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LEGAL AND ILLEGAL ACTIONS "CONFRONTATION": SOCIO-PHILOSOPHICAL DIMENSION

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It is confirmed that leveling of natural law as a basic tradition generates a "new normality" having no border between legal and illegal actions. The aim of the study is to analyze the content of the terms "legal action" and "illegal action" with a view to their further conceptualization. The key task is to comprehend the phenomenon of "conflict" between legal and illegal actions in terms of philosophical ontology, social philosophy, and philosophy of law. Philosophical-legal, philosophical-linguistic, as well as comparative methodological principles have shown that social cognition of legal reality proceeds in the procedures of understanding, interpreting, mastering social reality, but there is no complete understanding, which gives rise to confrontation between legal action and illegal action. The conclusions prove that "legal action" forms the basic principles of legal behavior as a socially significant external practical activity. "Illegal action", in turn, is the opposite factor, upsetting the balance of social relations, leveling or destroying tradition.

Key words legal action, illegal action, natural law, applicable law, tradition, legal reality.

«... інші науки, скільки б вони не намагалися міркувати,
не звертаючись до філософії, без неї не можуть володіти
ні життям, ні духом, ні істиною»

(Г. Гегель. Феноменологія духу)

Introduction

Socio-cultural, political, economic, managerial, as well as, legal conditionality of the action of law forms its specific system-forming core. The right has an external and an internal plane. The external plane is associated with the forms and methods: law, legal laws, and lawful behavior of subjects of law. The internal plane of law forms the current understanding of law in the context of its historical dynamics. At the same time, the content of law – its vectors, effectiveness, and quality – depends on the diversity of different cultures, traditions, customs, mentality, and psychological characteristics of peoples.

Legal action, therefore, stems from the meaning-forming core of natural law. Relation to the needs and interests of people unites the action of law and legal action. Legal action also determines the quality of state power and is inseparable from state activity as such. The state, in turn, must provide conditions for legal action. It develops special mechanisms that are intended for legal regulation, takes the necessary actions to achieve the ultimate legal goals. It should be noted that modern law absorbs a fairly large number of factors that change its particulars, however, until recently, the meaning-forming core of law did not change, which made it possible to preserve the moral and ethical mechanism of legal action.

The change in the meaning-forming core of the law, the gradual leveling of natural law as a basic tradition, the rejection of tradition in itself, gives rise to a new reality and "new normality", which has no border between legal action and illegal action. And this is perceived by modern social philosophers as an alarming signal. Questions arise: Will human civilization survive in the future if doubts arise about the past as an indisputable heritage? What to do if values are declared only in words? What to do with new traditions if there is no basic support in the collective "archetype"?

On the one hand, it may seem that the term "legal action" is defined in the same way as "action of law", which, in turn, can be understood as a property (or ability) of law in a certain environment to have an ideological motivational impact on a person, community of people and, as a result, ensure the lawful nature, according to their (rights) goals, principles, and prescriptions. However, on the other hand, "legal action" should be considered as a factor that preserves a certain fair balance in society. Consequently, the term "illegal action" is the opposite factor, upsetting this balance.

The aim and tasks Based on the above-mentioned, it is necessary, first of all, to analyze the content of the terms "legal action" and "illegal action" in order to further conceptualize them. It also requires an understanding of the phenomenon of "conflict" between legal action and illegal action in terms of philosophical ontology, social philosophy, and philosophy of law.

Research methods

Law is developed by an apparatus capable of enforcing legal compliance. The effectiveness of control mechanisms depends primarily on the quality of this apparatus. Even the most indisputable justice does not provide for itself in its entirety. Therefore, at all times, no society has been able to declare itself a completely just society. The methods of enforcing legal compliance in democratic and totalitarian legal systems are different. The result can be the production of legal and illegal laws. In contrast to a legal law, an illegal law does not meet the requirements of law and does not embody justice. Illegal laws take place in totalitarian regimes. However, until abolished, these laws are also enforceable. Accordingly, legal laws are acceptable in various democratic settings.

However, there is a tradition in both just and unjust political systems. Tradition preserves the legacy of natural law, implying the meaning of legal action as a value archetype. Being rejected by representatives of different cultural communities opposite traditions can be in confrontation, give rise to serious contradictions. It is the modern philosophy of law that is capable of deepening and determining the cause of the conflict between legal and illegal action.

