THE RULE OF LAW AS A PRINCIPLE OF LEGAL MEANING: EUROPEAN AND UKRAINIAN EXPERIENCE

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Summary

The article deals with the problem of legal meaning-making which is quite important, as the development of law is generally carried out through the creation of legal meanings by the subjects of law. Law must be *meaningful, reasonable* and *has some sense*. Legal existence is the real embodied and existing perfectly legal meanings. Emphasis is placed on the danger of large-scale de-legalization of public relations in modern Ukraine, which is manifested in numerous violations of the current Constitution of Ukraine by government officials, human rights violations that have become widespread, very significant politicization of the judiciary, including the Constitutional Court of Ukraine, violations of legal standards by various branches of government. On the way to a democratic state governed by the rule of law, the law itself, forms and ways of its manifestation, in contrast to arbitrariness, must increase in the country, not decrease. The semantic right of creation should be intensified, not narrowed.

It is emphasized that the implementation of the rule of law is the basic basis for legal meaning. Concern for the law is a concern for the development of its meanings, their assertion and protection must be a common cause of each and everyone. It is on the basis of the rule of law that real Ukrainian European integration is possible.

Key words: rule of law, legal meaning-making, values of law, dejuridization of social relations, anthropological-axiological approach, legal marginality, legal European integration.

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1. Introduction

Having set a course for the establishment of democratic principles of life and European integration, Ukrainians must make efforts to implement a number of legal reforms, without which these transformations will be impossible, and, consequently, the set goals will be unattainable. However, our reality now testifies to the unpreparedness of both society and especially the authorities for qualitative changes in legal life.

Unfortunately, the efforts of the reformers are nullified by the reluctance of the political and business elite to change something radically, the reforms are more imitated than actually implemented. Over the last decade in Ukraine there has been a large-scale dejuridization of

public relations, which is manifested in numerous violations of the current Constitution of Ukraine by government officials, including the head of state, mass human rights violations, even stronger politicization of the judiciary, including the Constitutional Court of Ukraine, breach of law by different branches of government, etc. On the way to a democratic state governed by the rule of law, the forms and ways of its manifestation, in contrast to arbitrariness, must increase in the country, not decrease. The situation of narrowing the legal space, the destruction of legal meanings, which we can observe in this regard in society and the state, should be a real concern for both legal citizens and government officials.

Various aspects of this problem are developed by such authors as N. Bordun-Komar *(Bordun-Komar, 2017)*, M. Bratasyuk *(Bratasyuk, 2021)*, S. Holovatyy *(Holovatyy, 2016)* V. Vyshkovska *(Vyshkovska, 2014)*, E. Zakharov *(Zakharov, 2005)*, M. Yelnikova *(Yelnikova, 2015)*, Y. Yevtoshuk *(Yevtoshuk, 2015)*, M. Kozyubra *(Kozyubra, 2017)*, N. Pilgun *(Pilgun, 2012)*, M. Roschuk *(Roschuk, 2012)*, O. Sokolenko *(Sokolenko, 2013)*, S. Shevchuk (*Shevchuk,2008*), O. Yaremko *(Yaremko, 2020)* and others. These scholars emphasize the problem of implementing the rule of law, warn against violating constitutional norms, principles of law, emphasize the need for compliance with legal standards by all law enforcement agencies, and so on. We will look at the problem of legal development, turning to the concept of legal meaning as an essential feature of the development of law and a means of expanding the boundaries of legal existence through the prism of the rule of law as its fundamental principle, show its importance for law and order and the consequences. This problem still refers to the underdeveloped knowledge in the philosophical and legal field, so it is proved to be relevant.

