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Khrystyna SOLODOVNIKOVA

Prospects for the use of an interdisciplinary approach to the study of human rights

(Psychology and Law)

According to A. Toynbee, at present Ukraine faces a challenge and undergoes transformational processes in all spheres of life, in particular social, political, economic, etc., taking into account the legal sphere. This situation is primarily due to the fact that the current understanding of the place and role of the person in the legal doctrine of Ukraine still uses outdated notions as regards the person being the object of influence of law. This thesis is most clearly illustrated in the scholarly discussions on prioritizing human rights.

In particular, the Ukrainian doctrine of rights keeps on having scientific debates on determining priorities between the right to life and the right to dignity – fundamental human rights. Scientists either avoid this topic or stick to the position that we must first outline the material object itself, namely life, and dignity are derived from it.

For the sake of affirming the real principle of the rule of law, the question of prioritization is indisputable, since, in our view, the dominant positive-normative approach in law does not make it possible to fully protect human rights, unlike the natural approach.

The issue of consideration of these two fundamental human rights is not usually raised abroad. Yes, most European constitutions, not only do not delineate these fundamental rights, but on the contrary, assert human dignity as the source of all other rights. This is reflected in particular in the Constitution of the Republic of Poland. Namely, its Art. 30 defines: the inherent and inalienable human dignity is the source of freedom and human and citizen rights. It is inviolable, and public authority has responsibility to make it be respected and defended.¹

The Polish researcher, Franciszek J. Mazurek, points out that human dignity is one, but there are a lot of its substantiations. Only those philosophical and anthropological concepts in which it is considered to be innate and irrevocable absolute value, objective and universal value correctly explain that it is the source of all human rights: freedom, sociality and solidarity.²

The same can be noted by analyzing the Basic Law of Germany, which like the draft Constitutional Convention, consisted of 149 articles. Many definitions were taken unchanged, but some were rewritten. For example, the first article begins with the phrase "Human dignity is inviolable. Respecting and protecting it is the duty of all state power" ("Die Würde des Menschen ist unantastbar. Sie zu achten und zu schützen ist Verpflichtung aller staatlichen Gewalt"). In the project, it sounded as follows: "The state exists for a person, not a person for the state" ("Der Staat ist um des Menschen willen da, nicht der Mensch um des Staates willen").³

The Ukrainian scientist and judge of the Constitutional Court of Ukraine, S. Holovaty, analyzing Article 3 of the Basic Law of Germany, states that "the state exists for the good of a person, not a person for the good of the state. Respect for human dignity by the state and protection of human dignity by the state is what constitutes the essence of the state's purpose. Therefore, if the state does not fulfill this purpose, then the question arises about the right of citizens to revolt, which follows from the prescription of paragraph 4 of Article 20 of the Basic Law". He further concludes that "human dignity means the recognition of a human being.

1 KONSTYTUCJA RZECZYPOSPOLITEJ POLSKIEJ URL: <http://www.sejm.gov.pl/prawo/konst/polski/kon1.htm> (дата звернення 17.11.2019)

2 F.J. Mazurek, *Godność osoby ludzkiej podstawa praw człowieka*, Lublin 2001, s. 462.

3 <https://www.dw.com/uk/70-%D1%80%D0%BE%D0%BA%D1%96%D0%B2-%D0%BD%D1%96%D0%BC%D0%B5%D1%86%D1%8C%D0%BA%D1%96%D0%B9-%D0%BA%D0%BE%D0%BD%D1%81%D1%82%D0%B8%D1%82%D1%83%D1%86%D1%96%D1%97-%D0%B0%D0%B1%D0%BE-%D1%8F%D0%BA-%D0%B1%D0%BE%D0%BD%D0%BD-%D1%81%D1%82%D0%B0%D0%B2-%D1%81%D1%82%D0%BE%D0%BB%D0%B8%D1%86%D0%B5%D1%8E-%D1%8-4%D1%80%D0%BD/a-48844094>

It is human dignity that requires a person to be empowered so that a person can protect his or her own way of life.”⁴

The Ukrainian doctrine of law is dominated by the concept of the hierarchy of fundamental rights. The starting point of this hierarchy is the point that without life there is no other right⁵. Without denying this point, let us allow ourselves, however, to question it in the part of the philosophical and methodological basis in which the logical question arises: what is the life of a person without dignity? Here is an illustration of why this hierarchy is harmful: Ukrainian law protects a person's life, but not what actually makes a person a person, in particular, his dignity. The result is a distorted understanding of the areas of protection, security, etc. Even the fact that in Ukraine there is no protection of the rights of the deceased person, unlike in Germany, suggests that the highest priority for Ukrainian law is life in the physiological sense, and not what personifies it, namely the person.

