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PECULIARITIES OF THE LEGAL STATUS OF THE STATE AS A SUBJECT OF LAW IN UKRAINE

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SUMMARY

The institutionalization of human rights and freedoms allows one to regard the people as a set of individual right-holders. Effective enforcement of these rights is ensured by the binding force of law as a fundamental component of the state system. Despite the existence of substantial developments in the theory of state and law, provided by legal scholars XIX–XX c, there is almost no modern research that characterizes the main features of the state as a collective subject of law, formed under the influence of the modern development of the legal systems of democratic states.

The purpose of the article is to examine the features of the legal status of the state as an subject of law in Ukraine.

It is established that in the theory of law the interpretation of classical features of the state, such as sovereignty, legal personality, territory, public authority is being updated due to the development of national legal systems. In particular, have had subjective rights of human and citizen: they obliged the state to protect and exercise these rights; to protect them by the law against the arbitrary use of coercion.

The examples from the legislation of Ukraine confirmed that the sovereignty of the state should be understood, first of all, as the ability to exercise the legal organization of society, create appropriate conditions for self-government of the population. This makes sovereignty an important feature of the state's legal personality.

The acquisition of legal capacity by the state occurs through the creation of appropriate rules of law. Their content defines the legal status of the state as a subject of law in public relations. The state is capable independently as a full participant in the legal relationship, also its capability realized by implementing in the system of executive authorities, the judiciary, as well as delegated powers to other entities. The international legal personality of the state is also collective in nature. The legal position of the state in the international agreement is based on a result of the alignment of the foreign and domestic policy vectors of the current government with the interests of the people as a whole.

Key words: collective subject of law, state, legal personality, legal capacity, legislation of Ukraine.

ОСОБЕННОСТИ ПРАВОВОГО СТАТУСА ГОСУДАРСТВА КАК СУБЪЕКТА ПРАВА В УКРАИНЕ

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АННОТАЦИЯ

Институционализация прав и свобод человека позволяет рассматривать народ как совокупность индивидуальных субъектов – носителей прав. Эффективность осуществления этих прав обеспечивается обязательственной силой права как фундаментальной составляющей государственного устройства. Несмотря на наличие фундаментальных разработок в области теории государства и права, проведенных учеными-юристами XIX–XX веков, практически отсутствуют современные исследования, которые характеризовали бы основные признаки государства как коллективного субъекта права, сформированные под влиянием современного развития правовых систем демократических государств.

Цель статьи заключается в изучении особенностей правового статуса государства как субъекта права в Украине.

Установлено, что в теории права толкование классических признаков государства, таких как суверенитет, правосубъектность, территория, публичная власть обновляется вследствие развития национальных правовых систем. В частности, важную роль в этом сыграли субъективные права человека и гражданина: они обязали государство обеспечивать защиту и реализацию этих прав; защитить нормами права от произвольного принуждения.

Примерами из законодательства Украины подтверждено, что суверенитет государства следует понимать прежде всего как способность осуществить правовую организацию общества, создать условия для реализации прав и свобод граждан, создать соответствующие условия для самоуправления населения. Это делает суверенитет важным признаком правосубъектности государства.

Обретение правоспособности государством происходит через создание соответствующих норм законодательства. Их содержание определяет правовой статус государства как субъекта права в общественных отношениях. Дееспособностью государство владеет самостоятельно как полноправный участник правоотношений, а также она реализовывается в системе органов исполнительной власти, судебной власти, а также через делегированные полномочия другим субъектам права. Международная правосубъектность государства также имеет коллективный характер. Правовая позиция государства в международном договоре формируется на основе результата согласования векторов внешней и внутренней политики действующего правительства с интересами народа в целом.

Ключевые слова: коллективный субъект права, государство, правосубъектность, правоспособность, законодательство Украины.

Introduction. A new phase in the study of the state and public authorities as collective subjects of law is possible as part of the modern paradigm of the state, namely its democratic, social, and legal orientation. The basis of this paradigm is built by internationally recognized human and citizen rights and freedoms. The institutionalization of these rights enables to consider the population as a totality of individual right-holders who are not set in the opposition to the state power. On the contrary, the state is a means of exercising these rights. The effectiveness of this process is ensured by the binding force of law as a fundamental element of the state structure.