2. Materials and methods

The research methodology should correspond to the subject of research. To cover this problem, it is appropriate to use the principle of polymethodology, involving philosophical, general and special legal approaches and methods, which in complementarity should ensure the completeness of the study of the problem. In particular, the leading approach in the study should be anthropological-axiological, through which both law and legal meaning-making, and the rule of law appear as humanistic phenomena, without which a full human existence becomes impossible. The anthropological-axiological approach allows us to see legal meaning-making as an active process of affirmation and expansion of law through the creation and development of legal subjects of legal meanings, which are at the same time universal legal values that embody the principles of human existence. In the light of the same approach, the rule of law is separated from the rule by law and is revealed meaningfully through a number of elements: legal values, principles, regulations, procedures, customs, etc., which aim to harmonize social relations and, consequently, contribute to being, exercising natural rights, to create law and order. The anthropological-axiological approach concretizes the natural-legal mega-approach, within which it is only possible to see law and legal meaning-making as a non-state universal phenomenon. The synergetic method contributes to the interpretation of the rule of law and legal meaning-making as systemic interdependent phenomena that are mutually enriched and mutually developed. Such general scientific methods as analysis and synthesis, theoretical modeling, the principle of objectivity have contributed to the study and formation of a number of concepts, in particular, such as: legal meaning, rule of law, legal standards, human rights, principles of law and others. The hermeneutic approach helped to understand and interpret the basic concepts and provisions of the research problem. The comparative legal method allowed us to see the factors and shortcomings of the experience of legal meaning-making in the European and Ukrainian legal space.

3. Legal meaning-making as an urgent problem of today

The modern human world has become digital, human existence is becoming more and more complex, and the law must respond accordingly to these processes in order to be adequate to a man of today with his needs and interests, which are constantly evolving. Scientists note that the current world is becoming more dynamic, uncertain and pluralistic, because it is made so by a person who himself is now (S. Proleyev). It is clear that such a complex, uncertain, dynamic world and the same person (in today's world is dominated by a person of the situational type) put forward new requirements to the law, without denying the previous ones. The current digital age has made many adjustments to legal life, in particular the problem of human rights. The modern author K. Lefort notes that human rights "… go beyond any particular definition given to them; … Acquired rights necessarily encourage the support of new rights." And further the author notes the following: "A democratic state goes beyond what is traditionally attributed to the rule of law. It tests rights that have not yet been incorporated into it" *(Lefort, 1986)*. That is, the development of a man and the development of his rights is a simultaneous natural process, and the state must keep up with it.

K. Lefort interprets the current development of natural human rights as a "universalist stretch", i.e. their intensification, a concentrated demand for "equality" in all forms of human interaction and throughout the geopolitical space *(Lefort, 1986)*. Therefore, the necessary rethinking of human rights should not take place in the direction of their restriction or mutual exclusion, but rather, on the contrary, as the expansion of "mutually multiple potentials (forces, powers, authority)", which are universal. In this regard, "human rights democracy" must be unrestricted, despite various obstacles. Human rights should not be thought of as dogma, they should be "reformulated and re-established", invented and restored in new conditions, in other proportions, - scientists say *(Evropeyska konventsiya pro zahist prav i osnovnyh svobod lyudyny, 1950)*.

The law in all its manifestations must work for man, it is his goal, and it is designed to provide him with a comfortable life in today's world. It must undoubtedly be humanistic, and it depends on the people who will create the law of the digital society. And in this sense, the problem of legal meaning-making is especially important. In general, the development of law is carried out through the creation of legal meanings by the subjects of law. Law must be *meaningful, reasonable and has some sense*. Meaning is the understanding of something, the importance of something, it is a certain meaning, purpose of something, task, usefulness of something, etc. (*Dictionary of the Ukrainian language, 1978:405*). Meaning is the content of thought, some phenomenon with a purpose; it is the essential characteristics of something, the meaning of creation, human interaction. W. Frakl considered meaning to be the basic motivation of human direction, which reveals the essential nature of the human field. A. Camus wrote that being has no meaning, it is absurd, however, something makes sense - and this "something" is a man, "the only being who needs meaning…" *(Camus, 1945)*.

Legal meanings serve as a link between a man and the world of law, the "empire of law" (R. Dworkin). Legal existence lives as the unity of a man as a subject of law with law, its forms and manifestations. Legal existence is the real embodied and existing perfectly legal meanings. Their origins are in the human spiritual and cultural essence, in the interaction of people as subjects of law, in their relations, in the ideas of perfection and harmony of human relations. Legal meanings are deeply humanistic; it is their humanistic content that makes law the same humanistic phenomenon. These meanings embody the universal and this is their power and significance.

