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DIALECTIC OF LEGITIMATION OF PUBLIC AUTHORITY: SOCIAL AND LEGAL ASPECTS

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SUMMARY

Main attention in the article is addressed to the analysis of one of the main conditions of ability of the public power – social recognition of power structures by population, whose interests these structures are destined to provide and protect. Peculiarities of procedures and processes of power legitimation in democratic society through involvement of the respective mechanisms are investigated. Regulation of the main ways and lines of legitimation of public power in a contemporary context has been proven.

Key words: legitimacy, lawfulness, legitimation, public power, mechanism of legitimation of public power.

ДІАЛЕКТИКА СОЦІАЛЬНОГО ТА ПРАВОВОГО В ПРОЦЕСІ ЛЕГІТИМАЦІЇ ПУБЛІЧНОЇ ВЛАДИ

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АНОТАЦІЯ

Основну увагу в статті приділено аналізу однієї з головних умов дієздатності державної влади – соціальному визнанню владних структур населенням, інтереси якого ці структури покликані забезпечувати та захищати. Досліджуються особливості процедур і процесів легітимації влади в демократичному суспільстві через задіяння відповідних механізмів. Обґрунтовано положення про основні шляхи і напрями легітимації державної влади в умовах сьогодення.

Ключові слова: легітимність, легальність, легітимація, державна влада, механізм легітимації державної влади.

REZUMAT

Principala atenție în articol este dedicată analizei uneia dintre principalele condiții ale capacității puterii de stat - recunoașterea socială a structurilor de putere de către populația a cărei interese aceste structuri sunt chemate să le ofere și să le protejeze. Sunt explorate caracteristicile procedurilor și proceselor de legitimație a puterii într-o societate democratică prin utilizarea unor mecanisme adecvate. Autorul susține prevederea privind principalele căi și direcții de legitimație a puterii de stat în condițiile actuale.

Cuvinte cheie: legitimitate, legalitate, legitimație, putere de stat, mecanism de legitimație a puterii de stat.

Formulation of the problem. Conduction of complex transformations is necessary in a contemporary context of the development of the Ukrainian state; goal of such transformations is a democratic development of Ukraine, effective organization of state and development of civil society. In due course a prominent German sociologist M. Weber, beginning to investigate the problem of power lawfulness, raised a question: "What are the internal grounds for justification of rule and what external facilities serve as its support?"

In a contemporary context one can say that the answer has been given to this question long ago at the theoretical level, however new political circumstances entail to put it over and over again. Moreover there were too essential grounds to speak of the crisis of power lawfulness almost during the whole history of the independent Ukraine. Lawfulness is at the same time both the goal and condition of functioning and efficiency of power relations in the state.

Relevance of the topic. Problem of relations between people and power has been present in research studies from the earliest times, namely in the work "Guidance to the Polish King Sigismund II August" of the Ukrainian scientist S. Orzechowski-Roxolan. He writes that starting from the beginning of its ruling the king "had to be more cautious in order to attract devotion of the people among which you are ruling.

It is the only protector of kings. King's power will be weak and incomplete without devotion of the nationals" [1]. Now therefore the emphasis is put on the essential importance of support on the part of the people for existence of power and performance of its functions.

The purpose of the article. Social recognition and support of power structures by population is a condition of quality functioning of the public power on which largely depends the success of reforms being implemented in Ukraine; these structures are destined to provide and protect interests of population. Exactly this way social purpose of any power reveals its recognition and provides its lawfulness. In the most general form the issue of lawfulness lies in the plane of theoretical and methodological range of problems.

The main research material. As it is known lawfulness (Latine legitimus – lawful, legal) – it is an obligatory feature of the public power that determines the degree of its recognition and sovereignty both in the country and in the international field. In the most general form lawfulness is the process within which the political power confirms its rights to its implementation. On the other hand lawfulness is the process of approval of power by people, expression of trust to it on the part of those by whom it rules. And thirdly lawfulness is a specific technology that helps to establish relations of citizens and civil society and

power, applying violence if necessary. In any case search of the authority as source of power and available general goal in the state is a basis of lawfulness.

In the most general form the matter of legitimacy can be related to the theoretical and methodological problems. It concerns first of all the definition of the political and legal construction of “legitimacy”, in fact one should pay attention to the correlation of legitimacy and legality, legitimacy and lawfulness, legitimacy and justice.