Brief literature review. Domestic and foreign scholars who studied the essence of the state and its basic features contributed decisively to the development of ideas about the state as a collective subject of law. In particular, such scholars as G. Waitz, C.F. Gerber, M. Seydel, P. Laband, J. Held, H. Schulze, and many others elaborated the concept of state sovereignty through the example of monarchies and democracies, federations and unitary states. The works of G. Jellinek, L. Stein, and other scholars are worth mentioning, as their authors defined the state as a collective subject and tried to give a thorough description of such features as sovereignty, state power, territory, and population. The contribution of the following Ukrainian legal theorists of the 19th – 20th centuries is highly insightful: M.M. Kovalevskyi who studied historical and legal ideas and their significance in the formation of the history of law; M.I. Palienko and B.O. Kistiakivskyi who developed the concepts of the state that defined it as a collective subject ("social union", "legal organization of the people"), and many others.

Despite considerable elaborations in the area of state and law theory made by scholars of the 19th – 20th centuries, there is practically no contemporary research that would characterize the main features of the state as a collective subject of law shaped under the stimulus of the modern development of legal systems of democratic states.

The **purpose** of the paper is to study the features of the legal status of the state as a subject of law in Ukraine. The following tasks ensure its *achievement*: a) to explore the basic features of the state as a collective subject of law; b) to study the basic approaches to the interpretation of their essence; c) characterize the present content of the elements of the legal status of the state as a collective subject.

Basic material of the research. The state is a special collective subject since it serves the interests of the whole society integrally. The basic principles of its legal status are historically predetermined. They encapsulate the peculiarities of the national legal system, formed on the grounds of legal ideas, inculcated under the influence of geopolitical position, socio-economic development of society, religion, social values, and other factors, which according to the principles of legal positivism can be considered as the "elements of the history of law" [11, p. 93]. We believe that the elements of the legal status of the state as a collective subject are marked by this specificity. These peculiarities completely convey the interdependence of the processes of formation of the elements of legal status internally.

In the legal literature, such "classical" features of the state as sovereignty, territory and population, and public authority have been considerably investigated [14]. In the course of the historical development of the state, visions of the state as a subject of law have also changed. However, if the essence of the population usually does not raise disagreement, the interpretation of such features as territory, sovereignty, state power [2, p. 47] has again and again been debated. In addition, with the progress of international law and more considerable involvement of the state in the civil circulation, the definition of the category of "legal personality of the state" comes into sharp focus.

According to ancient ideas, the territory of the state was seen as the space over which it was able to establish its military control. This approach was grounded on the "territorial superiority" principle, that is, the seizure of a new territory and the establishment of its power on it made it an object of law of the respective state.

In 1860, V.A. Nezabytovskyi was one of the first who expressed an opinion that the territory of the state is nothing more than the boundary of its power: "Territory is the spatial boundary of the state power of the state. And the doctrine of the territory is reflected in the doctrine of the limit of state power" [5, p. 6].

The inseparable connection between the territory and the population is shown in the works of O.O. Zhylin, who considered the state as an organized union, which, unlike other possible private-law unions, has particular features. First, the state is a supreme union with autonomous power which does not begin on other unions. Secondly, there are mainly legal relationships within the state, while private-law corporations may have relations between the corporation and its members [4, p. 50–52].

With increasing endeavors of the international community to "exclude war from the arsenal of national and international policy" the view of the Ukrainian scientist has been confirmed in practice. During the 20th century the acts of military aggression have repeatedly been condemned by the international community and resulted in the non-recognition of such newly created states [15] or the non-recognition of the sovereignty of the aggressor country over the occupied territories [13; 16].

Another example of the voluntary restriction of state power in its territory is represented in Art. 22 of the Vienna Convention on Diplomatic Relations, which prohibits the entry of the authorities of the host State in the premises of diplomatic missions without the consent of the chairman of the mission. This rule provides for no exceptions, even when the premises of the mission office and the land lot concerned may belong to a third party [1].

Today, the territory as a feature of the state increasingly becomes a legal abstraction; an important but not crucial condition for the legal personality of the state. It should not be equated with the state itself, but is intended, first of all, to outline the spatial boundaries of the exercise of state power. When it comes to these considerations, the statement that the borders of the state define the space where the state shapes its own legal order and exercises its sovereignty becomes more justified.

The validity of legal categories application to political relations was also mentioned by V.F Taranovskyi (1904), who justified this need as follows: "the needs of the court of public law <...> public foundations developed from the court practice... it preceded the school of natural law, and subsequently <...> acted alongside it" [10; 11, p. 105; 12]. Therefore, the meaning of sovereignty as a feature of the subject of law may be rightly correlated with the interpretation of this concept as a category of international law, where sovereignty means independence and autonomy of the state in the exercise of power.