However, people may lose touch with legal reality, the non-existence of law as a real possibility always exists. A person can spray, level, destroy legal meanings. She is not always ready to create them, to understand their importance, purpose, task, usefulness, and so on. The similar situation is among the nations - some of them have real success in the development of law, and others have not been able to achieve special achievements and successes. A man must worry about the law, assert it, develop it, because the law itself and its meanings (which are at the same time legal values) are a necessary prerequisite for human existence. Concern for the law is a concern for the development of its meanings, their assertion and protection must be a common cause of everyone. V. Nesterenko emphasizes that "without constant care for this, without creative human effort and spiritual enlightenment, the world is depleted of meanings. As a result, "enlightenments" and even semantic cavities appear in life, where individuals or the whole human communities stumble or even fail" *(Nesterenko, 1996: 109)*. A nation is not just a community of people, it is a community united by common meanings through which a common world of life is created. Ukrainians as a nation and as a legal community must be united by common legal meanings. Marginals appear where common meanings that can unite people are lost. This also applies to legal marginality. Legal meanings cement the community, creating a common understanding of the principles of legal existence, motivate to joint action to affirm and protect these principles, to create a common legal existence. The strength of these meanings is in their universal humanity, which has attracted at all times. To assert, multiply, develop, seek, enrich, strengthen legal meanings, values and ideals, principles and standards of law, legal customs and traditions, thus overcoming the semantic emptiness, all sorts of destructive tendencies and means to be right. The legal community is created in a movement from unique legal meanings to universal values. And this is impossible without the revival of historical memory, first of all semantic memory, the ability to know and appropriate a number of meanings, to master the semantic chain, which can penetrate not only the universal ratio, but also the depths of the soul *(Bratasyuk M., Rosolyak, 2020)*.

4. The experience of legal meaning-making in the EU and modern Ukraine

Ukrainians in the process of creating a national legal existence need to join the European legal meanings. What is Europeanness in general and Europeanness in law, to which Ukrainians are so eager? We believe it is a set of meanings that are European values as well, and they appeared in the process of transformation of a unique European into universal. In law, they find expression in European standards of law (which are the basis for the protection of human rights) and in the rule of law (which is a concentrated expression of these standards and a fundamental principle of legal development). Perhaps the greatest shortcoming of Ukrainian legal life is the systematic deviation from the requirements of the rule of law, the constant violation of its standards, the neglect of universal law, the constant replacement of universal special, particular, partial. The principle of the rule of law is an eloquent expression of European values, which at the same time have the status of universal. Therefore, it quite naturally went beyond the common law system, where it was formed *(Daysi, 2008)* and became a recognized universal heritage. Nowadays, Ukrainians need to reform the legal sphere precisely in the direction of the fullest realization of the rule of law - this will be the key to the Europeanization of Ukrainian legal reality, its accession to the European legal space. Ukrainian lawyers have not yet learned enough that the rule of law is not just a general idea, like any other principle. The rule of law must be perceived first of all as an integrated system of requirements that is the result of spiritual and cultural development of mankind, compliance and approval of which in legal life is

a necessity, a guarantee of avoiding failures in extrajudicial life that occurred with individuals and peoples under certain conditions.

The rule of law concentrates exemplary climaxes in the universal legal culture. Ukrainian scholars emphasize that this principle is understood as different one from the rule by law only in the context of the natural law paradigm, which asserts natural law as a deeply humanistic value-semantic phenomenon. It is this legal paradigm that affirms and protects such universal values as justice, life, human dignity, individual freedom, wealth, private property, equality, human rights, and so on. All these values are the basis of human existence, outside of them it becomes partial, bold, disordered, it turns into a continuous mess, slips into nothingness, ruin, becomes hostile to a man, because it depersonalizes the life and even destroys it physically. The rule of law as a principle that is not identical with the rule by law, is read in the context of the natural-legal paradigm is not accidental, it in the value-semantic sense completely coincides with it. As evidenced by European legal development, this principle was formed in line with the natural law tradition, which is quite powerful, especially in the Anglo-Saxon legal culture. It comes from this culture that this principle has spread to continental legal development, gaining universal significance. In fact, this principle is revealed through a number of sub-principles, legal norms, procedures, customs, traditions, legitimized by society, means of ensuring human rights, and so on. In particular, the rule of law includes the principle of a man with his life, natural rights, honor and dignity as the highest value, the principles of justice, the principle of equality of subjects of law, the principle of respect for individual freedom, the principles of accessibility and authority, good faith, reasonableness decision-making, principles of proportionality, legal certainty, etc. All these meanings-values are interconnected, all together, being applied in practice, create an orderly human being, favorable for the assertion of the human person, his existence. All components of this megaprinciple are included in the content of legal standards.

