ROLE OF THE STATE AND CIVIL SOCIETY IN HUMAN RIGHTS PROMOTING: SOCIOLOGICAL CONCEPT

T. PODOROZHNA
PhD, Associate Professor,
Associate Professor of the Public Law Department
Yuriy Fedkovych Chernivtsi National University
orcid.org/0000-0003-0502-950X
Researcher ID: D-5112-2016
t.podorozhna@chnu.edu.ua

Modern state and law-making processes in Ukraine, despite their complexity and contradictions, are impossible to be imagined beyond the ideas and ideals of democracy and the rule of law, strengthening and promotion of human rights and freedoms. Law is directly related to empowering of citizens with inalienable, recognized from the birth rights relating to freedom, equality and independence. Studying of the law just as a written, static phenomenon restricted by statute, substantially narrows its scope. Written law that is contained in the legislation, includes general rules, which are not always able to respond flexibly to changes in socio-economic and political life of society. Positive law itself is not able to satisfy all the needs of society [1, 76] and through the total indoctrination is unable to comprehend social reality. Therefore, it cannot be fully and thoroughly investigated out of touch with society as a social system.

Among all the existing science concepts of understanding of the law, sociological concept is most clearly represented by Eugen Ehrlich and is the most important in the issue of detection of connections between law and public relations. Sociological concept studies the law as a result of the social factors influence on the system norms of law and the reverse impact of the system on satisfying of the people's social needs. In this concept the social nature of law and its impact on public order are in the basis of understanding of law. Law should be seen not only as an abstract system of normative prescriptions of the sovereign power of the state, but as one of the interconnected social facts, as broad social structure, social order in the context of other facts-phenomena.

Sociological understanding of law is aimed at establishing of real mechanisms of power of law in society, its practical implementation ("live practice" according to Ehrlich) [2]. Understanding of the law as a "living law", which is accepted in the community [3, 266–269], allows the legislator to evaluate the efficiency of a particular normative-legal act. Legal structures and modes of mediated use of law as a special form of the law implementation can be made solely on the basis of human rights content. However, the legislator is unable to interpret the essence of human rights. Recognizing through legislation the basic human values, citizens oblige legislators to follow them, being guided by the understanding of natural principles in law. In this context, absolutely indisputable is that the legislative process must clearly and accurately implement the idea of human rights and freedoms. That is, in order the rights and freedoms are actually effective, they should get legal consolidation in existing legislation; only in this case they become of common concern and express common interest. The legal expression of the reality of rights and freedoms is democratic legal order, as exclusively in this area the key relationships of society, state and individual take legal registration.

Most often individualism and freedom – are not only the good and desirable goal of a person, but the mandatory conditions of his livelihood, requiring from him great life efforts. Relying on his own strength, the state of estrangement and other immanent inherent human traits associated with the specified value setups, generate situations in which the law becomes a universal regulator of social relations in civil society.

Value importance of human rights in civil society is expressed at the individual level (rights compose the value system of the individual), as well as at the level of institutions (rights are asserted as values for certain groups of people). That is why human rights are the part of law as a whole, and hence are the means of regulating relations between individuals, and between them and public institutions, the state, etc. [4, 94–95]. The law may be perceived as the reality of human's freedom in civil society. Social regulators are aimed mainly at ensuring appropriate levels of individual's freedom, the formation of acceptable system of restrictions of individual's freedom through rights and legal obligations of others.

The law also plays statutory and normative-regulatory role in social body. Thanks to it such processes are held as development of social hierarchies and institutions in the structure of society, securing of stable social and political order, legitimization of legal basis of power, strengthening of social values, promotion of sustainable rule of law, etc. – everything that provides a stable evolution of civil society [5, 205]. Equally humanistic goals that meet the legal nature of the state are the defining moment for the establishment of priority of law. The latter is not so much in the degree of being obliged of the state by law, but in identifying and real implementing of social obligations of the state to the individual. Coming out of this the appropriate display of the content of corresponding to human rights state obligations become the mirror projection of meaningful concretization of them. In a legal state the rule of law means not that it is an act of higher legal force, but that it secures human rights as the supreme value. Moreover, the opposite relationship is not less important: the more society gives rights and freedom to its citizens, the more sophisticated laws and the more effective order are to be, the more severe the observance and clearer application of regulatory requirements are to be.

