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SOME ASPECTS OF HISTORICAL SOURCES AND FORMING OF UKRAINIAN LEGAL CULTURE

A legal culture, as known, plays an important role in establishment and development of the national state system. Consequently, for more deep understanding of state creative processes, particularly, present problems and successes of state creative search is expedient to address to the analysis of national legal culture of Ukraine, namely its sources and forming features. In fact, the "future of legal development of society in a great deal depends on the past of cultural development of society, that particularly impossible to foresee the future of legal development without the awareness of his past" [1, p.142].

Range of problems and its separate aspects is given found a reflection in labours of V.Zhuravsky, O.Zaychuk, A.Kolodiy, O.Kopilenko, N.Onischenko, M.Orzikh, V.Pogonko, P.Rabinovich, V.Selivanov, A.Skurativska, S.Slivka, O.Skakun, Y.Todika, Y.Shemshuchenko, etc., both domestic and foreign scientists.

Legal culture, being component part of general culture can be considered in many contexts, including, in the narrow and wide understanding. In first case (wide understanding) it is possible to examine a legal culture as the public legal phenomenon which contains the major, most general results of legal experience of all society,

above all things right and sense of justice, legal relationships and legal activity, and also legality and law and order, besides, representing the high-quality level of development of legal life. In the second (narrow understanding) - a culture presents the system of spiritually legal values (legal knowledge, presentations and persuasions, etc.) which get a reflection in sense of justice of person and appear outwardly in active good behavior in all vital situations [2, p.131].

It is necessary to mark that research of history of formation and development of the Ukrainian legal culture is impossible without the objective and impartial approach to the analysis of historical process in whole. Thus, such researches will touch not only history of the state system of Ukraine but also many other powers of the world states. Because of political from commitment, maybe, most national historical scientific schools of many states, can ascertain, that such researches clash, as can see, with the row of artificial barriers and simply misunderstanding and groundless ignoring of present scientific actual material. It results in difficulty of scientific search and establishment of objective truth.

Establishment of Ukraine as democratic, social, legal and even equal among European and

other developed states of the world needs forming of the proper effective mechanisms. Successful euro integration depends on many factors, not in the last turn and from the level of the Ukrainian legal culture, efficiency of its functioning.

Modern realities of life in Ukraine affect very much in the state of legal consciousness and legal culture of society. Problems which are related to the disfigured stratification of society, social inequality and other negative phenomena force Ukrainian society for the sake of survival to overestimate social and legal values, norms and other, that it's caused above all things by discrepancy of last to necessities of nowadays. Global crisis processes, influencing on functioning of many spheres of life of Ukrainian societies and states draw the necessity of search of more effective foundations of development of all spheres of human life, particularly those which corresponds right directly.

Thus, more deep understanding of state and law-making processes, particularly in present problems and successes of state creative search needs the analysis of national legal culture of Ukraine, notably its historical sources and forming features.

Because of volume of work, we will consider only some most essential aspects of historical sources and establishment of the Ukrainian legal culture, more detailed analysis will be conducted in next publications.

Establishment and becoming of the Ukrainian legal culture took place during the large enough period of time, possibly, even being the first indeed cultural display of human civilization in universal scales.

From modern data of historians, Ukraine completed the old history (about 7000 B.C. - 430 p.A.D.) under the name Rus. Till Rus the precede Ukrainian state and his constituents had names of Arsaniya, Dandariya, Oniyara, Aratta, etc. Their cultures, as afterwards and culture of Ukraine, became part of property of universal civilization in other words state system [3, p. 3].

Already there was a high enough legal culture and democratic traditions at those times. The important certificate of it, among other, "Velesova book" where it is set that "...princes our was chosen, that power their took to care about us" [4, c. 44].

Old domestic development is characterized that on the usual (from 7000-5400 B.C) communal state system of forefathers, headed by priests, the second (from 862) accumulated, class state system under the wire of warriors. In opinion of Y. Shilova, these were the princes of the Baltic slavs detachments of which wandered an auction-military way "from Varangian in Greeks" (between coasts of Baltiki and Byzantium), while not "sit on a throne in Kyiv" - in the center of that way. It was naturally in that time of development of society. Varangians - foreigners strengthened the power by Byzantium Christianity, as not able to ground the usurpation the native faith of inhabitants [3, c.4].

