LAW-BASED STATE: PHILOSOFIC AND LAW DISCOURSE

In June 1996 already, the legislative body of the Ukrainian state, having adopted the Basic Law, consolidated the vector of the state development, in particular, the development of a law-based state (Article 1 of the Constitution of Ukraine). After that, a large number of dissertations were submitted (both for obtaining the degree of a Ph.D., and for the degree of Doctor of Science), not a single monograph was published, and a number of scientific articles were published on the subject of a law-based sate and directions of the development of Ukraine as a law-based state. There is a paradox: on the one hand, Ukrainian legal literature, mass media in Ukraine, and politicians constantly focus on the activities of a civil society in Ukraine, on the other hand most people recognize the failure of such a society and, moreover, indicate that it is not characteristic for our mentality and they refer to reports of foreign media, decisions of the European Court of Human Rights on passivity of the Ukrainian citizens in the political sphere, insufficient level of their consciousness, etc. Taking into account the abovementioned, and also taking into account the provisions of Art. 1 of the Constitution of Ukraine it can be argued that the question of a law-based state and a civil society remains relevant to the Ukrainian science. In addition, more than a quoter of century has passed since the proclamation of Ukraine's independence, which, in general, is a rather long period of time, which allows us to draw some conclusions about the achievements on this path (taking into consideration the fact that in the postmodern period the intensity of changes is rather high).

Therefore, the purpose of this paper is to highlight the modi of a law-based state and a civil society in the context of Western and Eastern values.

Of course, few people will deny that it is still impossible to recognize Ukraine as a law-based state today. Thus, over the past five years, Ukraine ranks the first place in terms of appeals to the European Court of Human Rights (can not be considered an exception the year of 2017, given the decision of this Court in the case of Burmich and others v. Ukraine, according to which more than 12,000 cases were removed from the list of cases of the Court and transferred to the Committee of Ministers of the Council of Europe). At the same time, the vast majority of cases against Ukraine concern to such fundamental rights as freedom from torture (Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms), the right to liberty and personal inviolability (Article 5 of the Convention for the Protection of Human Rights and

Fundamental Freedoms), the right to a fair trial (Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms).

According to the results of the World Democracy Rating (2017), Ukraine is classified as a hybrid regime (among four types: full democracy, imperfect democracy, hybrid regime and authoritarian regime). At the same time, an important factor influencing the fact that Ukraine was not recognized as a state with imperfect democracy was the state of functioning of public authorities (which can not be a surprise given my pre-mentioned statistics of appeals to the European Court of Human Rights).

According to the well-known organization Freedom House Ukraine belongs to partially free countries (this institution distinguishes between all three categories of states: free, partially free, non-free). At the same time, Freedom House emphasizes the lack of involvement of the authorities in legal responsibility for large-scale corruption at a high level, undermining the popularity of public authorities and influencing certain reform efforts; in the area of civil liberties – political pressure and attacks on journalists threatening freedom of the press [1].

In 2017, Ukraine's fall in the ranking of human freedom (132 place – the last among the European countries), taking into account such indicators as: security, the rule of law, freedom of religion, freedom of speech, the possibility of development.

Ukraine is referred to states with mostly non-free mass media.

Heritage Foundation removed Ukraine in 2017 to states with a largely non-free economy (44th – the last place among the European states and 150th among 180 countries in the world). Heritage Foundation notes the need to improve anti-corruption fight, development of capital markets, privatization of state-owned enterprises, and improvement of the legislative framework and the rule of law. "There are serious problems related to corruption in the courts, one of the weakest and least trustworthy state institutions in the country. Judges are largely regarded as business advocates and other powerful sources of influence. Corruption remains a serious challenge for Ukraine, and the progress in improving accountability is rather slow" [2]. Ukraine is between Cameroon and Sierra Leone, ahead of only the African states, Venezuela, the KPDR and some others.

The given ratings allow us to draw conclusions about the activities of the public authorities and their compliance (in this case – inconsistency) with the activities of the authorities in a state governed by the rule of law.

