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THE DETERMINANTS OF CONTEMPORARY LAW AND ORDER

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Abstract. The research is devoted to the analysis of the essence of the shape determinants influencing the contemporary law and order. According to the authors, the following determinants influence the formation, development and state of law and order: the predominant basic values, the processes of constitutionalization and globalization, the ratio of political forces in the state during the period of its constituting, the legal culture of society, the level of economic development of the state, the social essence of the state.

The paper establishes that the change of the socio-historical epoch causes the change of social ideals, a person's goals and the goals of human society, and accordingly, the content of values, including the legal ones. The influence of constitutionalization on law and order is related to: the implementation of the basic values of state-organized society in the Fundamental Law, and then in the sectoral legislation; the formation of appropriate institutions that will ensure the realization of these values.

It is also emphasized that under democracy the correlation of political forces is manifested through the political compromise of the elites. From the axiological point of view, legal culture is manifested through the commitment of the elite and the general public to certain values. Economic progress in different countries has inevitably led to the strengthening of constitutionalism.

It is concluded that the above-mentioned factors are not stable, they change due to the dynamics of social reality. In addition, the constituting of law and order is influenced (with varying degrees of influence) not by individual factors, but by

their totality. Reflecting social reality, a set of factors does not mechanically act as the sum of them – under certain conditions, the factors can both strengthen each other's deterministic influence and weaken it through the effect of neutralization.

Key words: law and order, determinants, legal values, constitutionalization, globalization, legal culture, political forces, economic development of the state.

Introduction.

Law and order as a category of theoretical and legal science being constituted and undergoing development in a particular state, is not the result of accidental coincidence, it is determined by a number of factors, whose clarification is important for revealing the essence of this complex notion. In our opinion, the following factors influence the formation, development and state of law and order: the predominant basic values, the processes of constitutionalization and globalization, the ratio of political forces in the state during the period of its constituting, the legal culture of society, the level of economic development of the state, the social essence of the state.

The *aim of the work* of the article is to study and analyze the shaping determinants that affect the category of law and order in modern legal realities.

Methodologically, this work is based on the system of methods, scientific approaches, techniques and principles with the help of which the realization of the research aim is carried out. There have been applied universal, general scientific and special legal methods.

Presentation of research results.

The shaping determinants of contemporary law and order:

1. *Legal values.* At the present stage (XX – XXI century) we can observe an increasing scientific interest in the value aspects of law. This is explained by a number of reasons, in particular: 1) the relatively late formation and introduction of the notions of «values», «axiology», «legal axiology (axiology of law)», «axiosphere of law» into the scientific circulation; 2) the unstable character of the system of values of law, its variable nature. The value hierarchy is also of a specifically historic nature. The change of the socio-historic era leads to changing social ideals, goals for man and human society, and accordingly, the content of values, including the legal ones. In this case, there may occur the total replacement of certain value-legal components or transformation of their role and significance in the hierarchy of values, as well as the updating of the essence of the already established values [5, p. 98]. For instance, such values as equality, justice, freedom are the basis of modern law and order, although their essence is not stable.

2. *The processes of constitutionalization and globalization.* Constitutionalization, as the reflection of the tendency of juridification at the present stage, involves the active application of constitutional legal means in the system of public relations, so to say, «capturing» new spheres and industries, as well as increasing the importance of constitutional regulators for legal influence on them. The

reasons for this are rooted in the considerable complexity and differentiation (specialization) of social governance, the strengthening of relations between the state and the civil society, etc. The impact of constitutionalization on the formation of the legal system and the maintenance of the legal order results in: the formation of a mechanism of harmonious development of international and national legislation; the development of the current legislation in accordance with the Constitution; the achievement of unity of law-making and law-enforcement practices; the formation of a clear hierarchy of the current legislation by eliminating gaps and collisions in the normative legal tool; the improvement of dividing authority between the branches of power; the formation of legal consciousness and legal culture which are based on the supremacy of the constitution [8, p. 91].

