. Holbach, I. Kant, G.W.F. Hegel, J. Bentham, J.St. Mill, F. Engels, R. Jhering, R. Pound) anyway expressed their opinion with regard to the issue.

As it was mentioned above, the new social legal philosophy develops under the condition of the crisis of classical rationalism which also impacted the studying of the mutual influence between human rights, needs and positive rights.

Starting from the second half of the XX century and to this day, the problem was actively perceived, in particular, in the Ukrainian and Russian literature (psychological and philosophical). The publications which appeared during the last years demonstrate immense diversity of views as to the above-mentioned problematic. The similar views as to these issues are also considered.

The article objective and task is to analyze the scholarly researches of the second half of the XX – early XXI centuries of the issue of mutual influence of the human rights, needs and positive rights.

Presentation of key material. In the national literature P. Rabinovich was the first who introduced the term of "the need-oriented approach" into the scientific use, gradually specifying and applying it to the determination of the essence of legal awareness [1, p. 8–13].

The need-oriented approach postulates the idea that the essence of the social phenomena is constituted by their useful features which can be used by the human and society for satisfaction of their needs. Thus, the very legal awareness is not defined by the author as the reflection of such features of the "legal phenomena" in human conscience which are useful for the satisfaction of the need of human or society.

The realization of the need-oriented approach for the understanding of essence of the legal phenomena requires the following actions: 1) it is necessary to perceive

the general understanding of the needs of different subjects of the society, which requires, in particular, the clarification of the correlation of these needs with such allied phenomena as interests, motives, goals of the corresponding subjects; 2) it is necessary to single out the key types of such needs, with regard to their certain classification; 3) the profound knowledge should be gained with regard to the needs: a) generally social; b) group; c) individual in the society where the researched legal phenomenon was formed, operates and develops; 4) the following should be determined: a) the needs of what subjects (i.e. whose needs – either of separate individuals or of their certain communities, associations of society in general) are satisfied by the researched phenomenon; b) what types of such needs are satisfied; 5) it should be clarified whether the researched legal phenomenon is able to be the tool of certain needs satisfaction, and if it is, to what extent. In particular, it should be clarified, whether it is only one of such tools or the one and only.

Using such approach, P. Rabinovych suggested the definition of human rights as certain possibilities of human being necessary for the satisfaction of the needs of the human existence and development under certain historical conditions, are objectively conditioned by the achieved level of the social development and are insured by the obligations of the other subjects [2, p. 18]. It means that these possibilities are necessary to act certain way to refrain from the actions in the society to satisfy the individual needs. In this respect the human rights mediate the satisfaction of the needs of their bearer according to the level of the development, for instance of the society in which these needs have been formed and in which the individual intends to satisfy them.

According to R. Havryliuk, modern right as the anthroposocial phenomenon is based on the freedom of the will expression of the individual, the way of his/her normative existence in the society with regard to the satisfaction of his personal and social needs [3, p. 747].

According to her, the dualistic human nature (combination of the biological and social, individual and public) defined the dual nature of human needs as of the social phenomenon: individual and public needs. Therefore, the right of the individual is distributive by its nature – with its help the human-generated product is subdivided into two almost unequal parts: one of them is aimed at the satisfaction of personal needs of individual, and the second one – at the satisfaction of his/her public needs, coinciding with the needs of other individuals. Thus, as she stresses, from the point of view of the anthroposocial approach, the right can be defined as the natural way of the socially-useful product distribution by the society into two unequal parts, aimed at the satisfaction of his/her personal and public needs [3, p. 751–752].

Ye. Romaniuk is the representative of the anthroposocial approach to the cognition of the positive right. According to this underlying postulate, the right is human right and is certain segment of the way of human coexistence with others which is aimed at the insurance of public needs and of the needs of all of other members of the society in general [4, p.8].

O. Tseliev, the author of one of the chapters of manuals issued in 2015 "General theory of law" states that like during the ancient times the needs of the regulation of values formed in the society, the regulation of the relations between people conditioned the appearance of corresponding legal norms, during the later periods the necessity of the safe, stable, predicted human existence, insurance of the growing needs facilitated the creation of the new governmental forms, protection of the social relations perceived by the society as useful, desirable, fair and lawful ones [5, p. 104].