Such a conclusion follows from the analysis of the Constitution of Ukraine statements concerning the right to life. In particular, the state assumes certain obligations for the protection of life arising from the statement of Art. 27 about the prohibition of arbitrary deprivation of life. In Art. 27 The Constitution proclaims the right to life, developing the points of Art. 3. That is, the right to life consists of the inherent right to life, the prohibition of arbitrary deprivation of life, the right to life deprivation due to the inevitable need to use force. The content of the statement of Part 2 of Art. 22 stipulates, on the one hand, the obligation of the state to guarantee constitutional rights and freedoms, first of all, human right to life, and on the other to refrain from adopting any acts that would lead to the abrogation of constitutional rights and freedoms, hence human rights to life.

Such a narrow understanding of this problem has, in our opinion, caused differences in the understanding of the weight of these rights.

Thus, there has been a heated debate in Ukrainian legal science on the philosophical and legal understanding of the nature and origin of fundamental human rights. In particular, there are two “opposite” points of view on the nature and sources of the origin of fundamental human rights. On the one hand, human rights are regarded as belonging to a person, regardless of the presence and degree of development of society,

4 Головатий, С. (2016). Про людські права. Київ: Дух і Літера. 757 с.

5 Рабінович, П. (2013). Основоположні права людини: соціально-антропна сутність, змістова класифікація. Вісник Національної академії правових наук України, (2), 10-16.

that is, they are transcendently natural (see the scientific works of S. Golovaty⁶), on the other, the idea is that in its pure form, outside society, a person finds himself in a vacuum, where he does not need any rights because of the impossibility of their realization and functioning, and the fundamental rights themselves serve certain capabilities of the person, “which are necessary to satisfy the needs of his existence and development in specific historical conditions objectively determined by the achieved level of social development and secured obligations of other entities»⁷ (see. Works by P. Rabinovich⁸).

In our opinion, the aforementioned scientific points are not opposing and, moreover, mutually exclusive. Because both opponents, when making their arguments, touch upon issues of human nature, including its psychological nature, and therefore the essence of human rights. We should notice that this dichotomy underlies the philosophical, historical, and psychological study of human nature.

Therefore, we hold on to both positions where a person, and accordingly his rights, show psychosocial essence, and what distinguishes him from an “animal”, not only according to thinking, activity, etc., but also his dignity. We consider inadmissible an approach that limits a person to his social functions, namely, that his rights are only opportunities, because in this way a purely mechanistic analysis is made on the bases of behavioral understanding of the essence of personality.

Unlike the Ukrainian doctrine of law, this problem is solved unambiguously and proceeds from a comprehensive understanding that a person is primarily a personality. Therefore, respect and the protection of a person as the determinant, that is the definitive law united by the constitutional right of the community, convey their interest in their preservation, supplementing it with a value-filled space. It also justifies the requirements of the State that interfere with the existential and vital personal sphere of such existential responsibilities as military service⁹.

The interpretation of the guarantee of human dignity is much greater than any other constitutional provisions; it is determined by a previous understanding, which is rooted in many thousands of years of ideas¹⁰.

6 Головатий, С. (2016). Про людські права. Київ: Дух і Літера. 757 с.

7 Рабінович, П. (2015). Біосоціальна сутність основоположних людських прав. Вісник Національної академії правових наук України, (4), С. 11.

8 Рабінович, П. (2015). Біосоціальна сутність основоположних людських прав. Вісник Національної академії правових наук України, (4), 8-20.

9 BVerfGE 12, 45 (51); 38, 154 (167). Siehe auch Häberle, в: HbStR, Bd. I, 2. Aufl. 1995, § 20, Rdnr. 12.

10 Hierzu Bayertz, ARSP 89 (1995), 465 і далі; Messner, в: Festschrift für Willi Geiger, 1974, S. 221 і далі; Ruiz Miguel, JöR n. F. 50 (2002), 281 і далі; Schaede, в: Bahr/Heinig (Hrsg.), Menschenwürde in der

The decisive influence in this case belongs mainly to the two components of the intellectual history of the idea of universally applicable human dignity: on the one hand, it is a common sense, which supports the human capacity for self-determination, and on the other, the influence of Christian ideas on the divine image of man.¹¹ This merges together the influence of sustainable philosophy and the concept of human personality, which developed scholasticism and got to the Enlightenment postulate of moral self-autonomy and autonomy personality.

Questions of the psychological basis of legal regulation have been the subject of research in the works of representatives of pre-revolutionary legal and philosophical sciences: L.Y. Petrazhitsky, M.M. Korkunov, M.O. Berdyaev, P.I. Novgorodtsev, I.O. Ilyin.

Therefore, in order to solve the problems of priority of rights, as well as the value of the essence of human dignity, we consider the deepening of the understanding of the role and place of the individual and personality. This knowledge makes it possible to deepen the involvement of psychological tools as well as the adaptation of certain terminological constructions.