In the area of international legal personality, the sovereignty of the public authorities implies the absence of influence on it by other states or subjects of international relations. In the area of the national legal system, the rule of state law over the legal norms created by other collective bodies of law. In its turn, the rule of state law in practice is implemented through enforcement in public and private legal relations.

G. Jellinek was one of the first in legal science who suggested the idea of the limited nature of the sovereignty of state power (1914). He proceeded on the assumption that the power of the state should be limited by law, by the force of special obligations. In case of failure to comply with such bindings (or in the absence thereof), the state will be "outside" of the legal system created by it. This scholar states the sovereignty of the legal system should be treated as "the capacity for exclusive legal self-determination", or as "the special ability of the state power to give a comprehensive binding content to its power, and determine its own rule of law in all directions" [3, p. 456, 463–464, 476].

Similar thoughts were expressed earlier by the famous Ukrainian legal theorist M.I. Palienko, describing the state as a "legally organized unity, as a "legal moral entity", with a single legally organized will and power." In support of his views on the link between law and sovereignty, he argued that, regardless of the sphere of lawmaking, the state always operates in the legal field it previously created, "the forms defined by the law that organizes this state". The existence of the state depends directly on the existence of national law: the destruction by the state of the same legal order should be treated as an act of self-destruction [6, p. 394].

We believe that the definitions of the rule of law and the welfare state, combined with the definition of the rule of law, have made a significant impact on the current understanding of the essence of power and the sovereignty of law. It is well known that a socially-oriented state recognizes a person of the highest social value. Therefore, a binding power of the state cannot be used to violate the acknowledged human rights and freedoms.

Respect for subjective human and citizen rights has a significant impact on the legal capacity of the state. On the one hand, it obliges the state to protect and exercise these rights. On the other hand, human rights are indefeasible against the arbitrary use of pressure by the state. Thus, the power of the state can be limited and bound by the norms of the right of direct effect, enshrined in the "act of public contract" – the constitution of the state.

In many areas of social relations, legal regulation has a dispositive nature, enabling collective entities to independently set legal rules and resolve local issues according to their competence. For example, local self-government bodies have powers defined by law (Part 1 of Article 16 of the Law of Ukraine "On Local Self-Government in Ukraine"); they may be entrusted with separate powers of the executive authorities (Part 2 of Article 16 of the Law); they may enter into civil relations with other legal entities and organizations with no communal ownership; have the right to set local taxes and fees for them, to initiate inspections and perform other functions (Article 18 of the Law) [9]. Thus, local self-government bodies do not compete with state authorities within the respective administrative and territorial unit. Their legal capacity is determined by the state, which delegates a part of the powers to them and does not interfere with the decision of the local authorities on the local self-government issues.

In its turn, the administrative-territorial autonomies within the state create a special regime of exercising sovereignty. By delegating powers, state power allows autonomy to exercise self-government. For this purpose, legal, organizational, financial, property, and resource independency within certain limits, as well as state guarantees (part 2, Article 3 of the Law of Ukraine "On Approval of the Constitution of the Autonomous Republic of Crimea") may be provided for the autonomous entity [7]. To exercise power directly, the autonomous entity independently forms the parliament and the system of executive bodies, which are not accountable to the state power, but the powers, formation, and activities of these bodies are determined by the rules of state law. The acts of the parliament of the autonomous entity and other normative legal acts of it cannot contradict the legislation of the state; and justice is exercised by the courts of the state.

The above examples indicate that "sovereignty" of the state is not a concept identical to "absolute power that can arbitrarily interfere with the lives of subjects." On the contrary, sovereignty is the ability of the state to exercise the legal organization of society, to create conditions for the exercise of the rights and freedoms of citizens, to create appropriate conditions for self-government of the population.

Thus, sovereignty is an important feature of the legal personality of the state. The implementation of the provisions of the "act of public contract", which is the Fundamental Law, requires recognition of the exclusive rights of the state to regulate social relations and ensure the development of society. Therefore, we can conclude that sovereignty is a necessary means to ensure the effective implementation of state-specific functions.

Legal personality is one of the main elements of the legal status of the state as a collective subject. In accordance with the common approach, the legal personality of an organization is based on a legal capacity, capacity, and delictual dispositive capacity. In private-legal relations, the state acts mainly as a legal entity. Therefore, its legal capacity and capacity are generally characterized by the same features. We should agree with A. Henel's opinion that "the understanding of the state as a legal person and a subject of law does not cover all the specific features of the legal nature of the state" [11, p. 100].

Theoretically, the state can be a party to all kinds of public and private legal relations provided for by law. This suggests that its legal capacity coincides with its capacity; implemented continuously in all spheres of social relations regulated by the regulations of substantive law.

