LAW AND MORALITY AS FACTORS OF CIVIL SOCIETY DEVELOPMENT: THE MODERN CONTEXT

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Summary: the article is devoted to the study of the general principles of the influence of law and morality on modern civil society. It is argued that in a crisis of moral regulation of social relations, their legal regulation will lose its effectiveness due to a number of objective and subjective factors. It is concluded that the interaction and coherence between law and traditional morality in society is the key to the effective functioning and development of civil society.

Keywords: civil society, law, morality, human rights and freedoms, natural law, rule of law.

The process of formation and development of civil society in the context of modern global transformations, which find their direct manifestation, in particular, in Ukraine, requires the implementation of new scientific research related to the definition of the basic principles or factors of its proper provision. The events of recent years, including those taking place in the developed democracies of Europe and America, indicate a crisis of relations and interrelationships that take place between the various institutions of civil society, that is, in general, between individuals and their associations in various spheres of life. One of the most dangerous manifestations of such a crisis is, for example, significant strengthening of the conflict potential in public relations due to the further stratification of society into a narrow circle of rich and super-rich people on the one hand, and the vast majority of low-income citizens on the other, who are forced to worry only about their own physical survival.

The modern socio-humanitarian discourse of civil society is mostly devoted to covering problems or issues related to the formation of a free individual as a primary element of the latter, as well as defining various parameters of interaction and relationship between democratic, legal state and civil society. At the same time, the scientific literature usually emphasizes that the normative form of expression of the degree of individual freedom in the functioning of a developed civil society and the legal state are human rights guaranteed by the state to each person through the legal system. In addition, there is an almost constant emphasis on the fact that civil society, as well as the legal state and the individual, can only develop effectively on the basis of ideological and political pluralism.

Since the primary element of civil society is human, we can say that to properly
understand the normative principles of formation and development of civil society, it is necessary to understand the normative basis of existence and development of human or individual, who always organizes their behavior and activities according to certain rules, having for him axiological (value) sense.

If we turn to the modern realities of normative support of human behavior and activity, it is no exaggeration to say that the law itself as a special socio-normative system today performs the functions of the main and most comprehensive regulator of social relations. The obvious signs of this fact are, in particular, the constant growth of legislation as a system of laws and regulations, strengthening doctrinal developments of the «legal matter», the high prestige of professional legal activity and more. It usually emphasizes that the law is not so much related to the functioning of the state, which formally enshrines and guarantees it, as with the so-called natural law, the extent to which in modern liberal-democratic society are human rights and freedoms or the principle of the rule of law to approve and ensure which the entire state apparatus must work. In this regard, it is quite natural to recognize the weakening of the role and importance of all other social regulators, including such an important and universal regulatory system as morality. After all, despite the common features that are characteristic of all socio-normative systems and, above all, law and morality, they still have significant differences, manifested, in particular, in the nature of influence on the behavior of the subject, forms of consolidation of their norms, ways to ensure etc. The latter demonstrates the importance of maintaining the objective relationship that has historically developed, at least between such basic regulatory systems as law and morality.

Noting the fact of permanent growth of legal influence on society and citizens, which, unfortunately, does not reach its effectiveness, and at the same time weakening the influence of other equally important social regulators, a fair question arises about the causes of such a crisis and hence the inefficiency of the whole systems of social regulation. Let's try to answer this question, starting with understanding the trends of modern legal discourse.

As previously noted, the law in modern liberal-democratic development is understood mainly in the context of the need to ensure human rights, freedoms and interests, which in accordance with basic laws, in particular, the Constitution of Ukraine, are recognized as the highest social values in the state. At the same time, the latter acts as a kind of link between positive law or law officially established, enshrined or sanctioned by the state, and natural law, thus expressed in the inalienable human rights and freedoms, which it is endowed from birth by virtue of belonging to human nature or the human race. In other words, the modern democratic European legal state in its development is limited to only one highest social value – natural law (rule of law), embodied in the system of inalienable human rights and freedoms, to ensure proper implementation of public administration [1]. It should be noted that the restriction of natural law only to human rights and freedoms has its roots in the Renaissance, which separated culture from religion, declaring humanism and anthropocentrism the basic principles of social development.

