Human Rights and Civil Freedoms: Anthropological Approach in the Theory of Law in the Age of Information Technology

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Summary
The article aims at studying the institution of human rights and civil freedoms with due regard to the anthropological approach in the theory of law. To the greatest extent, the provisions of non-classical legal science are confirmed in the Anglo-Saxon legal family, which endows the judge with law-making functions. In this regard, the role of a person in the legal sphere is increasing. The main research method was deduction used to study the anthropological approach to the institution of human rights and freedoms. The article also utilizes the inductive method, the method of systematic scientific analysis, comparative legal and historical methods. To solve the task set, the authors considered the legal foundations and features of human rights and freedoms in the modern world. The article proves that the classical legal discourse, represented by various types of interpretation, reduces the rule of law to the analysis of its logical structure and does not answer the questions posed. It is concluded that the prerequisite for the anthropological approach in the theory of law is the use of human-like concepts in modern legislation (guilt, justice, peculiar ferocity, child abuse, willful evasion, conscientiousness).
Keywords:
human rights, the protection of rights and freedoms, state control, the separation of powers, the anthropology of law.

1. Introduction

The article is relevant since modern jurisprudence addresses anthropological issues in the context of the analysis of branches of law and individual phenomena (human rights, legal understanding, the implementation and effectiveness of law, justice, abuse of law, legal tradition, etc.) and the study of conventional law. The interpretation of legal rules, representing a stage of law enforcement, is necessary to establish (find) the exact meaning of such norms by a person of law in order to implement them. However, it is often difficult to find such meaning in law enforcement since the formation of the rule of law is defined upon adoption (the so-called will of the legislator). Certain interpretation difficulties are associated with the requirements of legal engineering, therefore the essence of legal norms does not coincide with their linguistic (text) expression. In this regard, there is a number of questions, which we try to answer. How should the law enforcer understand the legislator's intent and decipher the meaning encrypted using complex linguistic means? Is it possible to find such meaning in legal uncertainty? What guidelines can be used in a complex law enforcement situation in the absence of official interpretation? In the process of interpretation, the definition of the rule of law is associated with the analysis of its text expression, the presence or absence of systemic links between legal norms, as well as with their origin and functioning. Keeping this in mind, various methods of interpretation (grammatical, systemic, historical-political, etc.) have been developed in the theory of law. In addition, it is generally accepted that the search for a legal meaning is possible through the analysis and consideration of structural elements of the rule of law (hypothesis, disposition, sanction).

To define a legal norm in the process of its interpretation, it is necessary to use the achievements of legal linguistics. Within the framework of the linguistic analysis of the rule of law, we should consider Yu.A. Gavrilova's Candidate's dissertation "The Interpretation of Law and Its Scope" [1]. According to Yu.A. Gavrilova, the conceptual apparatus of jurisprudence should embrace the semantic field of legal norms and concepts to properly interpret the rule of law.

From the perspective of anthropology, when interpreting a legal norm, one should consider such linguistic concepts as "sign", "text" and "meaning", etc. However, the meaning of legal norms is not limited to a symbolic (text) expression. Further developing Yu.A. Gavrilova's ideas, the Belarusian scholar V.I. Pavlov [2] claimed that if the interpretation of a legal norm required the identification of such complex elements as a semantic field, the core and periphery, then theoretical work on the creation of a legal norm should determine legal formations which are not substantive, but anthropological-legal, ideological and semantic and invariably associated with the model of a person in law and their activities.

In addition to elements of its logical structure, the rule of law should contain another type of representation due to its anthropological meaning. The latter is the understanding

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of the rule of law in a unified (integral) anthropological and text meaning; highlighting a sign-text-based and semantic meaning (legal meaning) of the rule of law. This is how the rule of law functions in legal and anthropological-legal discourse. Consequently, the formation of judicial meaning involves the legal meaning, not only projected in the text of a regulatory legal act but also born at the level of the specific legal existence of a person implementing this norm.