One of the areas where scientific attention should be focused, we consider the definition of an individual, in particular, it is advisable to use foreign experience. Namely, the German doctrine of law has developed a more detailed approach to the definition of this concept, which does not coincide with the definitions adopted in the Ukrainian doctrine.

Thus, in the German doctrine of law, it is customary to define an individual through the concept of "personality". Also, analyzing the provisions of the Basic Law of Germany, it is noted that fundamental rights are designed to serve the individual self-determination of the individual. Based on this point, the individual acts as an ideal and direct carrier of fundamental rights.

Therefore, based on the above-mentioned issues of consideration of the priority of rights, there are grounds to argue that scientific problems of understanding, the relation of the concepts of "natural person", "personality", "person" are relevant for Ukraine. Thus, in different historical periods in the Constitutions of the USSR, this legal category was not at all personified and used the terminology that characterized a certain social role, such as "citizen", "working masses", "peasants", "workers",

säkularen Verfassungsordnung, 2006, 3 і далі Siehe auch Spaemann, в: Böckenförde/Spaemann (Hrsg.), Menschenrechte und Menschenwürde, 1987, S. 295 і далі

11 Про людину як «образ божий» (imago dei) Genesis 1, 26 і наст.; Genesis 9, 6.

etc. The Constitution of Ukraine today uses the concept of “person” and “citizen”. In other areas of law, the definition of “natural person” is used. The term “natural person” in Ukrainian law is understood only as a person is a subject of civil legal relations (Article 24 of the Civil Code).

Ukrainian scientists consider it unjustified to identify the concepts of “natural person” and “personality”, since the latter is not a legal category.

Thus, the idea of the internal content of an “individual” is unusual for Ukraine. Accordingly, the issues of legal features and attributes that would specify a particular legal category remain unresolved. That is why there remain wide field relationships unregulated by law.

In Ukrainian law, the functions and role of the individual in legal relations that is his external manifestations are mostly analyzed. And the internal content remains as such that it does not need the special attention of legal experts. We do not agree with this, since we believe that by dismissing the natural, psychological features of the individual, legal science lends itself to inertia and lags far behind the socio-historical development of mankind.

We consider the attraction of the achievements of psychology as a way out of the current situation, which will allow filling the meaning of the term “individual” and also to clarify and deepen in particular the understanding of the central figure of any right of a human.

Based on the provisions proposed in the framework of the “positive” approach, scientists have departed from the concept of “personality”¹², which was quite widespread in the Soviet doctrine. This concept has caused a lot of controversy due to ambiguity of application, in particular within the distinction between the concepts of “person”, “individual”, “personality”, which in the legal literature are mostly identified. In modern civil law, these concepts have been transformed into a single definition of “natural person”.

However, we should notice that the concept of “personality” belongs exclusively to the field of psychology, where it was borrowed, but without the psychological traits that characterize it.

Psychological aspects of law as a whole are reflected in the works of foreign psychologists, sociologists, historians, lawyers. Thus, the fear of death and libido being the main driving forces act as a regulator of social

12 Кохановська О. В. (2011) Особисті немайнові права, що забезпечують природне існування фізичної особи як уособлення захисту прав і основних свобод людини в сучасній Україні. Вісник Київського національного університету імені Тараса Шевченка. С. 7–10.

behavior¹³, and its architectonics play a huge role¹⁴. Scientists have noted that first of all we should talk about the person, the personality, as the central figure¹⁵. One of the most important is the conclusion that a person himself is a law that is he has an internal self-regulatory of behavior¹⁶. However, the significant influence of the masses on the formation of normative and non-normative human behavior was not ruled out¹⁷.

It should be noted that a psychological theory of law existed and spread in the territory of the Russian Empire, which explained the existence of laws, their action, state system, etc. through the lens of personality psychology in its modern sense. In particular, emotions and actions accounted for the effect of law as a natural transcendental law¹⁸.

The psychological concept of law is based on the desire to offer the answer to the question – what is the person, in what capacity are his internal driving forces, so that he does not contradict the behavior of other subjects in the process of regulating his socially significant behavior. This theory so widely interpreted the law that it led to the blurring of its boundaries. In essence, this was no longer a law, but a legal reality. The origin of law, its effect in public life, influence on the psyche and behavior of the individual and society, the scientist explained with the help of emotions, “legal” experiences that arise as a reaction of the organism to the influence of the environment and shape its behavior. According to this concept, emotions being the genetic basis of our psyche can be defined as motives for social behavior. In the interaction of individuals, a new phenomenon is formed, namely a group, “folk psyche” with its “norms-laws” that determine motivation¹⁹.

In terms of the achievements of today’s psychology, one can agree with the scientist. However, it should be noted that such a scheme is somewhat simplified. Because social and legitimate behavior is based on a complex set of attitudes, values, etc. Such behavior is not reduced to automatic reactions, as it looks in the above mentioned concept.