A key element in the evolution of civil society is the degree of realization of human freedoms in the economic, political and social spheres. Regarding the latter, it is important that for the characteristics of civil society its specific relationship with the social state is essential. Civil society under the nature of its evolution is a demand to form the socially oriented legal state, and the existence of a developed civil society involves the formation of a democratically recognized state power. Such a society determines the most essential principles of regulation according to which the priority of personal interests over the interests of the collective, nation, state, and the state responsibility to the individual are set up; obligation of the state to adhere to legal requirements, to protect and maintain legal order are defined, and democratism of the state power is provided based on the principle of separation of powers. Thus, the state is secondary regarding society and basically serves the interests of society. The social state itself is to support the basic values of civil society, such as freedom, justice, solidarity, social partnership and consensus. Limits of functions and legal instruments of the state establish the society itself, civil in nature. Just being relatively independent and autonomous with regard to the state, society can become civil.

Civil society – is a free society, freedom of which consists in its autonomy and relative independence from the state. However, absolute independence from the state is not real, because the state itself is a certain guarantor of this freedom. The White Book of governance of the European Union defines civil society as one that combines mostly self-organized institutions or institutions organized under the leadership of the state.

Indeed, human rights can be guaranteed only in a strong state that is able to govern society and influence positively on a person. On the basis of these principles of regulation it is possible to establish a modern relationship between law and statute that determines the adoption of only "legal laws." It is no accident so that in the mass public consciousness the role of law for civil society is identified with justice of state regulations, progressive social orientation of goals and objectives expressed in legal norm. Though, the statute is the most advanced form of law, the law itself is not limited by statute, as it implies the action of real, actual social relations, and their transformation into legal relations as a process of livelihood ("living law'"). However, on the other hand, exactly "legal society" is intended to ensure the statute status of not only fundamental, primary, but in the future – of a single regulator of social relations.

Despite the existing appropriately formed regulatory framework on this issue, today Ukraine must undergo a long and difficult way of formation of institutions (structures) of civil society that are still poorly developed, and sometimes not developed at all. This is the evidence that the processes of civil society development, the implementation of foreign policy strategy, changes in the economic life of the country, reformation of the system of government require further legal regulation. Thus, the results of NationsinTransit research, which is conducted by international non-governmental organization FreedomHause (evaluation is done according to the seven-point scale, where seven – is the worst indicator, and one – respectively, is the best) show that the level of civil society formation in Ukraine has worsened from 4.50 points in 2005 to 4.93 points in 2014 [6]. Herewith the international community focuses on the need of its substantial improvement.

As it can be seen from the results of research in Ukraine, some civil society institutions, declared by the Basic Law, are still poorly developed, if not undeveloped at all. This is the evidence that the processes of civil society development, the implementation of foreign policy strategy, changes in the economic life of the country, reformation of the system of government require further humanization of legal life.

Unfortunately, many researchers rightly point declaratory of current legislation provisions on human rights and freedoms, due to the lack of economic, political, organizational, legal and other guarantees of enshrined rights, and the mechanism of their protection is recognized as ineffective. Among the main causes of these negative phenomena the following are named: insufficient development of national legislation; perception by the majority of the population of public law enforcement bodies not as a structure that protects a person, but as a state mechanism that protects the state from the person and his problems; underdevelopment and exclusion of state bodies and institutions that monitor human rights provision and so on.

Normative Acts are important but only as part of a general mechanism of social-political life. Effective power of legislation depends primarily on how it is known and supported by the citizens. Herewith legal environment is formed exclusively by the conduct of the majority of legal relations participants. If the mechanism of action of most of subjective rights implies active behavior of holders of these rights, the mechanism of action of legal norms requires legal activity of the whole social environment. Therefore, the essence of modern law is in its integrating, uniting social strata and groups of values, implementation and development of which should be the main task in the activities of all the state bodies. In this connection it is important to create throughout society legal culture that will increase efficiency of normative acts. The latter should determine first 'man-measuring' principles of civil society, its social values.

In this respect, effective law should be created as a result of the manifestation of two interrelated factors: the legal culture of the people and legislature, which they used in social life. Moreover, the legislation is only the tool that people use in accordance with their legal culture. Accordingly, the more perfect the instrument is, the more successfully people with a developed legal culture can use it to maintain law and order in the country. Legal culture – a kind of criterion of the life of the state, which shows how the law is applied or violated in daily practice, how in the state democratic norms and rules act. The high level of legal culture development is reflected in the legal sense of social relations, in the feasibility to live according to the law, in accessibility, familiarity and maximum dissemination of standards of lawful conduct, in implementation by the members of civil society of their rights and responsibilities.