The classical legal discourse, represented by various types of interpretation, reduces the interpretation of the rule of law to an analysis of its logical structure and does not provide answers to the questions posed. This is due to the fact that the normative order, as the content of classical legal science, does not imply an anthropological aspect of legal activity. As a result, personally significant values in law are ignored, and many issues of modern jurisprudence, including the interpretation of the rule of law, can no longer be solved through classical approaches.

The anthropological approach considers the rule of law, necessary for its interpretation, in the ontological context. This is the peculiar feature of approaches to classical legal understanding within the logical structure of the rule of law. Such approaches to the rule of law have been formed in various legal traditions, and are applicable to national and international legislation.

A prerequisite for the anthropological approach in the theory of law is the use of human-like concepts in modern legislation (guilt, justice, peculiar ferocity, child abuse, willful evasion, conscientiousness). At the same time, the emphasis is laid on the ontological structure of the rule of law, which reflects the way it functions and is implemented in legal reality.

Within the anthropological approach to law, the latter is revealed when a person faces the rule of law and the fact of legal life. At this point, the normativity of law is measured in the context of its human-dimensionality. For the anthropology of law, human-dimensionality (the fact of legal existence) is the key criterion for measuring legal aspects since law is valuable not so much for its abstract essence, but for ensuring legal existence as the person's specific life in legal reality [2].

A sign- and text-based meaning is a documentary expression of the rule of conduct in a normative legal act or other sources of law. A legal meaning should be regarded as the actualization of the symbolic expression of the rule of law by the subject of understanding, which is conducted at the level of legal existence based on the personality traits of the subject.

An anthropological aspect can also be traced in classical legal science with due regard to the personality traits of a law enforcement officer. Scholars consider the role of a person in law as an element of legal reality, i.e. the personality of a law enforcer (interpreter). In modern legislation and legal science, people can have different impacts on law that are not typical of classical normativity. However, adherence to normative legal understanding does not allow jurists to go beyond the scope of the study and revise the teachings of classical jurisprudence. It is obvious that the anthropological approach to the interpretation of the rule of law inevitably entails a revision of many provisions of classical legal science (constituent elements of an offense, the interpretation of the rule of law, the concept and signs of law, etc.) [3].

2. Methods

Using the main methods of scientific research (systems analysis, imperative and deductive methods), as well as a thorough study of the anthropological and legal nature of the institution of human rights, we have concluded that the anthropological approach reveals law in the situation when a person gets familiar with the rule of law and the fact of legal life. At this point, the normativity of law is measured in the context of its human-dimensionality.

The main research method was deduction used to study the legal nature and anthropological foundation of human rights and freedoms in the modern world.

3. Results

It can be argued that the provisions of non-classical legal science are confirmed in the Anglo-Saxon legal family, which endows the judge with law-making functions. In this regard, the role of a person in legal reality increases. Perhaps this explains the increased interest within the sociology of law in studying the personality of a judge, the dependence of a judicial decision on the judge's mood, the impact of the social origin of judges on their decisions, the behavior of police officers, the social background of lawyers in the United States, etc. To address these issues, we should refer to the achievements of non-classical legal science that have a number of advantages:

1) "The theory of law is no longer regarded as abstract knowledge proclaiming the truth in law but, first of all, as a tool for solving a legal challenge";

2) Within the framework of the anthropological approach, the legislator's meaning symbolically expressed in a regulatory legal act is not denied. In addition, the meaning of a sign is considered through the interpretation of the law enforcer, i.e. the scheme of understanding the rule of law by an individual in the process of applying a particular law;

3) Currently, provisions of the anthropological approach, including the interpretation of the rule of law, are confirmed by law enforcement and are reflected in law enforcement traditions that clearly represent the role of a person in law in the anthropological context;

4) The doctrine of structural elements of the rule of law within the anthropological approach (in combination with classical ideas) allows to establish the exact meaning of

legal norms to properly implement it using the following measures:
– To determine logical elements of the rule of law: conditions for applying some law (hypothesis), its content as the rule of conduct (disposition) and consequences of its violation (sanction), which do not coincide with the structure of one article (articles) of a regulatory legal act using legal techniques, i.e. by formal-logical or structural-logical analysis within the framework of classical normativity;
– To reveal the legislator's meaning through text analysis of the rule of law (the classic concept of the so-called will of the legislator), in a situation of legal uncertainty, with due regard to the interpretive activities (the theory of interpretation) obtained on the basis of legal thinking and personal qualities of the law enforcer (interpreter), i.e. through structural-ontological analysis within the framework of the anthropological approach [1].