On an ongoing basis the acquisition of legal capacity by the state occurs through the creation of relevant norms of legislation by another collective subject, which acts as the supreme body of state power – the parliament. The validity of such regulations ensures the legal status of the state as a subject of law in any sphere of public relations. The capacity of the state is the basis for determining the capacity of public authorities and officials. The state has its legal capacity as a subject in a legal relationship with full rights, and it is also implemented in the system of executive authorities, the court system, as well as powers delegated to other legal entities.

The execution of the legal personality of the state in the international law has a specific nature. The concentration of supreme state power in one hand (the monarchy) made it possible for a significant period of time to talk about the personification of the state, its personification as a single entity by a person who possesses individually the expressed will, goals and motives. At one time, this tendency was considered by V.A. Nezabytovskyi, who stated that "personification of the state became the ideal of politics" [11, p. 91].

The scholar did not deny that the legal personality of the state as a participant in the international relations and that of an individual has certain common features, but at the same time he emphasized that the nature of the execution of the rights and obligations of the state in relations with other states as well as within the state, does not allow their coequality.

"The state acts as a certain organization in foreign relations and with other states, acting in accordance with certain rules of law, created not by this organization but by the whole international community. These norms, which are not created by this state, at the same time, bind its behavior in foreign relations. The international community, whose member is the

state, is a broader and more general concept. Therefore, the concept of the state can be derived from the more general concept of international communication where the state acts and is regarded as a member of the community, that is, as a subject of rights and obligations" [11, p. 91].

Considering the international contractual obligations of the state, one could assume that in this relationship, the individual state exercises its legal personality individually. However, such an assumption would be incorrect, since the President and the government could act on behalf of the state; the terms of international treaties may include obligations to act by specific state bodies, provide for international cooperation of national authorities, etc. Direct international cooperation occurs with the participation of the authorized central executive authority in the area of foreign relations (Ministry of Foreign Affairs) [8] and other state bodies, as well as authorized officials (President of Ukraine (Item 3, Part 1, Article 106 of the Constitution of Ukraine), the Chairman of the Verkhovna Rada of Ukraine (Item 4, Part 2, Article 88) and others). Thus, the exercise of the legal personality of the state has a collective character, when the legal position of the state in an international treaty is formed on the basis of coordination of the foreign and domestic policy vectors of the current government with the interests of the people as a whole.

It should be noted that the separation of powers between the branches of power ensures that the interests of the people are represented in the course of making foreign policy decisions through the ratification of international treaties. For instance, a prerequisite for recognition of an international treaty as part of national legislation is the consent of the Verkhovna Rada of Ukraine to its bindingness (Part 1, Article 9 of the Constitution of Ukraine).

One should agree with the opinion of V.I. Tymoshenko in relation to the transformation of the will of individuals, expressed in the form of individual wills or combining them to the will of a collective subject, is determined by the prescriptions of the positive law concerning the creation, competence, and functions of such subjects. Therefore, declaration of will should be treated as a decision or norm made on the basis of legal rules defining state organization [11, p. 107].

Therefore, even in the course of international relations, a democratic state does not act as an "indivisible entity", and the government of the day is not the embodiment of the absolute nature of the current power. The legal capacity and capacity of the state requires a clear division of rights, duties, and powers between public authorities and officials, on the one hand, and the body of legislative power, on the other hand, which in its turn ensures the representation of the people in this process.

Conclusions. The summary of the above provides for the following statements. The ideas of the legal theorists of late 19th – early 20th centuries of the "agreement of union", "supreme union", "legal entity", and "legal corporation" found their practical implementation at the present phase of the state formation. These definitions characterize the modern content of the classical features of the state in such aspects. For one thing, the state acts as the subject which creates the law and enforces it, exercising legal regulation of social relations. In view of this, it implements such a specific trait as sovereignty, the essence of which is the ability of the state to create and maintain its own legal order independently. Secondly, a democratic state as an embodiment of law is inextricably linked to it; its legal personality contains prohibitions, obligations and restrictions, which originate from: a) the content of the Fundamental Law of the State, which defines the basic principles of the state system and establishes the content of rights and obligations to the state of its citizens; b) the content of international treaties, which have become part of national legislation, and treaties concerning cooperation between the States. Thirdly, the territory of the state is a legal abstraction that outlines the spatial boundaries of the exercise of state power. Fourthly, the legal capacity and capacity of the state provide for a clear separation of rights, duties, and powers between officials and public authorities, by the body of legislative power.

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