The rule of law as a kind of mega-principle, which has a very extensive and deep humanistic meaning and content, should become the basis of legal meaning for a man and for the government, its bodies and officials. It depends on many factors of different plan. In this context, it is very important to interpret the components of the rule of law as a guide to action, program requirements, which are requirements-goals, requirements-tasks, requirements-benchmarks, i.e. meaningful, reasonable and have to be performed. These requirements can be developed, as the European Court of Human Rights does successfully, they can be specified, but they cannot be deviated from, they cannot be neglected, violated, they must be observed and enforced, etc.

Ukraine in the legal sense is quite blurred, uncertain, scattered. Many Ukrainian citizens are not ready to live following the law, in fact, they suggest Ukrainian law to be nothing more than a declaration. Unfortunately, there are many such marginals among lawyers themselves. That is, Ukrainians as a semantic legal community have not fully developed. To overcome the legal marginality of the individual, it is necessary to "appropriate" the legal meanings expressed by the national legal tradition, "to permeate them with consistency, to place oneself in the appropriate semantic field" *(Bratasyuk M, 2019)*. The Ukrainian legal tradition, which has more than a thousand years of history *(Zaharchenko, 2019)*, is natural law *(Gradova, 2013)* it is based on the same legal meanings that express the content of the rule of law. It is very important now, when carrying out legal reform, to turn to our natural-legal tradition, and to use that value-semantic core which underlies it. The idea of the rule of law with such semantic characteristics as interpretation of law as justice, good, common good, respect for human dignity, individual freedom, human life as a special value, reinforced by Christian tradition, respect for private property, the principle of good faith, individuality of punishment, punishment through a fair trial, etc. *(Bratasyuk V., 2015)* was formed in our national culture since the time of princely

Ukraine. This tradition must be revived, used in the development of the national legal system, overcoming the totalitarian legal legacy of contempt for man and law *(Bratasyuk M., Shevtsova , 2021)*. The humanism that is potentially inherent in the rule of law, the standards of law, must become real. This is a difficult and arduous job for the entire nation, civil society and government. But this is the path to the rule of law, the fundamental principle of which is the rule of law. This state will not happen outside of it.

Good examples of legal meaning are demonstrated by the European Court of Human Rights, developing the principles and norms of the European Convention of Human Rights (*Evropeyska konventsiya pro zahist prav i osnovnyh svobod lyudyny 1950*), which is the embodiment and expressive expression of universal legal meanings and principles, standards of law, its rule. Ukrainian lawyers have recently become acquainted with the principle of proportionality, the essence of which is to maintain a balance of interests of legal entities, compliance with the purpose and means of achieving it, and so on. The meaning of proportionality is that, equalizing the interests of the subjects of law, to organize, improve legal relations, harmonize human existence. Without finding this proportionality of interests, legal relations can collapse. The principle of legal certainty is the European Court's of Human Rights contribution to the development of the mega-principle of the rule of law. The semantic content of the principle of legal certainty affects the humanization of legislation and law enforcement, which certainly has a positive effect on the implementation and protection of human rights *(Kampo, Savchin, Sergienko, 2010)*. The ultimate meaning of the application of the provisions of the Convention is to ensure the rule of law as a deeply humanistic principle of legal development. The law of the European Court of Human Rights is "alive" because it focuses on the most important meaning and value i.e. a person with his inalienable rights and freedoms, his full living, dynamic human existence, his harmony with life in general.

5. Conclusions

In summary, it can be stated that legal meaning-making is a process that develops together with people and society, depends on many factors of different kinds. Semantic emptiness, all sorts of destructive tendencies in social relations must be overcome by creating, asserting, multiplying, seeking, enriching and developing, strengthening legal meanings, values and ideals, principles and standards of law, legal customs and traditions. The people as a legal community are not just a population. It appears not when laws are passed, but when it is able to live in common meanings, that is, to be a sensible community. This requires a movement from unique legal meanings to the universal values of each individual who makes it, and, of course, special representatives in public authority bodies that directly carry out the legislative process and law enforcement. The realization of the rule of law as an integrated system of requirements is the key to avoiding failures in the extra-legal existence that occurs with individuals and people under certain conditions. It is on the basis of the rule of law that real Ukrainian European integration is possible.

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