It should also be noted that the concept of «civil society» in its modern or not
the most common sense as a system of private and public relations that operate on
democratic legal principles and oppose state intervention in the lives of citizens,
historically began to form on the humanistic ideas of the Renaissance. After all, the
further development of capitalism objectively required the expansion of economic
freedoms, legislative consolidation and recognition of various forms of ownership
and the free market, which could not be achieved without the unconditional
recognition and protection of natural human rights and equality before the law.
These ideas were later laid the foundation for the development of the legal state with
the principles of division of state power into appropriate branches and non-
interference of the state in the private life of citizens. However, such ideas, according
to the author, do not mean that human rights and freedoms should be recognized
as the only highest social value in the legal state.

Thus, the Renaissance initiated the process of rationalization of the theory of
natural law, which in past historical epochs (Antiquity and the Middle Ages) was also
associated not with the will of man and not even with his rights and freedoms, but
with the expression of the objective nature of things or the universe, which had a
sacred and predefined or predetermined character. Despite the fact that in
subsequent historical periods, some philosophers and thinkers (eg, Hegel)
continued to comprehend natural law in its inseparable relationship with the sacred,
timeless principles of human existence, it was from the Renaissance actually began
a gradual process of desacralization of natural law, ie deprivation its objective
connection with a certain transcendent principle, which reaches its culmination in
our time, the ever-expanding boundaries of human freedom, its liberation primarily
from traditional moral dogmas [2].

In the conditions of anthropocentrism introduced in modern times, man as a
primary element of any society is no longer considered in terms of its complex,
ambiguous, contradictory nature, which is able to manifest itself in various
normative-evaluation categories, but in the context of utopian abstract model
according to which man, by virtue of his nature, is always positive, that is, one who
constantly strives for good, for the performance of good deeds, regardless of any
circumstances, both objective and subjective.

In this context, it should be noted that due to the gradual spread of the ideas
of secularized anthropocentrism, which was based on the erroneous thesis that man
is an immanently good person, later formed a liberal ideology as a system of ideas
proclaiming the inviolability of human rights and freedoms which are recognized as
the highest value and basis of any social order. Such an approach to understanding
the extremely complex biopsychosocial nature of man contradicts the moral, and
especially – religious tradition, which has always seen its dichotomous nature.

In particular, the Christian religious tradition or doctrine and the morality
formed on its basis proceed from the fact that human nature is characterized by the
dual nature of its manifestation, one part of which is directed to good deeds and to
God, and the other is constantly directed to evil, which also has various forms. its
manifestation, which in many cases may even be outwardly expressed or presented
as good. In order for man to be able to refrain from doing evil, or from submitting to
his sinful or immoral part of subjective existence, he needs divine help to keep him
from evil.

Therefore, it is obvious that the recognition of human rights and freedoms as
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The only highest social value in society and the state naturally requires that any social, and therefore human interaction, aimed at meeting the relevant personal needs, would always be based on so-called natural law or as freely as possible, ie without the intervention of anyone or anything in the process. It is no coincidence that apologists for modern liberalism, or more precisely libertarianism, tend to emphasize that, for example, the economic life of society can be properly regulated by the so-called «invisible hand of the market», as a result of which the state should gradually and inevitably weaken its impact on the economy until its complete disappearance [3].

Thus, if the basis of social and state development is only the value of human rights and freedoms, ie in fact – the value of individualism, it is logical to assume that any human desires and needs, at least potentially can and should be recognized as legitimate or demanding regulatory and legal support. Under such conditions, it seems quite natural that such an important socio-normative system as morality in today's conditions is increasingly losing its true regulatory potential and become a so-called «private affair», ie when a person, depending on their personal desires, considerations, aspirations, emotions, needs, feelings, etc., determines for itself what is moral or immoral, justified or unjustified, useful or harmful, virtue or sin [4].