In a general sense (without implying a scientific definition), law can be defined as a super-complex, multifaceted, multi-level, comprehensive, and all-pervasive mega-regulator, a mechanism of social organization and control that ensures political stability and streamlines the most important spheres of society and state life in accordance with goal achievement [4]. It is methodologically justified to begin the analysis of national law with the constitution as the fundamental law of any country. In a concentrated form, the constitution accumulates the historical experience of state formation and contains provisions of the current socio-political doctrine concerning such fundamental issues as the constitutional system, form of government, territorial and state structure, political regime, the competence of state bodies, fundamental rights, civil freedoms, and obligations. It consolidates the foundations of sovereignty and territorial integrity, determines the foundations of democracy, and establishes the main principles of state and social life. The constitution is the core of any legal system and has the highest legal force, i.e. all legislative acts are issued on the basis of and in accordance with the constitution. It is worth mentioning that the constitution is not just a legal act (even if it is of special state significance) but a political, legal, spiritual, and ideological document. Scholars have been addressing these aspects of the constitution [5].

The constitution plays a special role since it contains the entire set of legal foundations (initial provisions), namely, norms, principles, values, interests, ideological attitudes, goals, ideals, i.e. everything that is necessary to ensure national security, socio-economic stability, preserve civil consent and develop modern society. At the same time, it seems that the primacy belongs to the state ideology which not only determines the current socio-economic model but also articulates national interests and indicates the further development of society [6]. The quintessence of the state ideology is the national idea, reflecting the highest life meanings, the spiritual bonds of the people, and the pillars of its statehood. It is necessary to rethink a person as a social actor, creating and reproducing legal reality through their actions and mental (psychic) activities [7].

4. Discussion

Within the semiotics of law, axiological issues have been analyzed since the emergence of this science. Chapter 12 of "The Law as a System of Signs", written by the founder of the Piercean school of the semiotics of law, Professor of the University of Pennsylvania Roberta Kevelson [8], explores "representations of ethics, morality and values in law". While noting that ethics and law were combined in Western history by Aristotle, the scholar emphasized the difficulty of finding ethical concepts and justice in the Romano-Germanic and Anglo-American (common law) legal systems developed from the Roman law. However, R. Kevelson concluded that freedom and responsible choice represent the unification of ethical principles and existential acts in law. Most scholars [9,10] highlighted the interaction of a general understanding of a person and their manifestations in various spheres, as well as the objective presence of anthropological and legal knowledge in the structure of mutually complementary levels (directions) of information that has its own subject-methodological specifics and names, united by a single methodology (paradigm). However, the above-mentioned issue is usually articulated at a particular but not at the ultimate level of abstraction as issues related to the status and differentiation (structuring) of various levels of anthropological knowledge, disclosure of the scope, and correlation of various terms. In particular, V.A. Bachinin [11] associated the creation of a single socio-legal anthroposphere with joint philosophical and legal aspects of the anthropology of law fastened with symbolic, normative, values-based, and semantic ties into the integral world of the human being.

The anthropological aspects of jurisprudence reflect a number of complex processes and patterns in the development of scientific knowledge. Thus, N.S. Pilyugina [12] mentioned that the anthropology of law was influenced by all methods of forming scientific knowledge, linking jurisprudence and anthropology, using methods and provisions from other areas of knowledge. I.L. Chestnov [9] believed that legal anthropology formed due to the internal differentiation of social anthropology, on the one hand, and the interdisciplinary interaction of the latter with jurisprudence, primarily with its branches (legal theory, legal history, and comparative law), on the other hand.