The term “legitimacy” is translated sometimes as “lawfulness” and it is not quite correct. Lawfulness being perceived by us as action reflected according to the law through the category of “legality”. The notion “legitimacy” has another explanation, it is more complex and has evaluation, ethical and political character, “legality” is an officially legal and ethically neutral character and it is narrower than “legitimacy” due to these facts.

The state power, even unpopular, is as a rule legal as consciousness by the power holder of its right to the power and ability to perform this power is one of the sides of legitimacy. At the same time it can be illegal, that is, it cannot be perceived by people and herewith issue laws at its own discretion and use them for violence and outrage.

Degree of legitimacy of the state power is a dynamic category and legalization is more static as it depends on the existing in the country legislation. Nor therefore legality and legitimacy express integration of the instrumental and value aspects of power but herewith the notion of legitimation is wider in relation to legalization and includes (can include) it. Legitimacy can even contravene the actual legality if legal laws do not meet the laws of justice, universal human values and policies of the most of the population.

It is obvious that legitimacy of the public power is first of all a social recognition of its right to the leading role in the society. The state power cannot be held for a long time and act efficiently basing only on the violence as even objectively the legal power can be illegal in the imagination of people. Voluntary consent confirmed by respect to lawfulness is necessary. Confidence of people in the fact that the representatives of power protects legal state interests, do not trench upon the thing being fairly private and personal is the major premise of voluntary consent. Disregard of the law and safety of revolutionary transformations prevails there where legitimacy of power is not absolute.

Often the notion of “legitimacy” and “legality” are considered as two interrelated characteristics of the public power. Thus M. Weber put emphasis on the fact that legitimacy is not only lawfulness of power on the actually legal side but a social and psychological phenomenon that consists in the recognition of the political power by society at least in its passive recognition.

Essence of the category “legitimacy of power” in the context of methodology is considered in three aspects: 1) legal aspect includes “legality” being based on the rationally created legal norms; 2) political – support of the political powers having the power by society and 3) axiological aspect – perception of the current state institutes as value. Nor therefore the regimes that became legal as the result of the revolution or military coup can become legal having provided for themselves the support of the significant part of society.

The situation also seems possible when activity of the state power does not find support of the population of the country in the traditional societies but in the mass consciousness the state being a powerful institute (for example, hereditary monarchy) is a value that makes people to recognize power irrespective of the nature of the activity. The value recognition can be based not only on the observance of the legal norms but also on the personal dedication to the ruling dynasty, moreover religious

values are important, they can be adequately reflected only if the form of state is available.

Accordingly one can claim that the nature of legitimacy, its sources and ways of the provision differ in the variety depending on the cultural level, traditions and psychology of population [2, p. 639]. Legitimacy has a double nature as it is a complex social phenomenon; on the one hand, it is the authority of power, confidence and recognition and, on the other hand, it is dedication to power, ability and wish of the dependent entities to fulfill its requirements.

Legitimacy of the state power is a complex social process the result of which is the recognition of power as legal. Legitimacy is an evaluation phenomenon being in charge of the procedure of the formation of the powerful institutes, their form and activity. Legitimacy is in itself the ability of power to provide stable functioning of the political and social institutes and ability to assure the population of the fact that these institutes facilitate to a greater extent the reflection and implementation of their interests [3].

Tasks of legitimacy are principally as follows: firstly, discovery of the origin and social nature of power; secondly, structural organization of power; thirdly, mechanism of formation in society; fourthly, methods and forms of exercise of power.

The structure of the process of legitimacy stipulates availability of such main elements as entity, circulation, means, methods, conditions, principles and procedures. These elements are in constant relationship and interrelation between themselves and each element performs its function providing functioning of the whole system.

On the basis of the conception of legitimacy as social relations one can state that it is implemented at least between two entities of legitimacy. Moreover a dependent entity must have a real ability and possibility of the respective perception and evaluation of power, perceiving power as the way of expression of its interests and establishing the respective criteria of its efficiency or on the contrary do not perceive it and evaluate the implementation of the power authorization by the respective bodies as such that does not reflect its interests. Such a perception of power takes place at the level of the moral consciousness that is based on the justice and confidence.

Under modern conditions, when we speak about democratic state, the power in state receives recognition from people being its only legal entity. Now therefore legitimacy of the state power is a delegation, transfer of power by society to its special organization, that is, to the state and its structures. The situation is reflected in the principle of the people’s sovereignty that is fixed in the Constitution of Ukraine. A power entity must realize indeed its right to power both within the legal and moral and ethical meaning. And implementation of the right, except the necessary social, political and legal guarantees, stipulates also an active public position of the citizen [4].