However, the latter fact does not mean and cannot mean that traditional morality is, relatively speaking, an archaic, outdated and non-progressive socio-normative system, the universal influence of which must be gradually abandoned. After all, its main goal is to limit human selfishness and curb the destructive manifestations of ambiguous human nature, expressed in bad intentions and actions.

It follows from the above that the effective development of civil society can not be based only on the legal matter, no matter how high quality and perfect it is, because the regulatory and protective impact of law on public relations is limited by objective parameters of its real, not ideal or declared in the relevant sources of nature. It is well known that law regulates the external manifestations of human behavior, and its impact on the motivational component of human consciousness, desires, emotions, instincts, etc., is minimal or, in any case, much less than the impact of traditional morality, especially that which is based on centuries of religious experience.. Moreover, the law can effectively regulate only those social relations that are really subject to legal regulation, leaving out of influence such important aspects of human life as friendship, love, tastes, fashion, charity, mutual assistance, and so on.

In addition, law, unlike morality, is not absolute or transcendent character, and therefore it is always associated with a particular socio-cultural context, which to some extent depends on some empirical experience. Even natural law, which is not limited to human rights and freedoms, but is understood through its organic relationship with higher, ideal principles of human existence such as justice, equality and humanism, will still go to the moral system of social regulation, without which these fundamental principles of formation and development of any social interaction will sooner or later become an instrument of normative manipulation of human consciousness and will.. Law can and should be addressed to the general moral ideal of good and those transcendent imperatives that it generates, but it cannot
objectively replace their action and influence primarily on the inner nature of man, his spiritual component.

In this context, the opinion of G. Maltsev should be supported, who notes that «every normative-regulatory system operating in society is specific and unique, and therefore cannot be replaced in its functions by any other system; each of them is valuable, necessary in its place and in its time» [5].

Thus, the great importance of the influence of moral principles and norms on the formation and development of civil society is explained primarily by the much higher level of moral requirements that it addresses to each individual, certainly condemning any manifestations of evil in social life, while law affects only the most dangerous forms of their specific external manifestation. If, for example, one wonders why a person refuses theft, lying, slander, hooliganism, betrayal, or any other manifestation of evil in relationships with others, one cannot be satisfied with the answer that the basis of such refusal is or should be fear of being punished or condemned, because under such conditions a person does not have a strong inner personal moral conviction that these actions are a manifestation of evil and therefore can not be committed. If a person renounces immoral or unlawful acts only out of fear of being punished or condemned, it means that the person will seek to minimize the possibility of adverse consequences for himself and still take appropriate actions because he is not aware of the immoral the meaning of their actions or deliberately neglects moral and, as a rule, at the same time religious norms, many of which have an objective universal nature and are not limited to the socio-cultural context.

A similar example can be given in the context of the functioning and development of civil society and its institutions. Thus, it should be recognized that the main functions of civil society, which are performed by its respective institutions, include, in particular, the function of public control over the activities or use of public administration at various levels, as well as protection, protection and promotion of public interests in general or interests individual social groups (for example, the interests of different minority groups). It is obvious that the ultimate goal of these functions may be different. In particular, public control over the activities of various management structures can be carried out in order to make proposals to improve the implementation of the powers of state bodies and solve many vital social problems, which meets both legal and moral norms. At the same time, this type of control can be exercised to achieve a completely different goal – to fully or partially discredit the state as a whole or its individual institutions, to ensure access of individuals to power for its further use for personal purposes and so on. In the latter case, it is quite possible that such public control corresponds to the formal legal requirements enshrined in law, although this under no circumstances will not comply with general norms and principles of morality and religion.

A similar example can be given in the context of the implementation by civil society institutions of the function of protection, defense and promotion of the interests of certain social groups, including the interests of so-called minority groups [6]. Thus, the function of protection and defense of the rights of the child can be carried out in order to ensure its comprehensive moral, intellectual and physical development, to promote its full family upbringing, which also meets the norms of the entire system of social regulation. At the same time, this function can be
performed with the ultimate goal of indulging all desires, passions, tastes and interests of the child, even those that may cause direct harm to him, which may not formally contradict legal norms, but under any circumstances will contradict moral norms. If, as a result of such indulgence, the family is destroyed as the primary center of society in which such a "free" child lives and is brought up, this may also not be taken into account, because the individual interest of the child through law in our time is placed above any collective family values.