At the same time, I focus on another aspect of the matter, since a law-based state provides for not only certain requirements for the activities of public authorities, but also for the population of such a state. A law-based

state can be developed only when the values of human dignity and tolerance will be prioritized to the population. Results of the sociological national study of the Democratic Initiatives Foundation named after Ilko Kucheriv, with the support of the United Nations Development Program in Ukraine and on the initiative of the Office of the Ombudsman of the Verkhovna Rada of Ukraine on Human Rights and the public unity “Human Rights Information Center”, point out the gaps in human rights sphere and the level of tolerance of the representatives of the expert community themselves (civil servants, police officers, judges, teachers, journalists and human rights activists). Herewith, only 25 % of Ukrainians called tolerance as a value. Only 35 % of Ukrainians said that human rights are more important than material wealth [3, c. 8, 17, 30].

For Ukrainian society, despite the perception of the idea of equality of all human beings regardless of "race, color, political, religious or other beliefs, sex, ethnic or social origin, property status, place of residence, language or other grounds" whenthe question is about the peaceful gatherings of sexual minorities, the constitutional prescription immediately goes to the background. Significant in this aspect is the discussion of November 17, 2016 in the Verkhovna Rada of Ukraine of the draft Law on Prevention and Combating Domestic Violence. One of the controversial issues was the exclusion of the concept of "gender" and "sexual orientation". I. Lutsenko stated on this subject that "the concept of" sexual orientation "will be regulated, based on the Christian values of this hall"; Y. Miroshnichenko stressed that "the only thing that the deputy minister and our colleagues who came before me draw their attention to is the position of the All-Ukrainian Council of Churches, where it is a matter of introducing exactly categories of gender and sexual orientation through these laws. This is unacceptable in our society "; I. Mosiychuk pointed out the following: "This bill contains things that are unacceptable for the Ukrainian society, which are unacceptable to the Ukrainian Church, which are unacceptable for every Ukrainian, who is aware of this. Therefore, the faction of the Radical Party will not support this law, and the bill. It is suggested that the draft law be returned to the committee» [4].

I note that the concepts of civil society and a law-based state are the achievements of the European (continental) culture. The doctrine of the rule of law is inherent for England, for example. If we talk about the Soviet Union and, accordingly, the states in the post-Soviet space, then it should be pointed out such a correspondence of these theories as legitimacy. And to this day, a significant amount of legal literature promotes the rule of a law and legitimacy as the principle of law, despite the fact that, firstly, the

current legislation clearly distinguishes between the notions of "law" and "a law", and secondly, the practice of the European Court of Human Rights points to the possibility of neglecting the provisions of "a law", if it does not correspond to "the quality of the law", that is, the rule of law. In this regard, the words of V. Andrushchenko are appropriate: "Totalitarianism keeps people with strong teeth and does not want to part with its victim. Its tentacles hold back the established social institutions, principles and technologies of social organization, and most importantly the souls of people who are accustomed to the idea that one can only live in such a way, and not otherwise, that there is no other freedom, that the true democracy is carried out not as a democracy, not as the will of the people, but as the maintenance of his (people's) good, even if it is necessary to act against his will" [5].

The anti-democratic Soviet legacy continues to gravitate towards the Ukrainian society. For example, manuals and textbooks on the theory of state and law – the fundamental legal science, which performs a methodological function in relation to other legal sciences, have not changed much since the times of A. Vyshynsky (who was considered to be the founder of the "Soviet law"). This is indicated by SP Holovaty in the extremely important and unique (concerning methodology, essence, the contents of the rule of law in the aspect of liberal values) paper today in Ukraine, the "Rule of Law" [6].

In recent times, the number of scientific works on comparative law has considerably increased. And it's natural. Integration processes in the world explain this. At the same time, it is well-known that various states (societies) (their groups) experience various values, different understanding of law. In connection with this, the term "legal civilization" is quite common. That is, it can be affirmed that law is an element of the culture of society, one of its achievements, which is quite static. After all, the publication of the law, the proclamation of the corresponding principle, for example, the rule of law, the law-based state will not change the mentality of a society. Therefore, "blind borrowing" of uncharacteristic elements, institutions, and ideas of another civilization that are not characteristic for a certain society is meaningless. This is the same as, for example, to transfuse a human being blood of incompatible groups, the consequence of which is well-known.