The analysis of legal culture of Kievan Rus shows that it the system of verbal ordinary right came forward a forming element as method of existence and establishment of legal norms, which in course of time was transformed in the Ukrainian ordinary right. In that time legal culture went out of necessity of formal determination of norms of ordinary law and observance of them. Such sources of that time right served as basis of legal culture of Old Rus society, as unwritten ordinary right, what grounded on a legal consuetude, agreements of princes with people and between itself, and also international agreements of princes with the outlandish states, princely regulations and lessons, princely church regulations, etc.

Humanistic maintenance of legal culture of Kievan Rus comes into a notice, in fact the severe, cruel types of punishment absented in the Old Rus criminal law, particularly death punishment, corporal punishments; in place of them a criminal fine which was the widespread type of punishment in the Old Rus right was entered. Humanistic look of legislator was on problems of exceptional value of human life, inviolability of

personality and respect. In opinion of researches, the above-mentioned features of legal culture of legislator were formed not abstracted, separately from realities of life, psychology (in thereby legal psychology) population, public idea, and reflected humanistic looks, distribution among the different layers of society [5, p.142].

It is necessary to say about influence on cultural life of Rus from the side of Byzantium (adopting Christianity, auction appeal, etc.), and accordingly, features of reception of its right which affected most on church legislation.

One of the most considerable displays of forming and development of legal culture, which testifies to its high level, is "Ruska Pravda" which survived besides edition in three releases [6, p.34]. It is important sight Old Rus, and in general, all of medieval right in that time influenced on development of not only Kievan Rus but also other states, establishment of their legal cultures, both nearby and remote countries of Asia and Europe.

The next stage of development of legal culture is related to the Galicia-Volhynia state (XII-XIII), which is characterized by drawing on accomplishments of times of Rus, and also certain changes of legislation. The new release of the "Ruska Pravda" went out; there was certain strengthening of role of legal acts, above all things directed on defense of dominating social-economic relations, privileges and adjusting of housekeeping. Among the short stories of that time legislation it is possible to select collection of decisions of princes of the Galicia-Volhynia state, vault (collection) of church instructions about justice, etc.

Introduction of Magdeburg rights which was carried out in some cities of South-West Rus provided for them self-governing plenary powers that were also instrumental in forming of legal culture, though very ambiguously, certainly, in a greater degree in these cities. It is necessary to mark that "Magdeburg rights stood changes from native customs and looks which often operated next to him and substituted for him" [7, p.114].

Stay of Ukraine in composition of Grand Duchy of Lithuania, Crown of the Polish Kingdom and Polish-Lithuanian Commonwealth, indisputably affected in features of forming of legal culture, but however much "most researchers think, that almost all period from XIV till XVI, when Rus (Byelorusian and Ukrainian) earths were in composition of Lithuanian state, an ordinary Rus right, the norms of which were used not only in the noted areas but also in Lithuania" [8, p.143]. Consequently, can talk about prevailing of Ukrainian legal traditions, in spite of influencing of Lithuanian and Polish legislations (code of law, regulations, decisions, etc.).

Including of Ukraine in the complement of Polish-Lithuanian Commonwealth (after Lithuanian junction in 1569) properly influenced on development of legal culture, legal system of society, in this period, taking for basis the norms of local ordinary and Polish right with saving of singularity of the Lithuanian legal norms.

An association within the limits of Polish-Lithuanian Commonwealth resulted in rapprochement of the Lithuanian and Polish right. Exactly acceptance of the third Lithuanian regulation was instrumental in driving of the Lithuanian legislation to accordance with Polish which though not having integral character, and the norms of it spread on Polish and Ukrainian states. Will mark that next to equipping with modern amenities of public life on Ukrainian earths, Polish right provided conducting in relation to the Ukrainian population of discriminatory colonialist policy. Clearly, that such "settlement" could not be positively perceived by Ukrainians, negatively influencing on forming of their legal culture. Consequently, although in this period Ukraine was within the limits of two-way influence of the European states, their proper systems of values, development of the Ukrainian legal culture was contradictory enough, it is possible to talk about some degradation, especially in relation to its humanistic maintenance.

Very important payment and influence on development of legal culture of Ukraine have

Cossack ordinary right which remains scantily explored.

Analyzing maintenance of norms of ordinary right for the Zaporozhian Cossacks it is possible to divide into two parts: "public right" and "private right". A public law of Zaporozhian Cossacks is original regulation which regulated the major public relations of Zaporozhian society: military-administrative mode (order of election and functioning of organs of power and management), soldiery businesses, order of domain and using earth, lands, general real and mobile estate, order of the legal proceeding, set responsibility for crimes, etc. A private right regulated the relations of civil legal character: right of ownership on private movable and immovable property, various agreements, responsibility for infliction of harm and others like that [9, c.78]. The important line of ordinary right for the Zaporozhian Cossacks was his rite which had various, rich in content and vivid character. Exactly it gave an ordinary right character of vitality and publicity coming into the notice of public, keeping maintenance of ordinary norms in folk memory, testifying the rightness of the use of consuetude, the same bringing rule-making of people, forming, actually active good behavior.