Thus, a viable civil society is much more than a simple set of people and their associations, their rights, freedoms, interests, goals, aspirations, etc., much more than a market economy, private property, freedom of enterprise, etc. After all, civil society can function and develop effectively only if it is based on super personal ideals, for which the individual is able to sacrifice their personal benefits. These super personal ideals are concentrated in the spiritual tradition of the society, which with the help of the moral coordinate system has absorbed centuries of experience in arranging or solving vital issues. In order for the principles of formation and development of modern civil society (freedom, justice, humanism, equality, free market economy, private property, etc.) declared in the legal system to be effectively implemented in practice, an internally conscious self-organization of the individual which can be achieved only if it is spiritually improved. In this regard, there is an objective urgent need to create systemic conditions aimed at forming a comprehensively developed personality capable of reflection, to draw the subject's attention to himself, his consciousness, the results of personal activities, the mechanisms decision-making, to comprehend and rethink personal values, interests, motives, desires, etc.

Given all the above, we can draw the following conclusions:

1. Civil society is always formed, functions and develops within a specific system of social regulators and values formed on their basis. The most common and influential socio-normative systems are law and morality, each of which, despite having a common purpose, function, and some other common features, differently affect the will, consciousness, behavior, actions and activities of citizens, given their complex and ambiguous nature and structure. The latter testifies to the objectively predicted interdependence and complementarity of law and morality, the artificial subjective neglect of which gradually leads to the intensification of various social destructions and deformations.

2. Man (individual, personality) as the primary element of civil society is always endowed with a certain level of moral consciousness, a high level of which indicates the developed moral qualities that determine its internally stable willingness to serve higher goals or imperatives, responsibly carry out any activity, etc. It is a person who carries out certain activities or actions, always based on conscious socio-normative constructions, the content of which cannot be limited only by law. At the same time, the possibility of free realization of one's own thoughts, ideas, desires, etc., without any external intervention objectively presupposes the formation of a high level of social responsibility, which is achieved primarily through proper influence on his will and consciousness of moral norms.

3. In today's complex and ambiguous conditions of state and social development, the law artificially and less effectively bears the main «burden» of ensuring public order, including in the context of ensuring relations between various
institutions of civil society. One of the main reasons for such a crisis of social regulation in general is the anomalous interpretation of law, which, even in its modern positivist and sociological understanding, is subject only to human rights and freedoms, devoid of moral restraints that are much stronger and deeper than law, provide destructive restrictions of dichotomies of human essence and nature. If the source of law and self-sufficient purpose of society and the state are human rights and freedoms, then in fact there is a substitution of natural law, the principles of which follow from the highest imperatives of human existence and do not depend on subjective point of view, positive law, the theory of which to another extent, it assumes that all legal forms are variable or always associated with changing circumstances and time requirements. After all, there can be nothing more changeable than individual human desires, aspirations, emotions, interests, etc., for the realization of which the individual is endowed with a system of rights and freedoms.

4. The gradual loss of effectiveness of legal regulation, which is increasingly manifested in today’s conditions, is not due to poor quality of legislation, shortcomings of legal techniques of its presentation, etc., but primarily to the devaluation of traditional morality as a special, closely interrelated with law historically conditioned socio-normative system. After all, one of the main consequences of such a devaluation is the loss of respect for the law as objectively necessary to ensure public order and the consent of the social regulator and turn it into a means of normative manipulation of «high legal matters» such as the rule of law and justice which is used only to formally cover up or overwhelm the personal desires and interests of government and business circles. It is impossible to convince a person to respect the law only on the basis of current legislation or even a perfect legal doctrine, and even more so to force him to do so, because respect for anything or anyone is a moral category or one of the most important requirements of traditional morality which instructs a person not to do any harm to others or anything that has a positive value dimension, and to recognize and respect the honor and dignity of others.

References: