

Philosophical and legal analysis of the discursive concept legal «legal order/social order»

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Abstract. In the article legal order is studied through the discursive concept "social order/legal order". It has been established that legal order and social order have the following differences:

- 1) social order — is mainly natural self-organization of society and legal order — is an accurate organization, orderliness, consistency created by such an institution as a state;
- 2) scope of control of social order is much wider than of the legal order since it regulates not only legal relations but also family, religious, moral relations, etc;
- 3) legal order, unlike social order, depends on the current power, legal ideology, legal regime in a particular state. Social control is known to the humankind since creation of the first social institution – family.

Problem statement

Reference to the notion «legal order» is not accidental since this notion is fundamental and decisive in the issue of achieving welfare, gaining stability and security in society. In addition, in order to define this multifaceted notion, it is necessary to address and understand many theoretical issues, in particular: determination of similarities and differences in social and legal order. This research will allow to gain insight into the problems of legal order and look at them more widely.

Status of the research. The following scientists have been studying social order and legal order: D.V. Andreev, T.G. Andrusiak, V.V. Borysov, L.A. Morozova, G.L. Monarstyrskyi, V.S. Nersesiants, N.V. Panaryna, V.I. Poklad, S. S. Senchuk, O.N. Sysoeva, A.L. Stupak, V.N. Kazakov, A.F. Kryzhanovskiy, I.P. Krysiuk, K.V. Kondovta, I.I. Khomyshym etc.

The purpose of the article is a study of legal and social order, their correlation.

Presentation of the main research material. Legal order is the core of the social order and characterizes in it those qualities of orderliness which are the result of action

(realization) of law. Legal order is a part and at the same time a legal form of a way of life, meaning legal mediation (legal aspects) of certain forms and methods of life. Such understanding of legal order allows us to construe legal order as something right, fixed, organized. The prevailing position is that the term «legal order» is used to characterize the state of organization, orderliness of legal relations which arises as a result of their regulation by legal rules and the implementation of such rules [1, p. 457].

The same point of view have Y. A. Vediernykova and V. S. Grekula who believe that «... the legal order is an important

structural element of social order which means well-established state of the whole set of social relations, regulated not only by legal but also by all other social rules. If strengthening and maintenance of legal order is associated with implementation of the legal rules, then in the maintenance of social order an important role belongs to other social rules – morals, corporate rules, traditions and customs» [2, p. 195].

V. D. Andreyev distinguishes two main theories of comprehension of legal order as an element of social order:

1) Based on the theoretical principles of the XVII-XVIII centuries and was grounded on the fact that natural state of a human is the basis for transition to a legal status in general and to public authority and public law in particular. According to this theory, order is a regulator of interpersonal relations which creates a possibility of a philosophical understanding of a person as a citizen, his rights and obligations. It means that this legal phenomenon is a projection of the generic individual, of his natural and social qualities, and is associated with a political body, a community of united individuals, which consists of state and private institutions, rules and laws governing social life.

2) It was formed in the middle of the XIX century the representatives of which are A. Comte, G. Spencer. Essential social ties that determine the life of society as a social whole were distinguished in the structure of the order. [3, p. 43].

Despite close affinity of legal order and social order, legal order should be distinguished from a similar but not identical phenomenon – social order. Social order, like legal order, is characterized by organization, orderliness of social relations but social order, unlike legal order, is formed under the influence of not only legal but also other social norms: rules of morality, customs, corporate rules, *etc.*

Social order is the state of regulation of social relations, based on implementation of all social rules and principles and is mainly provided by the power of social influence. At the same time, connection between social order and legal order is bilateral: on the one hand, legal order is the most important part of social order, and on the other – the state of

social order determines in many ways the state of the legal order [4, p. 383].

It is necessary to agree with the researcher of legal order S. S. Senchuk who believes that «to achieve a stable legal order exclusively by legal means – is a difficult, to be more precise, an impossible task. Legal order must be based on a stable social order, on the system of available, effective, demanded by society at a certain stage of its development of social relations and means their regulation. Only under such conditions, a stable legal order in the state is possible, and the state's duty, in this case, is to guarantee provision of these social regulators by the power of the state» [5, p. 44].

At the same time, I would like to draw attention to the differences between legal order and social order. Such differences are as follows:

Firstly, legal order and social order do not coincide in their genesis, origin, evolution. Historically, social order arises together with the emergence and formation of human society as its organic part and condition of existence and legal order as a legal phenomenon originates much later, namely, when the law, laws and the state arises.

Secondly, legal order and social order have different legal frameworks. Legal order is based on the law and is ultimately the result of its implementation, and social order is a consequence of compliance not only with the legal but also with all other social rules of society.

Thirdly, legal order and social order are provided differently. Legal order is based on a special apparatus of coercion which is provided by the state, and social order – by the force of public opinion, measures of non-state influence which is provided by social institutions and the whole society.

Fourthly, in case of violation of legal order and social order, various consequences arise since in the first case legal sanctions are applied, and in the second case – only measures of a moral character.

Fifthly, legal order and social order are not the same in their scope, content, elemental composition since the last is wider than the first due to the above reasons [6, p. 213-214].