O. Meshcheryakova rightly asserts that the philosophy of law is closely related to the dispute about the existence of free will, its limits and nature waged in philosophy since ancient times (Meshcheryakova, 2019: 22-23). The issue

of free will is also fundamental to jurisprudence. Therefore, for a deep understanding of the essence of law it is necessary to build the entire system of legal knowledge based on the philosophy of law. On such a basis exclusively it becomes possible for a progressive development of law, taking into account all the achievements of human thought and expanding the ideological boundaries and approaches to the understanding of law. There are two completely opposite positions in philosophy on the issue of free will. The first is based on a complete rejection of determinism and the assumption of the possibility of the existence of free will. The second is based on the so-called rigid determinism and the fundamental denial of free will. If we apply these positions to the philosophy of law, then they can be formulated as follows: the denial of determinism means the ability for a capable individual to choose a behavioral model, that is, to make a choice between good and evil; rigid determinism presupposes the illusory nature of free will, which puts the individual within a certain framework determined by the law, moral and ethical norms adopted in society. In this context, determinism is understood as a chain of reasons hidden from the individual, prompting him to a certain model of behavior (Meshcheryakova, 2019: 22-23). The author concludes that, despite the fundamental nature, the concept of "free will" is absent in modern philosophy of law and jurisprudence. The terms "action" or "inaction" used in philosophical and legal discourses do not fully reflect the full depth of the concept of "free will".

O. Meshcheryakova also argues that in the philosophy of law, the recognition of the existence of free will means that the individual, as the bearer of free will, is able to make decisions based on the free choice of the pattern of behavior that meets the moral and ethical standards adopted in society. Therefore, in a philosophical sense, free will should be understood as a kind of ideality. In jurisprudence, free will is understood as freedom of action and of choice. In general, the problem of mental acts in legal sciences is considered on the basis of two criteria – legal and biological. The first criterion is considered to be the subject's ability to form a proper intellectual and volitional attitude to the performed action or inaction. The second (biological) criterion is determined by means of natural (medical) science methods of the mental disorder state. In jurisprudence, the issue of free will is usually discussed in the context of various branches of law. Therefore, the philosophy of law as an academic discipline, along with the theory of state and law should become the foundation which the legal education is built on. Thus, the philosophy of law is one of the independent areas of general theoretical legal knowledge; it is not a part or continuation of the theory of law (Meshcheryakova, 2019: 22-23). Thus, free will is able to provide freedom of action as a legal action based on moral imperatives. It is also necessary to trace what causes the illegal action. In this regard, philosophical-legal, philosophical-linguistic, as well as comparative methodological principles are the most effective in considering legal action and illegal action.

Research results

Natural law, one way or another, is based on tradition. We understand tradition as a system of norms formed anonymously, as a result of accumulated experience, ideas, rules and patterns, which regulates a fairly large and stable group of people. Traditions are passed on from generation to generation as ways of preserving the collective historical memory. Traditions are often considered ancient, unchanging and very important, although sometimes they can be much less "natural" than previously thought. It is assumed that in order to consider any practice as traditional, it is necessary to be transfered across at least two generations. Tradition can also refer to ancient beliefs or customs of lost or mysterious origin that have existed since time immemorial. Originally, the word was used literally to denote material action.

Accordingly, natural law is understood as a tradition or doctrine in the philosophy of law and jurisprudence, recognizing the existence of a number of inalienable rights that belong to us and based on the very fact of our belonging to the human race. Natural law has traditionally been understood as the right to protection from violence by other people and the state, and the right to free disposal of one's identity.

A. Ovchinnikov considers it obvious that law is a part of social reality (Ovchinnikov, 2010: 15). But what, in the author's opinion, is a social reality? The phenomenological conception of society shows that social reality is constructed by human in every act of his social thinking. Human's understanding of social ties and relationships is manifested in the construction of meanings. Moreover, the process of understanding the actions of other members of society takes place in the semantic fields of the national language, which gives the newborn member of society a certain picture of the world, including the social world. All the experience accumulated by the mankind is objectified in language and transmitted by language itself, which always leaves a certain part of this experience unconscious, determines the worldview and perception of that part of the experience amenable to reflection. Language forms guidelines, recipes for behavioral reactions, meanings and actions, hypotheses about goals in the actions of social actors. Language consolidates the typification of social phenomena and actions and allows a person to objectify its inner world, which in its entirety will never be absolutely objectified, because in addition to the general experience enshrined in human language and memory, there is a private experience of perception and understanding of the social world. Therefore, social reality shapes human thinking and is constructed by it. In phenomenological sociology, society is both a subjective and an objective reality at the same time. Between them, or between the subjective and objective facets of social reality, there is no classical rationalistic antagonism: the subject, being part of society, is included in the object, so, knowing society, it at the same time knows itself.