In connection with which the following words of S. Holovaty are urgent: "Specifically, the German phenomenon is the so-called Rechtsstaat, which (by analogy with “specifically the English product” in the form of “the rule of law”) is also considered “a legal form of the system built on economic and political freedom» [6, c. 808].

For the Ukrainian society are characteristic two tendencies (ideas):

1) the idea of escaping from the state;

2) the idea of paternalism.

This situation is explained quite simply – the mentality of the Soviet man continues to gravitate over the Ukrainian society, the ideology of communism still lives in Ukrainian citizens. And, accordingly, the features of "homo sovieticus" are the features of "modern" Ukrainian. Having understood this, having realized this, one can outline the directions of Ukraine's development. Thus, the question of "homo sovieticus" is quite relevant to us. Therefore, one can not but mention the unsurpassed researcher of the soviet man and the soviet society – Alexander Zinoviev.

Alexander Oleksandrovich quite successfully determined the reason for updating the idea of civil society in post-Soviet states: "With the abolition of socism and the establishment of psysm, Ibansk walked the western way. And since in Western countries there is a Civil Society, Ibansk ... decided to take urgent measures in order to build such a society in Ibansk" [7].

However, once again, it should be emphasized that civil society can not be formed by adopting relevant laws, obtaining instructions from authorities, etc. Civil society is a constant opponent of public authorities, which is constantly strugling against the state. Herewith, civil society is a consequence of the interaction of free, equal, conscious, active citizens who are self-organizing to uphold their rights. Therefore, the person of such a society is endowed with legal consciousness, and his/her behavior is socially active. For "homo sovieticus" other features are characteristic – "there are no convictions. There is only a more or less stable reaction to all that we have to deal with – a stereotype of behavior. Convictions are the features of a Western, not a Soviet man. ... Will homosos organize and hold protest demonstrations? No, of course, he will not.. Homosos is trained to live in relatively bad conditions, ready to bear out difficulties, constantly expects still more bad, humble before the authorities ... " [8].

Therefore, the decision to build "civil society" is taken by the authorities, and not by "homo sovieticus", besides, not in contrast to the first one, but for helping it, under its control, and as its structure. Although it is clear to a person with common sense that such an institution can not be considered an element of civil society, since the latter institutions are created precisely against the public authority and, therefore, can not be its branch, can not "approve an appeal to the head of the state in which to assure the latter about the intentions of giving him all kinds of help".

Public associations should act as a kind of intermediary between society and the state. However, "the intermediary between the two social

objects may be only such a third object, which does not depend on these two precisely in terms of mediation" [9].

Describing the current state of the post-Soviet states, we can not again but use the words of O. Zinoviev on the state of permanent reformation. Moreover, as the author points out, there have never been so many reforms in the history of mankind as here. The reforms covered all spheres of life of citizens, starting with the alphabet. Reforms have become a constant component of life. The goal of reforms, of course, is to improve the life of society. Although, "nobody believes in these words. They are not a deception. There is a kind of ritual, etiquette, formalism here. ... experienced ibanets' knows in advance that all this is a play of verbiage. But this is not something completely meaningless and in general unnecessary. This spectacle is our reality" [7].

Usually, in transitional periods of development of society, issues of the means of streamlining social relations are actualized. In particular, it is about the regulatory opportunities of law, human rights as an inherent part of a person, and so on. This, in turn, is a factor in intensifying the scientific search for the above-mentioned phenomena, as well as the phenomena that are the subject of this study. I note that within the domestic legal science the question of understanding and structure of legal consciousness is discussed, and the european legal science operates mainly with the other notion – sence of justice. Are these phenomena the same that are denotted by these concepts?

In my opinion, these terms denote different phenomena. And the key to understanding these phenomena is the understanding of law. Domestic legal science does not operate with the notion of "sense of justice", since to this day it is based on the normative understanding of law which connects law with precriptive texts. According to this approach, though it may be noted about the fairness of law, but this provision is not actually applied (besides, within this approach, society may not always adequately perceive justice, so it is the prerogative of public authority that accepts these texts). Therefore, legal awareness is understood, mainly, through the perception of texts of normative legal acts. The emphasis is placed on the intellectual component. To what results could cause such an understanding of law (and, accordingly, of justice), the world saw on the example of national-socialism in Germany and communism in the Soviet Union.