The direct fixing and renewal in folk memory of ordinary norms by ceremonies-characters promoted because not only judges but also sides and society, found out perfect knowledge of ordinary right which talks about the general high level of legal culture. And the permanent use during big period of time of legal ordinary norms in form of short suggestions resulted in converting them into the rich in content formulations main principles of ordinary right and folk sense of justice were fixed in which compressed [9, p.80].

A legal culture because of act of Cossack ordinary right was formed and developed on principles of democracy, equality, responsibility and self-government, on the basis of observance of legal consuetude. Norms which intruded upon other states and conflicted with the system of values of the Cossacks could, especially at certain

historical terms, get formal acceptance, but in the activity decision of internal questions Cossacks to elimination of Zaporozka Sich in 1775 continued to follow an ordinary right.

We can establish, that establishment and development of the Ukrainian legal culture has old, difficult and contradictory history. Comprehension past allows to find out that in establishment of national legal culture both positive and negative, aspects which is possible and necessary to take into account, effectively to utilize in our time for development of legal culture of Ukraine.

Achievement of publicly legal development of Kievan Rus, basis of legal culture of which, was made by the norms of ordinary right, created by "Ruska pravda" had influence on legal and even civilization development of other states and people of Asia and Europe. The next forms of the Ukrainian state system adopted a spirit, essence of Rus culture, and its constituents, particularly legal culture.

Humanistic maintenance of the Ukrainian legal culture, as a display of universal sense of justice of Ukrainians passed ahead of that time development of other people and their states. Confirms this thesis particularly and that with the subsequent loss (on a certain period) of the state system by Ukraine-Rus, and accordingly and on forming of the national legal field, state, which utilized Ukrainian legal properties influence, above all things Moscow, Poland, Lithuania and others like that in a complete measure not able to perceive this Ukrainian humanism. Thus, carrying out partial legal harmonization cultures, the states adopted, tried to adjust legal achievements of falling into decay Kievan Rus to the necessities, doing, for example, criminally legal norms, in the side of greater cruelty of punishments and their kinds, besides having defense of some other system of values.

Lithuanian regulations, as world-wide, among other, the source of right confirms the above-mentioned theses, in fact they, the especially first Regulation (1529) is demonstrated inheri-

tance of oldrus legal norms the Russian-Lithuanian state, testify that exactly it, in the counterbalance of Moscow state, became the direct heiress of legal relations of Kievan Rus. We can see how with the loss of Ukrainian cultural basis Lithuanian regulation, during two releases gradually marked off from humanistic principles of the Old Russian right ("Ruska Pravda"). For example, a fine as the basic type of punishment played all less role (second and third releases of regulation this norm already does not contain actually), and the dominant were becoming norms, directed on physical punishments, intimidations, imprisonments, and others like that, which were not the personal touch of Rus right.

Subsequent development of the Ukrainian legal culture is characterized by greater contradiction; in fact there is a loss of the state system of Ukraine, which could not render considerable influence on its functioning in negative degree.

In association of the monarchist absolutist Russian state, and later the USSR, Ukraine with its republican democratic form of rule did not have prospects for the autonomous legal development. Violent integration processes in all spheres of public life approached a right Ukrainian to "Russian" right, and also, a difference was gradually worn away between sense of justice of Ukrainian and Russian, but ethno psychological features of peoples yet saved as a result of what and the complete loss of their originality, ethno cultural identity, did not happen [10, p. 20].

Consequently, separate political and legal state traditions, essence and deep principles of the Ukrainian legal culture, after the decline of Kievan Rus regenerated and reached the display in the days of existence of the Galicia-Volhynia state, Cossack, fight for proceeding instate system in the last century, up to nowadays. Taking into account worded, can assert that Ukraine is the plenipotentiary heiress of Kievan Rus in all aspects, above all things in cultural, and in legal and political. Undoubted is and closeness of the Ukrainian legal culture to European and its proper values. Possibly, analysis and account of expe-

rience of the Ukrainian state system, its achievements and errors, beginning from the oldest times will enable to settle modern political contradictions.

Must remember, that from that, as far as we count both positive and negative, historical experience of creation of the state, in a large measure efficiency of modern alteration of the state system of Ukraine, its development and establishment, depends our legal culture and future.

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