Therefore, social cognition takes place in the procedures of understanding, interpreting, mastering social reality. Moreover, understanding, as the main procedure of social thinking, is definitely socio-cultural. The influence of society on a person is expressed in reflecting certain social ties, relationships, patterns, acquires certain traits of character as a stone burned in a furnace, but in the fact that it, learning from childhood those or other ethno-cultural and other values, acquires the opportunity to form meanings, comprehension, constructs the reality that affected it (Ovchinnikov, 2010: 15).

Therefore, it is important to understand the transformation of the essence of "tradition", as well as the content of natural law, not in the utilitarian-applied sense of the word, but in the deep philosophical and moral sense. Social knowledge of legal reality does take place in the procedures of understanding, interpreting, mastering social reality, but full understanding is not always present, and sometimes absent at all, which creates a confrontation between legal action and illegal action. If "understanding" replaces "interpretation" at all, then all natural canons are being destroyed, including the canons of natural law.

The word "tradition" has been interpreted so harshly that its boundaries are gradually disappearing. Modern globalization offers images of new traditions or creates a situation of complete abandonment of tradition. Initially, the word "tradition" was associated with the fact that it has lost its novelty, opposes development and renewal, which in itself invariably symbolizes stability or stagnation, eliminates the need to comprehend the situation and make a decision. "Tradition" is often presented as a synonym for the word "backwardness". In the concept of progressivism, tradition retreats under the onslaught of the new, becomes a doomed and historically relative phenomenon. It can be argued that tradition is completely inferior to technology and innovation.

At all times, tradition viewed in the context of history has adapted to the needs of today, and change has become part of the ancient tradition. Tradition is changing slowly, and those who adhere to tradition unconsciously react to change. If a tradition is significantly transformed over many generations, it will be seen as immutable or as a canon. This model of behavior involves the correlation of individual actions with the line of tradition. Abandonment of any tradition in the field of natural law legitimizes illegal action.

Natural law is also considered in modern legal discourse as a natural process of history and is not a true law, but an ideal construction of future. The historical approach offers to consider all ongoing legal actions and illegal actions from the point of view of regularity, but, at the same time, the differences between "old" and "new" in each concrete historical time are leveled. The ideal construction of the future is possible within a set of individual moments of the present. Natural law, therefore, is evolving ideal consciousness of law, arising from the goods and needs of life, contributing to their further development. It contributes to the birth of real law, which is a natural process. Until natural law as an ideal consciousness has become a form of law, norm, rule or custom, it is only a moral requirement. Morality, therefore, is practically beyond the sphere of the relationship between legal and illegal actions.

Discussion

Today, natural rights also include many socio-economic and political rights, in particular, the right of the people to establish a constitution, to participate in political life actively, to be united in political parties, to work, to have a decent wage, equality before the court and the law. A. Mamychev, A. Mordovtsev, S. Shestopal argue that the consideration of different, even competing types of understanding of law, ways of understanding the legal, political, spiritual spheres of society – is, in methodological terms, the necessary meaningful moments of the main process of modern legal science identification of national law (Mamychev, 2017: 489). The question posed by the representatives of legal positivism as a statement remains "open": can a right be granted only by the will of the state embodied in law, so there can be no right outside the law, or is this a controversial point?

A. Mordovtsev, A. Mamychev also note that it is the legal mentality that determines the set of readiness and predispositions of the individual to act, think, feel, perceive various phenomena, assessing them as positive or negative, in the state-legal sphere; involves a combination of cognitive and value motives of lawful or wrongful behavior of actors (Mordovtsev, 2016: 446). Such readiness of individuals is connected with a long tradition to feel and consciously accept the action of the regulatory action as it is obligatory for execution within a certain time in a certain territory and concerning a concrete circle of persons, bodies, and organizations. As a general rule, a normative act applies to relations that took place after its entry into force. At the same time, the tradition remains, and regulations are transformed.

N. Varlamova draws attention to the special importance of internationalization (or trans-nationalization) of legal regulation. Today, in the context of the global division of labor and active interstate migration, it is becoming increasingly difficult to separate issues related to the internal affairs of a state and issues of general or regional interest. The everyday life of a person is dependent on events happening at the other end of the world. Citizens of one state who identify with the community are increasingly living and working outside the community. The operation of many commercial and non-commercial organizations has also long gone beyond national borders. The nature of international relations is changing radically; they are no longer reduced to interstate and acquire a diffuse character. Today in the international arena compete and cooperate with not only nation-states, but also many transnational and supranational organizations of all kinds – large multinational companies, the WTO, the World Bank, NATO, the European Union, Greenpeace, and Amnesty International. Moreover, non-governmental transnational organizations sometimes operate even more effectively than states and their associations.