The main subject of civil society is a person who has needs, interests and values, outwardly expressed in rights and obligations. The man is also a "primary holder" of order, because each subject of law by his daily, constant behavior "creates" law and order, affects its status. Moreover, a person as a part of civil society should understand himself as a goal and the highest social value; and because, as scientists rightly point out, *horizontal links, provided by natural law* (italics is ours. – ***T.P.***) are in the basis of civil society [7, 11], human rights as a core and a pivot of the rule of law are the source of continuous reproduction and activity, a tool of civil society self-development. Exactly human rights are certain value guide, which makes it possible to apply the " 'man-measuring' dimension" not only to the state, law, legal order, but also to civil society as the degree of its maturity depends largely on the situation with human rights, on the amount of their implementation. In this context, the role of the state and civil society is growing in ensuring human rights, individual's honor, dignity and natural sovereignty. Therefore, the formation of civil society in line with the respect for human rights is a priority of legal state, the solution of which requires a long time and depends on all the members of civil society.

It should be noted that many phenomena and processes occurring in the modern Ukrainian society, are not due to objective needs. A large part of society evaluates them rather negatively, and this attitude is often transferred to the upgrade process in general. In particular, citizens are particularly acute in crisis of social order, especially the legal part of it. In this respect, B. Kistyakivsky stressed that social discipline is created only by law; disciplined society and society with a developed legal order are identical concepts; alongside strong foundation of the legal order is freedom of the person and his inviolability, moreover in a constitutional state legal order is a system of relations in which all persons of a particular society hold the greatest freedom of activity and self-determination [8, 109]. Herewith the desire to restore and strengthen the rule of law is associated in the minds of people not with using the elaborated methods and tools, but with finding new, relevant to legal requirements of nowadays instruments and mechanisms of providing the state of law and legal order. The sharp deterioration of the legal order in the modern Ukrainian society is very

clearly expressed not only in quantitative but also qualitative indicators of dynamics of social standardization of activity and behavior of citizens.

Social control allows people to realize their rights. There are a lot of us, and each has many needs that may conflict with the desire of others. Therefore, the State should satisfy at least some of the requirements and desires of people. This is meant when we say that the goal of law is justice. That is justice is such regulation of relations and behavior of people that will allow to satisfy the interests of people with minimal losses [9, 211]. Accordingly, the legal system reaches goals of rule of law, or at least is committed to do this through recognition of such interests; recognition of limits in which they will be met. On this basis, it is sociology of law that makes it possible to find a specific rule that balances the specific interests as to the overall balance of interests that is protected by legal order [10, 190]. Thus, in the present conditions, it is necessary to rationalize legal order through taking into account of the people's interests in the political and legal activity, achieving clarity and certainty in determining government's position concerning man-centrist priorities, understanding those factors that destabilize the legal relationships and those which can be used for contrast.

Besides, under current challenges related to the terrorist threat to Ukrainian state and its citizens, it is particularly important that the state function of law enforcement would be carried out without violating the rights and freedoms of people, fundamental principles of legal state. This task can be fulfilled only by such a state that protects the rights and legitimate interests of its citizens. After all, the real indicator of the strength of the government power, its effectiveness is a high level of legal order. It is well known that the rule of law and democracy are interconnected; but the democratic rule of law does not mean fulfilment of laws at any price. The strength of democracy is defined not just by the presence of a written constitution, even by one that meets high standards, but by the availability and legal consolidation of a true balance of interests of different social strata and social groups, resulted in respect of citizens to the institutions of the state.

On the other hand, the purpose of any civil society – recognition and providing of natural and inalienable human rights and freedoms – will be elusive if between their recognition and providing there is no bridge, which is the respect of state for human rights. Respect for human rights primarily means that the legislature must properly define their scope and content. The legislator is responsible for the proper regulation in accordance with human values and principles, as bad statute, not appropriate to application, means the absence of legislative regulation. Accordingly, to the current formula of interaction between individual and state ("recognition – compliance – protection of the rights and freedoms of a man and a citizen") a final entry must be submitted: "... protection of the interests of individuals through respect for their rights." At the present stage of its development, Ukraine has all the necessity to ensure and realize the protection of fundamental rights and freedoms of a person, enshrined in the Constitution.