If we return to the prudence of priorities, there is every reason to argue that in today’s globalized reality, its self-worth is not only declared, but also occupies one of the highest levels in the legal sphere.

13 Фрейд З. Психология бессознательного. Москва; Санкт-Петербург: Питер, 2008. 400 с.

14 Юнг К. Г. Сознание и бессознательное. Москва: Академический Проект, 2007. 190 с.

15 Фромм Э. Бегство от свободы. Человек для себя. Минск: Попурри, 1998. 672с.

16 Фромм Э. Бегство от свободы. Человек для себя. Минск: Попурри, 1998. 672с.

17 Лебон Г. Психология народов и масс. Санкт-Петербург: Макет, 1995. 316 с.

18 Петражицкий Л. И. Введение в изучение права и нравственности. Основы эмоциональной психологи. СПб., 1908. 271 с.

19 Петражицкий Л. И. Введение в изучение права и нравственности. Основы эмоциональной психологи. СПб., 1908. 271 с.

The same is observed in the research of foreign scientists in the field of psychology. In their experiments, they found a tendency for a steady increase in the value of an individual's life. Scholars have studied this value by distinguishing factors such as quality of life, physical mental and psychological health, the harmony of social relationships, the ability to be creative, and more. The absence or insufficiency of any of these factors, for the most part, leads to a sharp decrease in the subjective assessment of the cost of living.

Understanding the value of human life has always been at the forefront of a democratic, developed society. Evolutionary concepts and approaches to understanding the concept of "person" have evolved. These issues become urgent during and after global social shifts, such as war, the mass terror of the Stalinist era, and so on.

Psychologists and psychotherapists, in particular such brightest representatives of the apologists of the inferiority of life as A. Schweitzer and W. Frankl in their fundamental works discussed the subjective perception of a person's own life in inhumane conditions (concentration camp, W. Frankl), as well as about the importance of someone else's life for society (A. Schweitzer, Nobel Peace Prize laureate). Both have come to the conclusion that life is an invaluable transcendent good under any circumstances.

And, if the modern information society not only introduces and disseminates this guideline both at the level of daily life and at the level of laws, then in Ukraine the situation is somewhat different.

However, legal practitioners point out that today in Ukraine the situation with an understanding of the place and role of the person in the system of law has significantly shifted towards human-centrism. Such a conclusion follows from the statement made by the Head of the Constitutional Court of Ukraine S. Shevchuk, "the fact that the right to respect for human dignity in the Constitution of Ukraine constitutes the fundamental basis of our legal system"²⁰. The author proposes to consider human dignity as a fundamental constitutional value and states that it is the basis of all the rights and freedoms contained in the Constitution of Ukraine.

20 Шевчук С. В. Людська гідність у системі конституційних цінностей. Право України. 2018. №9. С. 29-40.

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The Author

Solodovnikova Khrystyna
Candidate of Psychological Sciences,
Master of laws, Lawyer, Law Faculty,
Taras Shevchenko National University of Kyiv,
Kyiv, Ukraine
E-mail: krissolod.kks@gmail.com
orcid.org/ 0000-0002-9169-9026

Abstracts

SOŁODOWNIKOWA CHRYSZYNA. **Perspektywy zastosowania interdyscyplinarnego podejścia do badań praw człowieka (psychologia i prawo).** W artykule przeanalizowano perspektywy zastosowania interdyscyplinarnego podejścia do wyjaśnienia i pogłębienia zrozumienia miejsca i roli osoby i osobowości w systemie prawnym Ukrainy. **Słowa kluczowe:** osoba, osobowość, podejście interdyscyplinarne, psychologia, prawo.

СОЛОДОВНИКОВА ХРИСТИНА. **Перспективи використання міждисциплінарного підходу до вивчення прав людини (психологія та право).** У статті аналізуються перспективи використання міждисциплінарного підходу для уточнення та поглиблення розуміння місця й ролі людини і особистості в правовій системі України.

Ключові слова людина, особистість, міждисциплінарний підхід, психологія, право

СОЛОДОВНИКОВА КРИСТИНА. **Перспективы использования междисциплинарного подхода к изучению прав че-**

ловека (психология и право). В статье анализируются перспективы использования междисциплинарного подхода для уточнения и углубления понимания места и роли человека и личности в правовой системе Украины

Ключевые слова человек, личность, междисциплинарный подход, психология, право.

SOLODOVNIKOVA KHRYSTYNA. **Prospects for the use of an interdisciplinary approach to the study of human rights (psychology and law).** The article analyzes the prospects of using an interdisciplinary approach to clarify and deepen the understanding of the place and role of a person and personality in the legal system of Ukraine

Keywords: person, personality, interdisciplinary approach, psychology, law