

THE IMPACT OF GLOBAL INTEGRATION PROCESSES ON LAW AND LEGAL UNDERSTANDING

ВПЛИВ СВІТОВИХ ІНТЕГРАЦІЙНИХ ПРОЦЕСІВ НА ПРАВО ТА ПРАВОРОЗУМІННЯ

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Relevance of the research topic. Modern law and legal understanding in the new millennium, in the context of new global integration processes, acquires fundamentally different features, which is caused by large-scale globalization changes, conditions of life in the legal regime of martial law, which require adequate and real law enforcement, preservation and strengthening of fundamental legal values, rights and legitimate interests of the entire society, a high level of legal culture, and understanding of the essence and content of law is of particular importance.

The way to form a modern theory of state and law is impossible without searching for modern approaches to law, reviewing and analyzing those known in legal theory, and developing new models of legal understanding (the most important research areas to be conducted on the way to forming a modern theory of state and law). The process of rethinking many legal concepts, including law, determines the formulation and development of basic theoretical constructs and models of legal regulation.

The analysis of modern legal literature has shown that when considering important issues of general theoretical science, focusing on the issues of cognition of the essence of law, the authors of publications demonstrate polar positions in methodological approaches to law understanding, offer their own models of integrative law understanding based on the theory of natural law, on the synthesis of different approaches to law, or defend the positions of classical legal positivism in the context of studying various issues of legal theory and philosophy.

The purpose of the scientific article. The importance of this research for the study of the modernization of the legal doctrine of the independent Ukrainian State in the context of global integration processes is due to the change of the socio-political paradigm adapted to the new globalization conditions of the XXI century.

In this context, jurisprudence faces the need to study the understanding of the essence of law and legal understanding as one of the key, initial, initial categories in legal knowledge. The search for modern approaches to understanding the essence of law, the deepest possible comprehension of its role and purpose in society, review and thorough analysis of existing theories of law, as well as the development of new concepts of law understanding is an important stage in the development of modern domestic legal science.

The pluralism of approaches to law and the diversity of concepts of its cognition have become an objective trend in the research in legal theory. Particular emphasis is placed on legal understanding as one of the most important legal categories, reflecting both the process and the result of purposeful cognition and perception of law, assessment and attitude to law as a specific social phenomenon. The interest of modern legal science in legal understanding is determined not only by a range of numerous objective and subjective reasons, but also by quite specific patterns.

Key words: law, understanding of law, integration processes, state, globalization changes, legal order, positivism, jusnaturalism, liberal sociology, natural law, classical legal positivism, jurisprudence, legal reality, doctrinal legal consciousness, justice, philosophy of law, legal voluntarism.

Актуальність теми дослідження. Сучасне право та праворозуміння в новому тисячолітті, в умовах нових світових інтеграційних процесів, набуває принципово відмінних рис, що викликано масштабними глобалізаційними змінами, умовах життєдіяльності в правовому режимі дії військового стану, які вимагають адекватного та реального забезпечення правопорядку, збереження і зміцнення фундаментальних юридичних цінностей, прав та законних інтересів усього суспільства, високого показника рівня правової культури, розуміння сутності та змістового наповнення права набуває особливого значення.

Шлях формування сучасної теорії держави і права не можливий без пошуку сучасних підходів до права, перегляду та аналізу відомих у теорії права, а також розробки нових моделей праворозуміння (найважливіших наукових напрямів досліджень, які потрібно проводити на шляху формування сучасної теорії держави і права). Процес переосмислення багатьох юридичних понять, зокрема права, визначає формулювання й розробку основних теоретичних конструкцій і моделей правового регулювання.

Аналіз сучасної юридичної літератури засвідчив, що під час розгляду важливих проблем загальнотеоретичної науки, акцентуючи увагу на питаннях пізнання сутності права, автори публікацій демонструють полярні позиції в методологічних підходах до праворозуміння, пропонують власні моделі інтегративного праворозуміння, засновані на теорії природного права, на синтезі різних підходів до права або захищають позиції класичного юридичного позитивізму в контексті вивчення різних проблем теорії і філософії права.

Мета наукової статті. Важливість цього дослідження для вивчення модернізації правової доктрини незалежної Української держави в умовах світових інтеграційних процесів обумовлена, зміною суспільно-політичної парадигми, адаптованої до нових глобалізаційних умов XXI ст.