The needs-oriented problematic attracted interest of the Russian literature as well. Thus, for instance, the Russian sociologist A. Zdravosmyslov defined the politico-legal nature of the needs and interests of the free individual, which is constituted by the maintenance of the optimal balance in the relations between the personality and public government which conducts the law-forming activity [6, p. 13–14].

M. Taratkevich stated that human needs, in contrast to the animals' needs are not programmed in the genetic code, but are formed during the life under the influence of the social environment, the relations in which are regulated by the law [7, p. 13].

H. Chernobel assumed that the central functional content of the law as the normative regulator is in its definition of being the measuring unit of the social welfare [8, p. 84].

The stated problem was sometimes considered in the Russian legal sciences, namely, in civil ones. Thus, N. Barinov arrived at the conclusion that the construction of the material needs allows analyzing the problem of the public needs satisfaction from the broader respect, and not only through the prism of the material relations which are the subject of the civil law; and therefore, the category of needs should be considered at the level of the general theory of law as one of the elements of the mechanism of legal norms [9, p. 98].

This problematic was researched also by the Western specialists. The humanitarian sciences of the non-CIS countries states that in the developed countries the new society has formed, somewhat different from the industrial society of the early XX century: the admass society. It is based on the democratic forms of the solution of the acute social and political problems, on the mass employment of the society, satisfactory labor payment and reliable system of the social protection of population. Some foreign social scientists stated that such peculiarities of the modern society which were mostly insured through the positive legal regulation, reflected the general needs of its members.

The Canadian and American economist J. Galbraith was an outstanding representative of such views [10, p. 18, 41], and in his works he showed that the social development leads to the depersonalization of the social needs, where the needs of individuals are formed. Moreover, the aspiration to establish the control over the markets leads to the appearance of the forms of impact upon the consumer and formation of his needs according to the production demands. It is impossible to define, according to him, who and for what interests impacts the formation of human needs. The appearance is created that the needs are formed not by the people, but by the social processes, and, therefore, the conditions are possible under which not only the strange human needs will be formed but also the ones which may have harmful impact on human life, health and, eventually, may lead to the destruction of human society. According to his theory, the interaction of the positive right and the needs was about the extended national impact on the social processes to

achieve the crisis-free and stable development of the production, i.e. for the satisfaction of the production needs under the mediation of the norms of positive rights.

The Norwegian sociologist J. Galtung in the chapter Human Rights and Human Needs of his book [11] described the author's views as to the general connection between the human rights and human needs.

He arrived at the conclusion that under the current conditions there are the needs which have the analogues of the rights as well as the needs which do not have such analogues, which leads to the idea of extending the concept of human rights; there are the rights which do not have the analogues of the needs which leads to the idea of certain cultural and class-specific directions on which the creation of human rights is based. He also stated that one identified need may be satisfied (fully or partially) through the implementation of several rights; one right may be the tool for the implementation of several needs [11, p. 70].

In the national literature [12, p. 112–125] the doctrine of the integral human rights is defined; the representatives of it provide the grounding of the human rights on the basis of the paradigm of egalitarianism and fairness; this doctrine is based on the explanation of all human rights as the moral human rights. According to it, the key human needs which ensure its existence as the human being shall be subject to the necessary protection. The basic nature of these human needs conditions the fact that on the basis of this the right appears to at least certain minimum of the human needs satisfaction, in other words, the right to the right [12, p. 117].

According to the anthroposociocultural theory of the legal understanding, from the point of view of the paradigm of the transcendental exchange of benefits between the people, it is conditioned by two attributive conditions of the human works possibilities, mainly: 1) existentially constructed attributive human aspiration at the uninterrupted realization of the personal autonomous nature; 2) communicative solidarity. Perpetum mobile of such constant human aspiration are their needs for benefits and life necessity of their satisfaction.

O. Goffe, R. Ferber and A. Maslow are the outstanding representatives of this theory. Thus, O. Goffre states that even with the reference to the transcendental needs the task for the right legitimization may not be fulfilled to the full. According to him, it is necessary to show that there are the subjective requirements, in other words, the subjective needs of acknowledging the corresponding interests of others. Although human being, as he believes, is the potentially social being by nature, the human being should create itself as such, activate the hidden potential social features, because the society emerges only with the mutual acknowledgement of one by the other. In this mission the human rights have their own irreplaceable role: before self-affirmation the human being shall take care of the fundamental conditions of human life. "The anger and characteristic passion, – O. Goffe says, – which accompanies the protest against the human rights violation, is fair because, first of all, the inborn interests are met, the acknowledgement of which, secondly, has the nature of the demand". And here a question appears: "on the basis of what can I demand the acknowledgement of my indisputable interests by the others?" The answer to this question is viewed by O. Goffe in the correlation, i.e. the action which may take place only on condition of action in response to something: the human rights may be legitimized on the basis of reciprocality, i.e. the exchange [12, p. 119–120].