Thus, the influence of constitutionalization on law and order is manifested in many aspects, but it is inevitably linked to: 1) the implementation of the basic values of a state-organized society (human rights, rule-of-law, justice) in the Fundamental Law, and further in the sectoral legislation; 2) the creation of appropriate institutions, whose activity is aimed at ensuring that these values are indeed implemented in the behavior of the subjects of public relations.

The constitutionalization of European values in the national legal space requires a clear understanding of the nature of international contemporary processes, one of which is globalization.

The essence of globalization, as a process that characterizes the modern stage of human development, is the formation of the common global economic, political and cultural space, which functions on the basis of universally recognized legal values and principles and is mediated by general organizational forms. The main impact of globalization on law is expressed in its universalization, which consists in the development of the common basic principles and institutions of law, the elimination of contradictions between national legal systems. Law in turn becomes an important instrument of globalization, since the absence of the sole legal field, the fact that it is insufficiently formed hamper globalization processes in various spheres of forming and functioning the world society [2, p. 403].

M. Savchyn points out that the mechanism of forming global law must combine the mechanisms of the implementation / transformation of international law and constitutionalization. On the one hand, it is necessary to provide the proper legitimate mechanism for delegating some of the sovereign powers of nation-states to supranational structures under condition of adhering to democratic standards of expressing the will of the people. In this context we speak of global popular sovereignty. On the other hand, the international legitimacy of the formation of global law is viewed through the prism of a certain algorithm, a sequence of steps taken to solve a number of problems which cannot be competently solved by national states today on the basis of constitutive and approximate legitimacy [7, p. 260].

The practice of EU functioning shows that in order to ensure national interests, more effective decision-making, the member states are ready to cede part of sovereign rights to the supranational level so that they might be dealt with there.

3. *The correlation of political forces in the state during the period of its constituting.* The civil society possesses a strong potential to establish and maintain sound legal order in society. Moreover, the influence of civil society on the legal ordering of public life is not limited to the functioning of specialized public institutions that promote the ensuring and protection of the rights of citizens, or those who directly participate in maintaining public order in settlements, while conducting civic actions and activities; this influence is manifested across the spectrum of establishing and maintaining legal order. Democracy and legal order are indicators of political and legal «health», the maturity of society, its political and legal culture, and in general – the level of civility, since the ability of society to live in the conditions of democracy and law makes the human community civilized [3, p. 42].

This factor is manifested, in particular, in the fact that the talk is not only about «political forces» in society, we mean the broader constituents of society – segments of the population, classes, social groups. In conditions of democracy (regardless of the degree of consolidation), the balance of political forces is expressed in the political compromise of the elites, the content of which is the harmonization of positions on the institutional component of law and order. It should be emphasized that the subject of political consensus is not static and the development of Ukraine as a law-based state after 1991 convincingly proves it.

If the narrow approach is applied, it should be noted that in the modern state, the ratio of political forces is well observed in the distribution of party forces in the parliament – the quantitative ratio of deputy factions. In the context when plebiscitary ways of securing the institutional basis of law and order are gradually receding, the parliament is the main mechanism for finding political compromise.

4. *Legal culture of society.* The talk is about its broad understanding, which «includes law itself (objective and subjective), legal awareness, legal relations, the state of lawfulness, the level of perfection of law-making, law-enforcement and other legal activities», and yet this legal phenomenon «necessarily includes a person and his / her activities» [1, p. 33].

The comprehension of legal culture and legal order cannot but take into account the existence of negative legal phenomena in society – poor legislation, legal idealism, nihilism and cynicism, criminality, other offenses and non-legal regimes that undermine the quality of legal culture, reduce the level of legal order in society [3, p. 21].

The level of legal culture influences, in particular, the technology of building the institutional component of law and order, despite the fact whether consensus among elites has been reached or not. In Spain, in 1977, the Moncloa Pact

became the model of the identified legal culture of this country's elite and of the supportive attitude of this elite towards the democratization of law and order.