У цьому контексті перед юриспруденцією постає необхідність дослідження розуміння сутності права та праворозуміння як однієї з ключових, початкових, вихідних категорій у юридичному знанні. Пошук сучасних підходів до розуміння сутності права, якомога глибшого осмислення його ролі та призначення у суспільстві, перегляд і ґрунтовний аналіз вже існуючих теорій права, а також вироблення нових концепцій праворозуміння є важливим етапом у процесі розвитку сучасної вітчизняної правознавчої науки.

Плуралізм підходів до права і різноманіття концепцій його пізнання стали об'єктивною тенденцією здійснюваних досліджень у теорії права. Особливо акцентується на праворозумінні як одній з найважливіших правових категорій, що відображає одночасно як процес, так і результат цілеспрямованого пізнання та сприйняття права, оцінку та ставлення до права як до специфічного соціального явища. Інтерес сучасної юридичної науки до праворозуміння детермінується не лише колом численних об'єктивних і суб'єктивних причин, а й цілком конкретними закономірностями.

Ключові слова: право, праворозуміння, інтеграційні процеси, держава, глобалізаційні зміни, правопорядок, позитивізм, юснатуралізм, лібертарний соціологізм, природне право, класичний юридичний позитивізм, юриспруденція, правова дійсність, доктринальна правосвідомість, справедливість, філософія права, правовий волюнтаризм.

The legal system is constantly being reformed in the course of Ukraine's development as a democratic, rule-of-law state, and the war did not stop this trend. The problem of legal understanding has a cognitive, theoretical and practical component, since it is extremely important for the legislator

to take into account the dominance of optimal types of legal understanding in society in lawmaking. The realization that law can be expressed in different forms of existence will allow for a better understanding of legal matter, forecasting its development in the future and avoiding mistakes in

lawmaking and law enforcement activities. The progressive processes of globalization observed over the past decades have generated much debate among legal scholars. Many modern studies are devoted to the problems of globalization and its consequences. We believe that it is necessary to consider how globalization processes affect the knowledge of law.

The identification of the legal constructs «legal understanding» and «law» is incorrect. In the definition, «law» is interpreted as a complex concept that includes historical preconditions, patterns of emergence and development of law, structure, features, functions and principles of law, legal consciousness, legal relations, correlation of law as a social phenomenon with morality, law, human rights and freedoms, power, politics, and legal practice.

We also understand law as a system of generally binding, formally defined norms established and enforced by the state and aimed at regulating the behavior of individuals and their groups in accordance with the rules of socio-economic, political and spiritual life accepted in a given society. Also, the understanding of law may include legal views and positions that express social interests and are enshrined in the system of social rules of conduct established and enforced by the state and regulating social relations. There is a synthesis of legal understanding in the form of legal ideology, legal consciousness, legal concepts and rules of law that introduce a normative measure of social behavior.

The analysis of various scientific approaches to the definition of this term allowed M. Kozyubra to make, in our opinion, the correct conclusion that legal understanding is mostly considered as a category of doctrinal legal consciousness, i.e. a scientific category associated with scientific knowledge of law [3, p. 13]. Legal understanding is a scientific category which reflects the process and result of purposeful mental activity of a person, which includes knowledge of law, its assessment and attitude to it as a holistic and adapted to society phenomenon.

In his efforts to reveal the concept of legal understanding as a process and result of purposeful mental scientific activity aimed at cognition, perception and evaluation of law, the scholar believes that the importance of science in understanding law should not be exaggerated. Not only because the formation of the category of «understanding of law» has gone a long way from an individually colored understanding of law based on personal experience to a modern rationalized and systematized presentation of it, which we really owe to science. And not even because science is not omnipotent, it cannot provide answers to all the questions that life will generate. First of all, it is because law as a phenomenon cannot be understood solely on the basis of the scientific paradigm with its focus on such criteria as objectivity, reliability, verifiability, the possibility of practical reproduction of results, etc. Based on these generalizations, M. Kozyubra believes that people's attitude to law, its comprehension and evaluation are determined not only and not even so much by scientific considerations as by values and perceptions. It has been known since antiquity that law is not only a science but also an art; it is based not only on knowledge but also on certain social and human values, such as equality, freedom, justice, etc. Values are primarily a sphere of worldview, which is a way not of studying and explaining the phenomenon of existence, including law, but of its spiritual development and interpretation. Unlike scientific knowledge, which should not depend on the ideals and views of the cognizing subject, the worldview is a kind of spiritual prism through which the world around us is viewed and experienced, and therefore cannot claim to be reliable [3, p. 13–14].