Therefore, the state itself should be involved into active participation in the formation and development of civil society, placing it at the service of effective institutions of civil society. The primary task of the modern state is to overcome the alienation between the state and society by the joint efforts. It could be possible to release the state from some traditional responsibilities by transferring them to these or those public organizations, with which close cooperation must be established. Such changes should not be executed at the expense of weakening of the state. On the contrary, the power of the state is in its close, agreed and solidarity interaction with the public formations, citizens, all population of the country. Of course, the constitutionalisation of the system of interaction between the state as a subject of governance and the society (social relations) as its object of governance depends on the level of civil society maturity. Moreover, it is the principle of social and political balance in the relations between the state and civil society that should be the basis for correction and correlation of unstable political situation

For the legal state, firstly, of great importance is the transition from the former "simplified democracy" to the real involvement of citizens in administration of the state and society business, to exercising the sovereignty by the people of Ukraine. "The legal state, – the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, – means not just formal legality, by which the regularity and consistency in achieving and maintaining democratic law is provided, but justice based on the full recognition of the highest human value" [11].

Unfortunately, the level of development of modern Ukrainian society is not an indicator of proactive citizens, which would be aimed at achieving and protection of democratic values. The implementation into the public consciousness of the very notions of "legal state", "human rights", "separation of powers", "political pluralism" is difficult because of the lack of legal consciousness development of most citizens, as well as contradictions of these concepts to the existing Ukrainian reality. It is necessary to understanding the

fact that without the participation of civil society institutions, their connection with the state and respected bodies of citizens' self-government it is impossible to provide the citizens' legal consciousness potential, without which the desired rule of law will remain a dream. In connection with the strengthening of authoritarian principles of government, the principle of separation of powers loses its original meaning. The power and the law are always beside, working closely together to achieve a common goal. It is obvious that the power which is not limited by law can be dangerous, and the law not secured by power is powerless; but the most important priority of power is to guarantee the personal security of citizens, their rights and freedoms. It is the only way possible to achieve social and political stability, and, thus, the real, vital and proper legal order.

Citizens hold the right to participate in managing the affairs of state and society directly as well as through their representatives. They are involved in the formation, organization and activities of state and local governments, have equal access to public service, participate in the administration of justice. As a result, people directly (for example, during the referendum) and by means of created by them bodies themselves establish the scope of rights and freedoms of all citizens in a democratic state, determine the conditions of their implementation and protection (including within the judiciary). Strengthening of political guarantees of citizens' rights and freedoms occurs in the process of implementation of measures aimed at promoting democracy, the widespread involvement of citizens in state-government activity, assuring if their political activity in public and civic affairs' governance. Among the most important measures that define deployment of democracy in Ukraine, we should mention the following: developing transparency, ensuring freedom of mass media, the activity of mass media in terms of the prohibition of censorship, the implementation of ideological and political pluralism, multi-party, the right of individual and collective appeals to the state and public bodies, freedom of movement, as well as ensuring the right to information that directly relate to the rights and freedoms of citizens, ensuring of their safety. Therefore, in the context of the ensuring the legal order, current legislature is, a so-called, public law, and its main purpose is the protection of freedom as human freedom is an essential foundation of a democratic order.

Moreover, the law should regulate relations between the state and society in such a way that the state, through its agencies and officials, being the guarantor of rights and freedoms, could not directly control the society. This is the legal nature of the parliament, which should not allow restrictions of the freedom of people, assess the activities of all other public authorities, determine the liability of any officials for their actions (inaction) in order to prevent attacks on freedom, democracy, or any infringement of the rights and interests of individuals. Thus, the task of the state is to regulate relations between free citizens based on norms of law that are to guarantee freedom of individual, rights of a person and citizen.

The law is extremely essential for the development of morality concerning the need for a clear legal order that provides community with stability and strength in the regulation of social relations [12, 61]. However, according to several authors, among the aspects of the multifaceted law one vital paradox stands out: giving people freedom of existence, the law does not allow chaos, curbing possible social turmoil by elaborating of formal limits for manifestations of human will. Due to this, in the life of society elements of order, organization and coordination actively manifest themselves, and the law at the same time acts as a holder, spokesman of the degree of freedom of people, while remaining an effective helmsman of state governance because society is the most crucial foundation for the practical implementation of the legal norms, only where the actual effectiveness indicators can appear. Thus law and morality consist of general rules of conduct, expressing a certain will, which is aimed at establishing and maintaining at the required level of discipline and legal order in society.

From all the said above, we can conclude that certain requirements-principles that would meet the principles of all the society must necessarily be reflected in legislation. In a democratic state the law must serve as that specific instance, which has an impact not only on society and citizens, but also on the state itself.