The term sence of justice places emphasis on the emotional component, on the "people's spirit", "divine setting" and so on. In this context, one can not but mention the psychological school of law. The most well-known representative (the founder) of the psychological direction in law is Leon Petrazhitsky (1867–1931), a graduate of the University of Kyiv,

is the most well-known representative (founder) of the psychological trend in law. L. Petrazhitsky in his paper "Theory of law and state in connection with the theory of morality" indicates that the practice of lawyers has little in common with the understanding of law. First of all, as the thinker points out, the use of the word "law" by lawyers (as well as by many other people) of the word "law"and their perceptions about law are based on a naive and projectional view, on the adoption of emotional fantasies as valid legal phenomena, namely, norms, "dictates" and "prohibitions", applied to subordinate to law legal relationships between individuals, their rights and responsibilities. This, in turn, leads to the emergence of a number of unsolvable essentially problems about the nature of the corresponding imaginary realities, which are overcome through the use of various fictions and other arbitrary constructions, in particular the adoption of various non-existent "wills", "the only will" of the state, general recognition, etc. At the same time, the "set of rules of law" lawyers call "objective law" or "law in an objective sense", and the legal relationships between the subjects, their rights and responsibilities (which, as L. Petrazhitsky points out, they consider as three various phenomena) are called "subjective law" or "law in the subjective sense". Accordingly, lawyers distinguish between two types of law and it would be necessary to determine the nature of the law, which combines both objective and subjective, based on this logic. But this is not done. Instead, an objective law is defined as a system of rules of law, and therefore subjective law is considered as something insignificant, secondary, optional, an abnormal addition to the "objective law".

These provisions allowed L. Petrazhitsky to conclude that the understanding of the concept of law should be based on a different view, it should proceed from the denial of the real existence of what lawyers consider to be present in the field of law and shifting the emphasis on finding real legal phenomena as a special class of complex, emotionall and intellectual mental processes, therefore, one should proceed from the sphere of the psyche [10, c. 84].

In a review of the work of Markus D. Debbard "Feeling of Justice" David S. Vroble points out that for society as a whole, the concept of "justice" is of great importance. This is an abstract idea, an ideal prerequisite for our entire system of law, in particular, criminal law. We accurately identify our criminal system as a system of justice, recognizing that the sense of its existence is the support and arrangement of this theoretical construct. The most famous American legal institution – the jury – is based on the idea that a public "sense of justice" can be used [11].

For the european legal science, it is important to understand the very phenomenon, denoted by the term "law", as well as its essence – justice:

Jus est ars boni et aequi. So the question is about the "sense of justice", and not knowledge of laws, attitudes towards them and fulfillment / non-fulfillment (legal awareness). In addition, even legal awareness is considered within the limits of european civilization mostly as an emotional characteristic, and not intellectual, because law itself is not always represented in a text form.

Considering the modi of civil society and a law-based state, one can not but point out the following. Initial thing in understanding of the contenst of a law-based state is the very understanding of law. According to the normative approach to the understanding of law, the latter is defined as a system of mandatory, formally defined rules of conduct that are adopted (sanctioned) and provided by the state. That is law and the legislation are identified. "Law is the will of the ruling class raised in the law", as the founders of Marxism-Leninism argued. In addition to that, the hierarchy and subordination of both the authorities and, accordingly, the acts that they accept are important. In this regard, all normative legal acts must comply with the Basic Act of the state – the Constitution, it is important that the state body does not go beyond the competence, complies with the regulations, procedures, etc. That is, not the question of complying of the letter and the spirit of law is solved, but it turns out the correspondence of the letter to letter of a law (which generally may be called the red tape or bureaucracy). Thus, according to this approach, it is important not the conformity of the law with law, but the compliance of the law with the law (the principle of the rule of the law).