From the axiological point of view, legal culture is manifested in the commitment of the elite and the general public to certain values. For example, the reformation of law and order took place in countries that were preparing to join the European Union. The process of such changes in the state-legal sphere was caused by the necessity to implement the so-called «European standards», the commitment to which became the subject of consensus of the political elite of these countries. In other words, a situation when certain consensual values are within the non-confrontational political field of a particular state indicates a certain level of legal culture that directly effects law and order in the state as a whole.

5. *The level of economic development of the state.* This factor reflects the pattern that manifests itself over a long period of time. The essence of this pattern is that economic progress in certain states has inevitably led to the strengthening of institutions of parliamentarism, the self-restriction of the state, and the strengthening of constitutionalism in general. Yet, conversely, in economically less developed countries, absolutist forms of governance had historically remained for a longer time (for example, in Russia until 1905).

Today, in all economically developed countries, the institution of constitutionalism (separation of powers, parliamentarism) acts as a pivotal characteristic of law and order.

However, while analyzing economic factors that affect law and order, it is not enough to claim that private property is the economic basis of law and order, and only market economy is able to ensure its continuous improvement. It is unproductive either to relate directly the state of law and order to the existence of different forms of ownership, type and model of an economy. In order to achieve more significant results, it is necessary to decompose socio-economic factors into such components as the degree of openness of an economy, the level of trust and the volume of social capital, the differentiation of the population by the level of income, the index of development of human potential, indicators of upward and downward social mobility, etc., which are related to the issues of law and order functioning [6]. This approach, the analysis of individual aspects of the economic factor, will allow to objectively evaluate and receive a complete picture of the impact of the economy on law and order.

6. *The social essence of the state.* The political elite's understanding of the social essence of the state affects not only the determination of the priority directions of its activity (functions of the state), but also law and order as a whole. In domestic legal science «the social essence of the state» is defined as its «specific feature, which lies in the ability of the state in the process of its functioning and development to meet the basic needs of the whole society, as well as under certain historical circumstances to create the conditions for satisfying needs and

interests of separate individuals and their communities (national, socio-economic, demographic, religious, etc.)» [4, p. 16].

Admittedly, this factor influences law and order, however, not in such a straightforward way as the ones mentioned earlier. It should be emphasized that the mechanism of mutual influence of the social essence of the state and its form is manifested not only in the plane of the «functions of the state – the structure of the higher bodies of state power», but also in the interaction of the institutional and functional constituent of law and order with the necessity to actually ensure basic social values (human rights, political pluralism, etc.) enshrined in the constitution. For example, the presence of an ombudsman among the public authorities or the prerogatives of the courts to overturn the unlawful decision of any public authority on the grounds of human rights protection prove the validity of this approach.

To summarize, it can be stated that the social essence of the state affects law and order as far as the latter act as a mechanism for its practical implementation.

Conclusions.

Certainly, the aforementioned list of determinants of law and order is not exhaustive. On balance, a number of fundamental conclusions must be drawn.

First, the above factors are not permanent, and they change with the dynamics of social reality. Clarifying their essence at every historical stage in the development of law and order (national, supranational or international) will help to determine the legal nature of this notion. Law and order is a complex phenomenon of legal reality, whose methodology requires the use of an integrated approach in the analysis of the determinants of their functioning and development. Secondly, the constituting of law and order is influenced (with varying degrees of influence) not by individual factors, but by their totality. Reflecting social reality, a set of factors does not mechanically act as the sum of them – under certain conditions, the factors can both strengthen each other's deterministic influence and weaken it through the effect of neutralization. For instance, although in Ukraine the mediocre indicators of economic development and a seventy-year impact of the totalitarian system complicate the process of establishing constitutionalism, the geographical proximity to the European legal space partially offsets these factors.

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