Theoretical and ideological components stand out in the content of legal understanding: 1) the theoretical component is characterized as a set of ideas and provisions that are complete, well-grounded, focused on the prevailing view of science, take into account generally accepted methods of theoretical substantiation and are characterized

by certain methods. Thus, the scientific content of concepts is determined by their scientific value, consideration of existing scientific ideas, the possibility of substantiating one's own scientific position, and their reliance on a system of generally accepted methods, which are characterized as methodology; 2) the ideological component is due to the existence of various legal schools that are pluralistic in nature and provide an opportunity to study not only law as a multidimensional category, but also to formulate areas of practical implementation of legal provisions; the ideological content of legal understanding characterizes law as an element of legal ideology, which is ultimately an element of the ideology of society and determines aspects of the functioning of law as a means of providing society with the features of systemicity.

According to T. Didych, scientific legal research of state and legal institutions is usually based on the theoretical aspect of legal understanding as a means of generalizing the views of philosophers, statesmen and scholars on the specific problem under study. However, today it is advisable to intensify and apply the ideological aspect of legal understanding as the basis for institutional research of state and legal categories and phenomena based on the relevant schools of legal understanding [2, p. 91].

Additionally, legal understanding is characterized by the results, scientific results of cognition of the general laws of law, acting in this context as the most general form of knowledge analysis, general knowledge about law, the laws of its formation, development, functioning in society, subjecting to analysis the phenomena which have only a legal nature, the study of general essential laws of the ontological essences of law, the criteria of scientificity, the functioning of the category in the process of cognition, internal relations, regularities of legal reality.

Legal understanding is both the process of cognition of the essence of law and the result of its theoretical comprehension, which performs various functions (scientific substantiation of law, the policy adopted in a given society, taking into account the spiritual traditions of society, systematization of legal values, verification of objective truth in the context of existing ways of cognition of legal priorities (values), acts as a means of discovering new truths, moving towards absolute truth by identifying new laws of law, developing scientific foundations for practical Globalization has a significant impact on changes in law, understanding of law and related phenomena at the global, regional and domestic levels. National legal cultures and legal awareness of society are particularly vulnerable to globalization processes.

The content and development of the professional and doctrinal level of legal awareness depends on the systematic and purposeful acquisition and replenishment of knowledge about law in the course of training and practical activities of professional lawyers, teachers and researchers. Accordingly, different levels of knowledge of law affect the formation of legal understanding.

Legal activity requires a combination of the abstract and the concrete, the identification of the legal aspect of any problem under consideration, and the generalization and classification of various legally significant phenomena, events, and facts. The gradual development of law, the process of complication of the legal system leads to certain theoretical generalizations of knowledge about law. However, the emergence of legal theory became possible only when law, as a scale and norm of freedom, spread to all people, and a general theory of law emerged, based on legislation and practical jurisprudence. The highest level of research on the phenomenon of law is conducted by the philosophy of law, which comprehends law as a social phenomenon that is an integral part of culture in the context of civilizational development.

Accordingly, all stages of cognition of law are related to legal understanding, and jurisprudence becomes a true science

when it studies not only the human but also the natural origin of law, i.e. when, in solving the main question of jurisprudence, it recognizes that law is a creation not only of people but also of nature.

It is incorrect to absolutize the understanding of law, to give it a certain categorical nature, as this may lead to negative consequences not only in legal theory but also in law enforcement practice. The process of understanding the essence of law has an obvious relativistic character, which means relativity, conditionality and subjectivity in legal understanding, since there is no generally accepted (single or objective) truth. All problems of law are always just a matter of our understanding of law. Since in the proper sense of the word, the so-called legal issues (which, of course, also includes issues of practical implementation of the so-called legal norms) are a product of our consciousness, the result of reflection and socially subjective interpretation of real social patterns, trends, connections, relations, contradictions, etc.

Similar to the above definitions of the concept of law, each person expresses and presents his or her own understanding of law, his or her own view of various forms of reflection and expression of real-life phenomena, i.e. our consciousness not only reflects the objective world but also creates it. Law is primarily the result of our subjective understanding. The main practical and theoretical significance of legal understanding and law is that our consciousness – in the form of legal consciousness – not only reflects the objective world, but also creates it. Legal phenomena as a product of consciousness, the construction of each legal consciousness is the result of our interpretation, subjective understanding, and therefore it is always something inadequate, non-identical, and in this sense something new compared to the «standard» understanding of real phenomena.

Law traditionally belongs to the factors of social regulation and should be considered a «regulator» of social relations, but, according to E. Baglay, it can be understood in different ways. Most often, law is interpreted as a set of mandatory and protected by the possibility of state coercion rules of behavior established on behalf of the state. This understanding is quite convenient, but too simplistic.