In the law-based state, law, and not the law, must prevail. And the principle of legality applies only to state bodies. Laws exist for the consolidation of the foundations of activites of state bodies, the rule of law is key for citizens. Therefore, for the latter, it is important to have legal activity and, accordingly, legal culture. In the time of the Soviet Union the situation was opposite.

At the same time, attention should be paid to the following provisions.

Firstly, the rule of law is not just one single, separate principle; it is a complex phenomenon, a number of principles, including such as: legality, in particular transparency, accountability and democratic procedure for the adoption of laws; legal certainty; prohibition of arbitrariness; access to justice; observance of human rights; non-discrimination and equality before the law [12].

The principle of the rule of law directly concerns even the principle of proportionality, about which our domestic legal science knows so little and which is the basis for decision-making, even by policemen, in the Federal Republic of Germany.

Secondly, understanding of the legality as a compliance of the activities / act with substantive and procedural rules is overly simplistic and does not meet western legal tradition (though it is in full accordance with the soviet (non) law tradition with its understanding of law as a prescriptive text and the need for compliance purely with this text, hence formalism and bureaucracy, because the place in such a system for a human being – as the main value – does not exist simply). "In due time the former Government Agent for the European Court of Human Rights Yuri Zaitsev, called this approach "formal and primitive","schematic" and pointed out that the term "a law" in the context of the European Court of Human Rights has wider meaning than its "technical" understanding" [13, c. 130].

Lawfulness also prescribes compliance of the prescriptive text with the "quality of the law". This has been repeatedly pointed out by the European Court of Human Rights. For example, in the case of Volokhy v. Ukraine, the Court noted: "The court has always held the idea that the phrase "in accordance with the law" does not simply sends away to national law but also is related to the requirement of the quality of the "law", that is, to the requirement to adhere to the principle of "the rule of law", as it is directly stated in the preamble of the Convention ..." [14].

In this context, it is important to re-evaluate the contents of such a legal category as the principles of law. Thus, by adopting the Constitution of Ukraine in 1996, it is unlikely that everyone understood the contents of the provision enshrined in Part 1 of Art. 8 of the Basic Law. Especially considering the provisions of other parts of the same article, proceeding from the interpretation of which some domestic scientists actually identify the rule of law with the supremacy of the law and the "top" of this system is called the Constitution.

For more than 20 years has been required for domestic jurisprudence in order to begin to embodythe principe of the rule of law, having enshrined in laws that define the manner of the organization and activities of public authorities, in particular the so-called law enforcement agencies, as well as courts (although it is the courts (as well as the legal profession, and non-state law enforcement organizations), in my opinion, protect law. In addition, certain articles of the Basic Law directly sustained partial (but essential) changes: first of all, Article 129: the provision that the judge while administaring justice is governed by the law is replaced by the provision that the judge is guided by the rule of law. Although even in this case, the soviet dogma has worked: the provisions of the Constitution require the introduction of a mechanism for implementation, which is determined by the law (in spite of the fact that according to part 3 of Article 8 of the Constitution, "The norms of the Constitution of Ukraine are rules of direct

action" [15]), and ratified by Ukraine, in 1997 already, the Convention for the Protection of Human Rights and Fundamental Freedoms "is filled with firmness as European governments, who are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law ..." [16].

At the same time, one can not but point out that, unfortunately, legislation in Ukraine is outpacing the legal science. Thus, despite the fact that the rule of law is even directly enforced in the laws, a considerable number of scholars are investigating the "rule of the law", identifying law with the prescriptive text, and the guarantee of the human rights is the law (human rights are defined as a measure of freedom guaranteed by the law). The principles of law are seen as effective means of regulating social relations only when they: 1) are enshrined in the law or 2) are deduced from the contents of the law, placing law dependent on the law.

And this is with the recognition of human rights and of his/her rights as the main value, as the main duty of the state to assert and guarantee human rights, with the recognition of the inexhaustibility of human rights, with the recognition of the rule of law, with the recognition of the jurisdiction of the European Court of Human Rights.