According to R. Ferber's concept, the procedures of grounding the fundamental practical principles (of the fundamental norms) should include one more exclusively important aspect: "direct or indirect consideration of the life needs of the other people" [12, p. 118].

Maslow called these needs the real human needs (without their satisfaction the human being as such is impossible in principle, let alone the human being as a personality). Since personal needs of the individual influence it as a natural necessity, therefore, the human being cannot but take them into account. That was the symbolic exchange between the individual freedoms and his benefits [13, p. 38].

Conclusions. The following conclusions may be drawn from the above:

1. All theories of needs and their correlation with the positive rights and human rights of the second half of the XX century and these days come down to the fact that the needs connect the people with the world of the social relations, outside which their needs cannot be satisfied and most of such relations are regulated by the positive right which serves as the tool of the human needs satisfaction.

2. The right, in its turn, apart from being the tool of the human needs satisfaction, provides for their formation and development. However, it should not be forgotten that the right does not regulate all the needs, but only the basic (real ones), which, are realized in human rights.

3. At the same time, the human rights are the possibilities necessary to act in certain manner in order to refrain from the actions in the society for the satisfaction of personal needs, i.e. they mediate the satisfaction of the needs of their bearer according to the level of the development, of first of all, the society in which these needs have formed and in which the individual intends to satisfy them.

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КОДИФИЦИРОВАННЫЕ АКТЫ В СИСТЕМЕ ИСТОЧНИКОВ ГРАЖДАНСКОГО ПРОЦЕССУАЛЬНОГО ПРАВА УКРАИНЫ: ИСТОРИЯ И СОВРЕМЕННОСТЬ

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АННОТАЦИЯ

В статье предпринята попытка углубить знания о содержании и особенностях систематизации гражданского процессуального законодательства Украины в разных исторических периодах становления и развития гражданского судопроизводства. Особое внимание уделено кодификации как основной форме систематизации гражданского процессуального законодательства. Рассмотрена реформа гражданского судопроизводства 1864 года, уточнены место и роль Устава гражданского судопроизводства в развитии отечественного процессуального законодательства как в советский, так и в современный периоды. Отдельное внимание уделено современному этапу кодификации гражданского процессуального законодательства Украины, а также тенденциям его дальнейшего развития.

Ключевые слова: Устав гражданского судопроизводства, судебная реформа, гражданский процесс, Гражданский процессуальный кодекс, кодификация, судоустройство.

CODIFICATED ACTS IN THE SYSTEM OF SOURCES OF CIVIL PROCEDURE RIGHTS OF UKRAINE: HISTORY AND MODERNITY

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SUMMARY

The article made another attempt to deepen knowledge about the content and features of systematization of civil procedural legislation of Ukraine in different historical periods of the formation and development of civil proceedings. Particular attention is paid to codification as the main form of systematization of civil procedural legislation. Considered the reform of civil proceedings in 1864 and clarified the place and the role of the Charter of civil proceedings in the development of domestic procedural legislation in both the Soviet and modern periods. Special attention is paid to the modern stage of codification of the civil procedural legislation of Ukraine, as well as trends of its further development.

Key words: charter of civil proceedings, judicial reform, civil procedure, Civil Procedure Code, codification, judicial system.

Постановка проблемы. Среди источников гражданского процессуального права кодифицированные акты занимают центральное место. И это неслучайно, ведь кодифицированная форма закона является важным условием эффективности правового регулирования гражданско-процессуальной деятельности. Кодификация обеспечивает целостность, полноту, системность, единство методов правового регулирования гражданско-процессуальных отношений, способствует внутренней согласованности гражданско-процессуального закона, исключению повторений и противоречий, компактности законодательства, его стабильности и устойчивости.

Вопрос целесообразности кодификации законодательства является предметом постоянного интереса исследователей как в области теории и истории государства и права, так и гражданского процесса. Однако направленность