As a result, a number of economic, financial, environmental, social, political, military processes that affect the lives of the population are beyond the control of nation states. Formally, sovereign states (regardless of their economic and military power) are unable to act fully autonomously, even within their territory, and are forced to take into account the position of other actors in international relations – nation-states and transnational organizations. The state largely loses control over its domestic legal order, because the implementation of adopted regulations governing, for example, the Internet, taxation, the fight against unemployment or economic crimes, cannot be provided solely by the resources at its disposal (Varlamova, 2016: 32). Traditions in international and intercultural legal reality are different, so they do not coincide, and the confrontation between legal action and illegal action is growing. Legal regulation, as a rule, is a

process of purposeful influence of the state on public relations by means of special legal means and methods which are directed on their stabilization. However, the new global legal normality is often implemented as a unilateral mechanism, operating within a single value model, unsuitable for bearers of different legal traditions.

S. Kharchenko confirmed that in today's globalized world, where competition between different centers of power is becoming more intense, not all players are equal. It can be observed that international legal institutions often act asymmetrically towards certain members of the world community, and their strategic interests are ignored (Kharchenko, 2019: 91). That is, such a new legal normality, declaring equality, generates inequality.

E. Gerasimova considers this problem in another point of view and emphasizes that equality in the socio-economic sphere, achieved at the cost of limiting economic activity and forcing the low standard of living of most citizens, cannot be good. The author states that inequality in wealth can be the basis for compensating benefits for everyone. For example, no one will deny the high progressive tax on wealth in this case (Gerasimova, 2020: 8). Such new traditions as sponsorship, patronage, charity, funding also replace the concepts of equality and inequality, as they are based not on a natural desire to do good, but on the need to circumvent the law, to reduce taxes on wealth.

For the legislator, natural law should be a guideline to be pursued. There is no single universally recognized list of natural rights: it can vary depending on time, place. Legal reality today is presented not only as a material and spiritual reality, but also as a virtual one. In this sense Yu. Kharchenko showed how the trivergence of the material, spiritual and virtual worlds only distantly reflects the essence of the universal integrity, however, it allows us to see, as we have already said, the colossal capabilities of a person that discovers new phenomena, fixes them in spacetime, thinks them, and manifests its unique qualities (talents, abilities, character traits). That is, the feeling of the unique and the universal integrity is the most important stimulus for the development of the human psyche, self and spirituality (Kharchenko, 2020 : 21). The concept of natural law understands "right" and "law" as different concepts. Thus, each individual has some higher, permanent right, embodying reason, justice, the objective order of values, or even the wisdom of God himself. All of them do not depend on the norms and principles established by the state and act directly.

Conclusion

Thus, "legal action" as a factor of fair balance in society, is a derivative of the rule of law. It still continues to be formed under the influence of natural law, tradition, canon as the basic foundations of society and the state. In modern philosophical and legal discourse, the "rule of law" is presented as an ideal type of state, which activities subject to law. Legal traditions in comparison with legal customs represent a wider entity; they are less connected with feelings, emotions of people. What distinguishes these social regulators is that customs are formed over several generations, and traditions in a shorter time.

"Legal action" forms the basic principles of legal behavior as a socially significant external practical activity, evaluated from political, legal, moral positions. Legal behavior is an externally observable system of human actions, which the law is realized in. "Illegal action", in turn, is the opposite factor, disturbing the balance of social relations, leveling or destroying tradition. "Illegal action" generates "protest unconventionality". Protest unconventionality is a deliberate violation of established traditions, order, norms, rules of conduct, taboos.