Obviously, the rules adopted and proclaimed do not work by themselves, they do not regulate anything. «In order for them to really determine people's behavior,» the scholar believes, «appropriate activity is required both on the part of the subjects themselves – the executors of regulatory requirements, and on the part of social structures – from those that formulate norms to those that control and ensure their implementation in various ways; in addition, appropriate organizational, informational, cultural and other specific prerequisites are required, without which the actual implementation of the rules is impossible. As a factor of real and systemic influence on the social behavior of people, law cannot but cover these and other elements, without which the process of legal regulation cannot be objectively carried out, and legal regulation itself cannot take place.

Such a holistic and comprehensive view of law allows us to present law as a specific type, a way of social and normative regulation and to avoid an overly simplified interpretation of the concept of «law» [1, p. 15].

Legal understanding is an important legal category that reflects the process and the result of purposeful cognition of law, perception, evaluation and attitude to law as a specific socio-cultural phenomenon. All levels of cognition of law influence the formation of legal understanding. Practical jurisprudence, knowledge of law in action and the use of this knowledge, is activated in the process of solving specific social issues. The development of law, the process of complication of the legal system, leads to theoretical generalizations of knowledge about law. The philosophy of law comprehends law as a social phenomenon that is an integral part of culture

in the context of civilizational development, based on ideals and value orientations.

Interpretation of the term «law» is determined by the numerous scientific concepts of legal understanding developed in different times and by different civilizations. In the course of a long search, the types of legal understanding have been formed (depending on the philosophical basis for their comprehension) within three main areas – positivist (legalistic), natural law (jus naturalistic) and sociological (libertarian legal) concepts.

Since law is a social phenomenon, a product of society, the processes of its cognition are characterized by the peculiarities inherent in the methodology of the humanities, the subject of which is man and society. Therefore, the understanding of law is not so much a theoretical process of cognition of law, but rather an intuitive, subjective, intrapersonal comprehension of law.

The law should be perceived as it is in real life, adequate to how the law came into being, what its structure is, how it manifests itself in everyday life and how it can be useful to a particular person. The category of legal understanding covers all existing ideas about what constitutes law.

Legal understanding is a certain theoretical construct that exists in the human mind and helps to understand specific phenomena of objective reality. This is done with the help of the concept of law, which, depending on the historical context, means freedom, justice, rules, balance of personal and public interests, and in modern history- also certain needs, relations, feelings (emotions), and requirements of subjects.

The structure of legal understanding consists of mandatory elements: a subject (citizen, legal practitioner, legal scholar), an object (law, legal norm, legislative act) and the content of legal understanding (the subject's knowledge of his or her rights and obligations, their assessment and subjective attitude to them).

Law is a theoretical construct that exists in human consciousness and helps to understand the phenomena of objective reality. The holistic knowledge of law obtained through interdisciplinary synthesis is characterized through the following aspects.

Modern trends in the universalization and unification of law, and thus legal understanding, which have been formed and are developing in the context of globalization, are quite clearly manifested primarily in the attempt to develop a general, comprehensive approach to the phenomenon of law, while preserving the inviolable and unshakable idea of law.

A historical analysis of the issue of legal understanding in the system of legal knowledge suggests that each historical stage of society's development is characterized by intensification of scientific efforts aimed at developing specific concepts of legal understanding. The dominant ideas about legal understanding are being criticized, and new theoretical concepts of legal understanding are being sought, some of which, due to scientific insufficiency, fail completely. The debate continues and it is now generally recognized that positivism, jusnaturalism and libertarian sociology have the greatest influence on the formation of the understanding of law. Each of these concepts offers its own vision of the essence of law and legal reality, but none of them can claim the absoluteness of truth, which is primarily due to the particular complexity and multifaceted nature of the object of study – law.

In a context where global **integration processes are accompanied by broad legal integration**, modern national legal thinking is making attempts to overcome the boundaries of certain classical types of legal understanding and form a holistic legal concept of a more concentrated, comprehensive definition of law and legal phenomena. Such a concept should not only integrate certain aspects of the existence of law, but also be based on the interpretation of law as a multidimensional structure, and ensure the synthesis of those components of law

that are characterized by different, often alternative or even competitive natural law, normative and sociological concepts and theories of law.

The study of the current state and prospects of development of modern national legal understanding will allow expanding the scope of knowledge of current problems of legal understanding and determining the most optimal concept

of understanding the essence of law in the system of legal knowledge. The impact of globalization on law and legal understanding, social and economic life of States and peoples takes place in various forms and by various methods. As for the results of this impact, their power and direction depend on many factors, among which the legal sphere occupies a special place.

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