For example, V.G. Lavskii [13] considered the anthropology of law as a result of the differentiation of the general theory of law and philosophy, as well as the integration of knowledge and epistemological methods of jurisprudence, ethnology, sociology of law, etc. Therefore,

the appeal to anthropological jurisprudence requires the identification of the initial theoretical and methodological principles, parameters and axioms of knowledge, the integration of a person into the subject field of legal science, the connection between jurisprudence and the chosen external environment (philosophy, sociology, theology, etc.), which predetermines the being (understanding) of a person and causes qualitative differences in the structure of subject-methodological phenomena. Simultaneously with the determination of such hypotheses, prerequisites, and axioms, people also seek (define) the basic methods (principles) of cognition and its heuristic potential, designate the subject-methodological phenomenon being formed (legal anthropology, anthropology of law, anthropological approach, etc.), reflect its role in the system of interdisciplinary relations of legal science.

The human-dimensionality of law requires the development of new methods for the cognition of legal phenomena, including the communicative theory of law by A.V. Polyakov, dialogical anthropology of law by I.L. Chestnov [9], and legal-anthropological analysis by V.I. Pavlov [14]. We consider the stated topic in its context. Despite different approaches, the anthropological discourse in this article is based on the criticism of classical rationality and the normative interpretation of the subject of law.

According to V.I. Pavlov [14], the legal-anthropological analysis consists in "the analytical identification of all legal elements and their focus on the actual legal existence of a person in law", as well as the development of new terms, including thirteen "basic language units": "person in law" ("person in legal reality"), "legal person", "legal entity", "personality" ("personality in law"), "personal constitution" and "identity". V.I. Pavlov started from a critical attitude to the new European philosophy that exalted the natural foundations in any person, defined them as essence, and formalized them in natural rights. This concept of anthropology of law is based on the principle of energy (S.S. Khoruzhiy) and the Eastern Christian idea of personality, which fills the concept of a "person in law" with normative ("legal entity") and anthropological ("legal person") aspects in understanding the legal existence of a person, as opposed to the traditional concept of a subject of law, "implying only the normative aspect of human existence in law". The scholar proceeded from the assertion that one's personality is not reduced to natural properties, it is a way of human existence. The new model of a person also includes a personal constitution understood as the form-building structures (properties) of a person, realized in the way of their existence and personal identity that is an act of self-certification in the person's mind through life techniques (subjectivation practices). Their diversity presents a subject of law as a developing person who realizes themselves in a certain socially significant environment [15].

A quite logical question arises: do human rights enshrined in national legislation and international acts belong to the discourse that forms legal personality? In the last two decades, much has been said about the devaluation of rights, the loss of their significance due to ineffective multiculturalism, global migration, the rejection of traditional values, the neglect of formal equality, and, according to L.Yu. Grudtsyna [16], double judicial standards of supranational institutions.

We should also emphasize the multi-modal expression of legal values. The concept of "legal existence" is not typical of the traditional general legal theory that mainly utilizes the concept of "legal behavior". Nowadays a person and their legal existence are gradually moving from actual reality to a virtual one. The latter is acquiring legal features regardless of the legalization of this reality by state (primarily due to the social significance of virtual operations and their consequences). This process is objective, and it is only growing in scale due to the increasing digitalization of the social sphere. Consequently, the traditional consideration of law as a means of social control or social engineering at the present stage of social development gradually becomes a thing of the past, giving way to the concept of technology as social engineering and the main social regulator [8].

5. Conclusion

From the philosophical perspective, law is just the storage of socio-humanitarian values, the basic principles of social communication, and rational goal setting that determine the general vector of social development. In view of the foregoing, the Pythagorean idea becomes more understandable that justice is like the only geometric figure that has countless combinations of figures differently located but having the same value of the square root.

What is this environment for a person in the context of the stated topic? On the one hand, this is a set of fixed capabilities represented by the national legal system, formally expressed in human rights and civil freedoms. On the other hand, these are personal ideas about legal capabilities that can be used not only to acquire material goods but also to develop one's individuality, disclose one's essence through self-knowledge, self-understanding, self-determination, and self-realization, which is absolutely impossible without overcoming the proposed practices, i.e. the ability to transcend, which V.I. Pavlov for some reason excluded from the process of deploying a legal personality and gaining the fullness of human existence.

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