That is, the existence of the principle of law is dependent on the existence of the text of a legal act. This is despite the fact that the principles of law are defined as guiding, fundamental ideas under which the national system of law functions (and, accordingly, the development of legislation takes place). Such a cognitive dissonance has not become a factor in the rethinking of the soviet perception of the essence of the principles of law until today. In spite of the fact that the two paradigms under consideration are antagonistic: if we recognize the primacy of the principles of law as regards precriptive texts, then we can not argue that the principles of law are neither necessarily fixed or enshrined nor derive from the text of a normative legal act (since the principle exists even before the adoption of the corresponding normative legal act, this act does not exist yet, but there is a principle according to which legal requirements will be formulated). And vice versa: if the principles of law derive from the precriptive text, they can in no way be guiding, fundamental ideas that determine the development of these prescripted texts.

Consequently, such an eclectic understanding of the principles of law distorts their essence, removing lawyers from natural and law understanding to legal positivism and even up to legism.

Unlike such "scientific" provisions, in 2004 already, the Constitutional Court of Ukraine in the case about the imposition of a more lenient punishment by the court indicated that law is not limited only to the law,

but also includes other social regulators, in particular, norms of morality, and customs. At the same time, the law is notlaw if it is not fair (and justice is a category of morality; therefore, law is, first of all, morality, not the law) [17].

It is precisely because of the discrepancy of the principle of legal certainty the Constitutional Court of Ukraine declared unconstitutional paragraphs. 7 h 9 st. 11 of the Law of Ukraine "On State Assistance to Families with Children" of November 21, 1992, according to which the payment of childbirth assistance is terminated "in case of arising of other circumstances" [18].

"If the court concludes that foreclosure in the form of confiscation of property will not ensure a balance between the general interests of society and the requirements of protection the right of ownership of a particular person, then he is entitled not to impose such a penalty, even if it is stipulated by the provisions of the Customs Code as obliged" [19] – is indicated in the ruling of the Court of Appeal of the Chernivtsi region of April 19, 2016.

The European Court of Human Rights has repeatedly pointed out in decisions (quite often in decisions against Ukraine) that the phrase "in accordance with the law" does not merely refer to national legislation, but also antisipates that such legislation corresponds to the "quality" of the law, that is, the rule of law. The law must comply with law, and not law of the law. The rule of law is in force, not the rule of the law. Human rights determine the contents and direction of the activities of the state, and not the state fixes in the law and thus confer rights to a human being. The absence of "mechanisms for implementation" of certain provisions of the law is not a human issue, but a problem of inactivity of the relevant state bodies and their officials, for which they should bear legal responsibility, and therefore this can not be a hindrance to the realization of human rights.

Thus, legal practice is obviously ahead of legal science (as well as education), which is largely left over dogmatic. Ukrainian law practice gradually departs from normative perception of law and implements the provisions of the natural law school. The rule "is given preference" not to the law, but to law. In my opinion the activities of the European Court of Human Rights, the practice of which is recognized in Ukraine as a source of law (in accordance with Article 17 of the Law of Ukraine "On the implementation of decisions and application of the European Court of Human Rights practice" [20]) contributes to this. The soviet legal science perceived the principles of law as some kind of transcendental phenomena that have nothing to do with legal practice, besides giving the text of the law an element of democracy. A similar attitude was even to the Constitution

(because the Constitution establishes the foundations of human relations and public authority, the principles of organization and activities of the latter, human rights).

To a great extent, even to this day, the principles of law are perceived by the established tradition as an "introductory part" in the text of a normative legal act that can be not read (something like the license agreement, which most users do not read when installing computer programs, simply by choosing option "I agree to the license terms"). This conclusion is possible to be drawn due to nterviews of about 200 investigators of the National Police, 150 district inspectors (Dnipropetrovsk region), in particular, with regard to the understanding of the second section of the Law of Ukraine "On the National Police" (principles of the activities of the National Police) and the second section of the Criminal Procedural Code of Ukraine (principles of criminal proceedings) which I conducted personally. In addition to that, the overwhelming majority (96 %) actually identifies law with the law, and the rule of law understands the rule of the law, even though that in the Law "On the National Police" the rule of law is enshrined in Art. 6, and legality (as a principle) – in Art. 8; Art. 8 of the Criminal Procedure Code is entitled "Rule of Law", and Art. 9 – "Lawfulness". In addition, according to Part 5 of Art. 9 of the Criminal Procedural Code "Criminal Procedural Law of Ukraine is applied in the light of the practice of the European Court of Human Rights". And part 6 of Art. 9 consolidates the analogy of law: "In cases where the provisions of this Code do not regulate or ambiguously regulate the issues of criminal proceedings, the general principles of criminal proceedings, specified in part one of Article 7 of this Code, are applicable." [21]. There rhetorical questions arise: is it possible to achieve the purpose of criminal proceedings without understanding its principles and is not it the lack of understanding of the principles of criminal proceedings the cause for the bureaucracy of this proceeding, eliminating all humane from it, including the person himself/herself?