Therefore, the trend of increasing of the role and importance of law in the life of society, in ensuring its stability and functioning is correlated with the trend of increasing the role and importance of individual as the highest social value. According to K. Rossetti, defining the autonomy of civil society, legal state has to respond to the requests and needs of the associated citizenship, issue appropriate legislative acts and monitor their implementation; in other words, it should create a situation of legal protection of citizens, create a favorable legal framework for the activity of created by them social institutions [13, 87]. Thus, the task of the state is to regulate relations between free citizens based on the norms of law, which are intended to guarantee personal freedom, inviolability of property, housing and other human rights. That is the statute must be a public law, and its main purpose is the protection of freedom because freedom of people is the basis of

human life order. The effectiveness of the state depends on how it is able to accumulate common interests and implement them in its policy. The state must not and should not ignore the real interests and needs of the person, as this will destroy the balance of social interests in society. Moreover, the law should regulate relations between the state and society in such a way that the state, through its agencies and officials, being the guarantor of rights and freedoms, could not directly control the society. On the other hand, modern society becomes more complex and differentiated. Decisions taken in the interest of the whole, cannot quite adequately reflect and consider the interests of its constituent entities, and certainly all individuals. It is naturally that under such conditions, freedom of society is contrary to freedom of the individual. Without it, neither society nor the individual will achieve freedom. Thus, the contradiction of individual and public interests is inevitable. The activity of civil society institutions, which should be the basis of national interests, the needs of communities and human rights in general, is directed exactly at overcoming them. Moreover, modern society is being gradually transformed into a new civilizational status – information-technological ("society of knowledge" [14, 157]), which requires from individuals a higher, compared to the existing level of education and intellectual development, new type of thinking, targeting of its activity at the future status of socially oriented reality.

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Подорожна Т. С. Роль держави і громадянського суспільства у забезпеченні прав людини: соціологічна концепція

Анотація. Стаття присвячена дослідженню проблем забезпечення прав людини інститутами громадянського суспільства та державою. Означені проблеми розглядаються крізь призму соціологічної концепції Є. Ерліха. Звертається увага на те, що сучасні державотворчі та правотворчі процеси в Україні, незважаючи на їх складність і суперечливість, неможливо уявити поза межами ідей та ідеалів демократії і верховенства права, утвердження й забезпечення прав і свобод людини. Зазначається, що право безпосередньо пов'язане з наділенням громадян невідчужуваними, визнаними від народження правами, які стосуються свободи, рівності та незалежності. Вивчення права тільки як писаного, статичного явища, обмеженого законом, істотно звужує його рамки. Писане право, що міститься в законі, включає загальні норми, які не завжди можуть гнучко реагувати на зміни в соціально-економічному та політичному житті суспільства. Аргументується, що позитивне право саме по собі не спроможне задовольняти всі потреби суспільства та через тотальну догматизацію не здатне осягнути соціальних реалій. Тому право не може бути повно і всебічно досліджено поза зв'язком з суспільством як соціальною системою, поза існуючих в суспільстві соціальних зв'язків. З цих підстав зроблено висновок, що закон має бути суспільним правом, і головна його мета – охорона свободи, оскільки свобода людини є засадою життєвого устрою. Ефективність держави залежить від того, наскільки вона здатна акумулювати загальнолюдські інтереси та реалізувати їх у своїй політиці.

Ключові слова: права людини, «живе право», «жива практика», свобода, соціологічна концепція права, держава, громадянське суспільство, баланс інтересів, правопорядок.

Podorozhna T. S. Role of the state and civil society in human rights promoting: sociological concept

Abstract. The article is devoted to the problems of human rights promotion by institutions of the civil society and the state. The mentioned problems are considered in the light of sociological concepts by Ehrlich. Attention is drawn to the fact that modern state and legislation-making processes in Ukraine, despite their complexity and contradictions, are impossible to be imagined beyond the ideas and ideals of democracy and the rule of law, strengthening and ensuring of the rights and freedoms of a person. It is noted that the law is directly linked to empowering of citizens with unalienable, recognized from the birth rights relating to freedom, equality and independence. Studying of the law only as a written, static phenomenon restricted by statute substantially narrows its scope. Written law contained in the statute, includes general rules, which are not always able to respond flexibly to changes in socio-economic and political life of society. It is grounded that positive law itself is not able to meet all the needs of society and through total indoctrination is unable to comprehend social reality. Therefore, the law cannot be fully and thoroughly investigated out of touch with society as a social system, out of social connections existing in a society. On these grounds it is concluded that the statute should be public law, and its main purpose – is the protection of freedom because freedom is the basis of human life order. The effectiveness of the state depends on how it is able to accumulate common interests and implement them in its policy.

Keywords: human rights, "living law", "live practice", freedom, sociological concept of law, state, civil society, the balance of interests, the rule of law.