The following differences between legal order and social order should be added to those mentioned above:

1) social order — is mainly natural self-organization of society and legal order — is an accurate organization, orderliness, consistency created by such an institution as a state;

2) scope of control of social order is much wider than of the legal order since it regulates not only legal relations but also family, religious, moral relations, etc;

3) legal order, unlike social order, depends on the current power, legal ideology, legal regime in a particular state.

When analyzing the differences between social and legal order, V. I. Poklad states that «legal order, in contrast to the natural self-organization of society, is always artificially created, deliberately projected. Secondly, if social order is formed by a majority, then legal order is created by a minority: «laws that impose a ban on certain forms of behavior and oblige citizens to act otherwise, are adopted by legislators who have received a place with the support of the groups lobbying their interests» or to be franker: «laws are the rules defined by the authorities as principles that citizens must follow». Thirdly, social order is maintained only by the influence of public opinion, voluntary conformity of a majority and legal order — by power of state coercion» [7, p. 76].

Despite these differences, I would like to underline that social order and legal order cannot exist without each other. And there are several reasons for it:

1) legal order arose on the basis of social order;

2) legal order is a subtype of social order;

3) legal order depends on the observance of social order;

4) legal order should not contradict social order since such a conflict will sooner or later undermine the authority of legal order in society;

5) the purpose of legal and social order should be the same;

6) legal order and social order must intertwine and the point of intersection must be bilateral social control. On the one hand, legal order must apply legal means of influencing people, *id est*, legal control but, on

the other hand, society must also influence the state and it should do so through legal self-organization (by certain authorized there to individuals, organizations, institutions).

Consequently, emergence and implementation of legal order act as a regularity of social development since society has an urgent need to organize the most important spheres of human coexistence which is achieved mainly by legal means. Any disorder and lack of system, unfettered force and arbitrariness, that is chaos, immediately prejudices the interests of society and a human causing serious harm. Therefore, only a precise organization, orderliness, consistency can ensure the success of the case [8, p. 310-311]. We should agree with V. V. Borysov who emphasizes that society needs to regulate the most important spheres of human coexistence by legal means since any disorder and lack of system, anarchism and immorality immediately prejudices the interests of society and a human, causing significant harm [9, p. 189].

The notion «legal order» reflects «intellectual searches for social and ideological foundations of integrity of society, integrative values and rules that allow harmonizing social relations to overcome chaos, get out of crisis, crisis, obtain stability and predictability of social relations» [10, p. 719].

A. M. Vasyliiev states that «legal order» belongs to the categories of basic concept list of the theory of law along with such the categories as «law», «system of law», «legal rule», «legitimacy», «form (source) of law», «law enforcement» and «legal relations». Legal order which acts as the final unit of the basic concept list means to be a consistent «disclosure» of the essence of law and illustrates the process of ascension in cognition of law from abstract to concrete. Category «legal order» logically summarizes social results of legal regulation and gives an answer to the question about the state of regulation of social relations through the law. Thus, legal order is a general legal criterion of effectiveness of legal regulation since the results of the latter become apparent during comparison of legal requirements with the general state of legal order [11, p. 179-180].

From the point of view of V. V. Borysov, legal order is a complicated socio-legal category in which the motives of legal and

non-legal nature of governmental and generally social content closely intertwined, and social content are closely intertwined, and interests of different groups, layers, citizens of society interact; it is objectively and subjectively conditioned state of social life, characterized by internal coherence, regulatedness of the system of legal relations, based on regulatory requirements, principles of law and legitimacy, as well as on democratic, humanistic and moral requirements, rights and obligations, freedom and responsibility of all subjects of law [8, p. 310-311].

In modern conditions, objective necessity of legal order consists in the fact that it is impossible to solve the tasks set before the society without it, namely: successful implementation of economic reforms, formation of market relations, development of production; formation of civil society and a law-governed state; effective operation of the institutes of democracy, political system; enjoyment of the human rights and freedoms, strengthening of their guarantees; systematic work of the state apparatus, all of its units, bodies, structures, officials; fight against crime, legal arbitrariness, corruption, terrorism; provision

of the law-making, law-enforcement and administrative process; achievement of political and legal culture and increase of legal consciousness of an individual and society as a whole [6, p. 204].

Legal order is objectively necessary for any state-organized society since people anyway enter into legal relationships with each other. These may be relations of coordination of their joint activities which are governed by the relevant legal rules. Any interaction requires a clear organization, control and establishment of a certain subordination between its participants. These are the so-called subordination and control relationships [12, p. 9-10].

The following factors influence strengthening of legal order and social order: level of legal knowledge of an individual, social groups, the whole society, level of their legal consciousness legal and general culture, attitude to the values of society, moral consciousness, etc. The issue of strengthening of legal order must be solved in together with the issue of social order because without social order there will be no legal order, without a stable, strong legal order it is impossible to establish social order [13, p. 252].

Conclusion

Social and legal order – are two complementary notions. Despite the differences in social and legal order (arising from the fact that social order is mainly a natural self-organization of society and legal order is a clear-cut organization, orderliness, consistency created by such an institution as a state), attention should be paid to the fact that legal order and social order must intertwine and the point of intersection must be bilateral social control. On the one hand, legal order must apply legal means of influencing a human which means legal control but, on the other hand, society also must influence the state and perform it through legal self-organization (by certain authorized thereto individuals, organizations, institutions).

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