People, through delegation of its powers, entrust the respective political powers with the society management for a certain period of time within the political system. Now therefore the political system can be conventionally determined through a collective wielder of power being formed by the public authorities and management, political party and movements of separate political leaders. Institute of the representation of people is a central institute within the system of the public authorities that provides interest and needs of society, facilitates involvement of people in the participation in the implementation of the legislative power.

Without fixing separately on the detailed analysis of the ways of power legitimacy it is necessary to put emphasis on the analysis being most popular today in the countries of the Western Europe and Northern America; it consists in the introduction of the institute of the direct elections into authorities. It is impossible to reevaluate the ideas of the direct elections and

its implementation, indeed it became the most efficient mean of legitimacy of power in the European countries and gave opportunity to avoid revolutionary overthrow of power. Loyalty of the population of the state that was in crisis during breakup of the dynastic monarchies and essential reduction of the role of the religion was preserved to a greater extent due to gradual introduction of the institute of elections. Awareness by the population of the fact that it forms power and is its source became the basis of the sufficient level of legitimacy of power in the most countries of the world. Hence it is worth reminding the words of B. Kistiakivskiy who says that prestige and greatness of the legal state lie not in the inaccessibility of power but in the support to people and right [5, p.330].

Legitimacy of the state power can be considered as category formed not only by domestic political centers (society, political system, state) but also by external – foreign states, international organizations that allows us speaking about two levels of legitimacy – within domestic (state) and external. Peculiarity of the international legitimacy consists in the fact that recognition of power is performed by not dependent entities represented by other states. Such recognition is a unilateral act of state where it states recognition of state as entity of the international law.

Process of recognition of the state power by society provides several stages: *firstly, it a social and political substantiation of the state power* that stipulates direction of efforts towards search of the ideal, namely absolute values such as justice, truth and other or towards establishment of the will of the people. In due course the necessity of the social substantiation of power gave the ground to M. Weber for substantiation of three kinds of legitimacy: traditional (that is, based on the common laws of traditions, customs, ceremonies, culture, pre-state political relations); charismatic (emotionally-willful); rational (based on the orders and laws adopted in the state). Crisis of the previous power takes place at the modern stage of state formation and necessity of the establishment of new rules, new order of relations of the civil society and power is recognized.

Secondly, vesting of the entity of the potentially legal power with the state-power authorities takes place at the stage of formation of the state power. Formation of public authorities can be both in the revolutionary and evolutionary way. A revolutionary way provides taking the upper hand by political powers through overthrow of the previous machine of power whereas an evolutionary way provides transition of power in a lawful way according to the legality principle on the basis of the current legislation of the state that stipulates order of transition of the state power. Instead an evolutionary way of transition of power is determined by legal change of the senior leadership of the state. Thus in monarchy the power is transferred through senior leadership of the state according to law or custom whereas in republic the power is formed according to the principle of electivity that provides a procedural fixation of legitimacy through holding of elections.

Thirdly, legal substantiation, legalization of the state power is a procedure of the legal fixation through a statutory instrument (declaration, law etc.) where legality of power is legally substantiated (for example, ratification by the Verkhovna Rada of Ukraine of Belavezha and Alma-Ata Accords, holding of referendum on independence of Ukraine were the grounds of legitimacy of the state power in Ukraine).

Fourthly, neutralization of the possible counteraction of the reactionary powers and antigovernment elements by the state power requires from the new power holder provision of its maintenance applying herewith the whole potential of the state machinery for implementation of the power goal. This problem is especially major in connection with the spread of terrorism in the world, Islamic radicalism and separatist movements.

Fifthly, information and ideological influence of the state power to the dependent entities includes necessity of produc-

tion of the state ideology directed towards the power maintenance the goal of which is to provide perception of the available state power by a dependent entity as a single legal, competent, efficient power, such that expresses interests of the whole population in the state policy. Informational impact on society at present is one of the most effective methods of implementation of functions of state. Such an impact is a regulatory facility both of the formation of consciousness, behavior and acts of people and creation of the information field around certain political processes and institutes. One can both accelerate the development of the social and legal conflicts and locate them through information impact [6, p. 87].

Sixthly, support of authority of the state power provides actual basis, that is, positive result of activity of the state power. Now therefore the process of legitimacy is finished and the power is recognized as legitimate, if it becomes clear that its substantiation was feasible at the first stage.