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С. П. Харченко

«КОНФРОНТАЦИЯ» ПРАВОВЫХ И НЕПРАВОВЫХ ДЕЙСТВИЙ: СОЦИАЛЬНО-ФИЛОСОФСКОЕ ИЗМЕРЕНИЕ

Аннотация. Показано, что нивелирование естественного права как базовой традиции, порождает «новую нормальность», в которой нет границы между правовым и неправовым действием. Целью исследования является анализ содержания терминов «правовое действие» и «неправовое действие» с целью их дальнейшей концептуализации. Ключевой задачей стало осмысление феномена «конфликта» между правовым действием и неправовым действием в терминах философской онтологии, социальной философии, философии права. Применение философско-правового, философско-лингвистического, а также компаративного методологических принципов позволили продемонстрировать, что социальное познание правовой действительности протекает с использованием процедур понимания, интерпретации, освоения социальной реальности, однако полное понимание отсутствует, что и порождает конфронтацию между правовым действием и неправовым действием. Делается вывод, что «правовое действие» формирует базовые принципы правового поведения как социально значимой внешней практической деятельности. «Неправовое действие», в свою очередь, является противоположным фактором, нарушающим баланс общественных отношений, нивелирующий или уничтожающий традицию.

Ключевые слова: *правовое действие, неправовое действие, естественное право, действующее право, традиция, правовая действительность.*

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«КОНФРОНТАЦІЯ» ПРАВОВИХ І НЕПРАВОВИХ ДІЙ: СОЦІАЛЬНО-ФІЛОСОФСЬКИЙ ВИМІР

Вступ. Визначено, що соціокультурна, політична, економічна, управлінська, господарська, а також правова обумовленість дії права формують його специфічне системоутворююче ядро. Право має зовнішню площину, яка пов'язана з формами і методами права, правовими законами, правомірною поведінкою суб'єктів права, а також внутрішню площину, яка формує поточне розуміння права в контексті його історичної динаміки. Правова дія виникає з ядра природного права, пов'язаного з потребами та інтересами людей, а також визначає якість державної влади. Держава, в свою чергу, забезпечує умови для правової дії, оскільки виробляє спеціальні механізми, які призначені для правового регулювання. Зміна смислового ядра права, поступове нівелювання природного права як базової традиції, відмова від традиції як такої, породжує нову реальність і «нову нормальність», в якій немає межі між правовою дією і неправовою дією. ***Метою дослідження*** є аналіз змісту термінів «правова дія» і «неправова дія» з метою їхньої подальшої концептуалізації. *Ключовим* ***завданням*** стало осмислення феномену «конфлікту» між правовою дією і неправовою дією в термінах філософської онтології, соціальної філософії, філософії права. ***Методологія і результати дослідження.*** Філософсько-правовий, філософсько-лінгвістичний, а також компаративний методологічні принципи допомогли показати, що соціальне пізнання правової дійсності дійсно протікає в процедурах розуміння, інтерпретації, освоєння соціальної реальності, однак повне розуміння не завжди присутнє, а іноді відсутнє взагалі, що й породжує конфронтацію між правовою дією і неправовою дією. Якщо «інтерпретація» підмінює «розуміння», тоді всі природні канони руйнуються, включаючи канони природного права. ***Обговорення.*** Показано, що традиції у міжнародній та міжкультурній правовій дійсності є різними, тому вони й не збігаються, і конфронтація між правовою дією та неправовою дією наростає. Однак у межах нової глобальної правової нормальності правове регулювання нерідко здійснюється як однобічний механізм, що діє в рамках якоїсь однієї ціннісної моделі, непридатної для носіїв різних правових традицій. *У* ***висновках*** «правову дію» представлено як фактор, що зберігає деякий справедливий баланс у суспільстві, а також є похідною правової держави, яка все ще продовжує формуватися під впливом природного права, традиції, канону як базових підвалин суспільства і держави. Доведено, що «правова дія» формує базові принципи правової поведінки як соціально значущої зовнішньої практичної діяльності, що оцінюється з різних позицій: політичної, правової, моральної. «Неправова дія», в свою чергу, є протилежним фактором, що порушує баланс суспільних відносин, нівелює або знищує традицію. «Неправова дія» породжує «протестну нетрадиційність», що, в свою чергу, порушує порядок, норми, правила поведінки, табу, створює штучні традиції.

Ключові слова: *правова дія, неправова дія, природне право, чинне право, традиція, правова дійсність.*

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ФОРМУВАННЯ ЕКОЛОГІЧНОЇ СВІДОМОСТІ ЯК ВІДПОВІДЬ НА ВИКЛИКИ СЬОГОДЕННЯ

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Анотація. *У статті аналізується феномен екологічної свідомості, обґрунтовується його соціокультурний та цивілізаційний виміри. Показано, як кризові явища в європейській культурі та цивілізації зумовили необхідність формування глобальної свідомості, яка існує в зв'язках із іншими формами суспільної свідомості, які також екологізуються. Проілюстровано, що накопичення проблем, пов'язаних із поглибленням екологічної кризи на планеті,*