Thus, for domestic legal science even to this day, the soviet dogmatism is inherent in such an important issue as understanding of law, human rights and the principles of law. As long as the principles of law are not perceived as a means of regulation of public relations as a mandatory requirement, there no democratic law-based state we can even mention. Principles of law – this is not an advice, not a recommendation; they require a mandatory and full implementation in social practice. Rough and systematic violation, ignoring their demands not only causes harm to individual social relations, but also undermines the foundations of law and order.

In addition, the existing classifications of the principles of law give rise to denials. In particular, it is not clear what kind of logic individual scientists are guided by while distinguishing general and social and special and social (legal) principles, referring to the first the rule of the law over political and physical strength, the rule of human rights and freedoms over the rights of the state [22]. In addition to that, as a rule, special and social (legal) principles are divided into: branch, principles of a sub-branch of law, principles of law institutes. This approach, in my opinion, is also a reflection of the soviet dogmatic jurisprudence. My position is based on the following. First, the rule of the law is eclecticism of two antagonistic paradigms: natural law and normative. There is the rule of law, the constituent of which is legitimacy. At the same time, the prescriptive text should be "qualitative", that is, comply with the rule of law. Secondly, what are the rights of the state for the western lawyer (and, accordingly, the lawyer of the state, which has taken the course towards the european integration, and has even fixed the european values at the legislative level) this is at least incomprehensible, and in general – an oxymoron. Thirdly, for the western legal culture, the distinction of such constituent of law as the institute of law, sub-branch of law, etc. is not characteristic. Such a division of the law system was proposed in the first half of the twentieth century by the soviet scholars. Such a structure is a derivative of legislation that can be grouped into institutions, sub-branches, branches (although it is indicated that the system of law is an objective phenomenon, while the system of the legislation is subjective. But the question arises: it is objective towards what? Does the institute of law exist objectively? Is the law institute the result of a logical operation performed by a research jurist and which is called a classification?

Consequently, the law-based state can not exist: 1) in a society whose citizens do not have legal activity, and legal culture; 2) where law and the law (legislation) are identical; 3) where the rule of the law (legislation) prevails but not the rule of law.

It is necessary to remember the famous saying: "Only that person is worth of happiness and freedom – who fights for them every day." The process of building of the law-based state and the formation of civil society is a complex and long-lasting. Even the effectiveness of reforms carried out in the state can not lead to the improvement of life at the same time. Every day consciousness demands a quick, and effective result, which is used by politicians, making meaningful decisions, especially before the next elections. In addition, the reform should not happen chaotically, but according to a single concept, which, again, is designed for more than a decade. Demostrative in this context is the analogy with the Babylonian

tower: the lack of unity does not allow to reach the corresponding goal, therefore all reforms should be carried out unidirectionally. The activities of state authorities and local self-government bodies should be aimed at achieving a single goal, which can not be abolished with the change of officials, the latter can only result in the replacement of methods and means of achieving the goal.

The next thing that needs to be understood by the Ukrainian people is that a strong state is a weak society. I can recall that the state differs from the primitive society by the presence (apart from some other signs) of public authority, which is defined by lawyers as a power whose interests do not coincide with the interests of the majority of society.

Thus, creating a model of an ideal state, defining the vector of development of Ukraine, we should first of all clearly understand the peculiarity of the people, their mentality, and not to try to "blindly borrow" the experience of other peoples and forcibly implement it.

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