The power must be real and strong so that it could be legitimate. State power holder must meet range of requirements being determined by the phenomenon “state power”. It is worth reminding the conditions of the reasonable legitimacy that were substantiated by M. Weber. Reasonable legitimacy provides range of requirements to the state power that are determined by a specific nature of the mechanism of exercise of the political power, the main requirements are as follows: dominance, leadership, management, organization and control.

Dominance is substantiated by available division of society to those who exercises political power and to those with regard to whom it is exercised. Dominance receives its legislative implementation as a rule through statutory instruments. Essence of management consists in the development and making the essential decisions for society, in determination of its goal, plans and strategic prospects.

Management is performed through direct practical activity with regard to implementation of the decisions made by wielder of power. Administrative machinery is engaged in the managerial activity. Organization provides consistency, adjustment and provision of the relationship of separate persons, groups and classes. Control provides observance of the social norms, rules of activity of people and social groups on society. Control plays also the role of the feedback that allows tracing the consequences of the managerial impact of power. Only in case of the fulfillment of these requirements one can speak of the force of power, its ability to handle the situation being one of its features of legitimacy.

Legitimacy process is performed by means of various methods through which a potential state power holder substantiates its legitimacy and a dependent entity recognizes the state power. These methods are determined by conformity of the legitimacy subject, that is, by the state power and the interests and needs towards implementation of which efforts of the state power holder are directed.

Legitimacy methods used by power entity are too various but the main of them are imperative and dispositive methods. The imperative method provides a direct impact based on the authority of the potential state power holder. The dispositive method is determined by a “softer” impact on the dependent entity. This is a legitimacy through motives and needs (facilitation of the desired behavior and activity of the legitimacy entity), through value system (information, bringing up, education).

Legitimacy methods used by the dependent entity are the aggregate of techniques and facilities by means of which recognition of the state power “form below” is performed. They can be divided into two large groups – methods of approval and methods of distrust. And if the first methods provide a positive attitude towards current power that is reflected in the respective voting during elections and referendum, holding of

mass events (demonstrations, protests) in support of the current power and criticism of its opponents, other methods provide a negative attitude towards certain institutes of power respectively that can be the feature of recognition of another, alternative power as legitimate; voting in a respective manner, holding of mass protest movements can be manifestation of this, and the extreme form – overthrow of power that people stopped to recognize as legitimate.

Legitimacy of a certain power is not lasting; it can change the degree of efficiency. The power is changed depending on the conditions or certain peculiarities of behavior of the power structures and can be both grown and reduced. It should be admitted that whatever successful the legitimacy of any kind of power is, social groups opposing actions of the power will be always present in society.

Increase of the quantitative indices of the opposition-minded citizens can result at first in the weakening of the efficiency of the measures being held by power and in due course – in crisis of legitimacy and delegitimacy processes of power. Any pre-revolutionary or revolutionary situation is the consequence of crisis of legitimacy of power. It appears when the power is nit sensitive to the long-standing needs of society in structural changes. The more socially ineffective the political power will be, the more repressive it becomes, the stronger it requires approval on part of the people.

Legitimacy and legality of the public political power are connected with dialectics of correlation of right and law and serves as a triangle, firstly through judicial legitimacy of the power structures; secondly through legal and regulatory strengthening of their competence according to the principle of power division in the area of the state management and social needs of society; thirdly through legitimacy of forms, methods and means of implementation by every authority of its social purpose and established competence.

Conclusions. It should be admitted that modern mechanisms of the development and functioning of the legitimacy processes of the political power in Ukraine and its development trend require new theoretical models able to include all various social changes and must include a complex, including hermeneutical approach, directed towards research of the political will as an important part of the legitimacy and delegitimacy processes of power. Indeed after the Ukrainian revolution 2014 (known as Euromaidan) the Ukraine began a new period of the development of its statehood that takes place under complex circumstances, when external problems were added to the domestic economic, political and public problems that were al-

ways pressing during 1991–2013. Ukraine has met for the last years after the World War II with real armed aggression on part of the neighboring state. Under such conditions the problem of legitimacy of power is transferred to the practical plane: from the indifferent confidence to the active combined participation.

The course of modern political and legal processes in Ukraine showed once more the importance and inevitability of the consequences of disregard of the problem of legitimacy or its change by pseudo legitimation processes and technologies for power institutes, having proved again that society and individual are the main source of legitimacy of the state power [7, p. 15].

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