

AXIOLOGY OF HUMAN FREEDOM: PHILOSOPHICAL AND LEGAL ANALYSIS

**Schadylo Oleg - Post-graduate Student, Department of Theory and Philosophy
of Law National University «Lviv Polytechnic»**

ORCID ID: <https://orcid.org/0000-0001-6156-4393>

Статья посвящена анализу философско-правовых взглядов на аксиологию свободы человека. Современная философско-правовая концепция свободы как категории естественного права основывается на достижениях и взглядах философов разных эпох. Это обусловлено тем, что свобода является одной из вечных философско-правовых проблем, поскольку она пронизывает все аспекты деятельности человека. Одной из важнейших методологических проблем теории права и юридической практики является опосредование правом свободы как на уровне общества, так особенно и на уровне индивида с целью создания условий гармоничного развития человека, его взаимодействия с другими людьми, обществом и природой. Важность решения этой проблемы обусловлена тем, что настоящая свобода основывается не только и не столько на праве как системе общеобязательных юридических норм, сколько на праве как одном из важнейших социально-регулирующих элементов жизнедеятельности людей, который ограничивает произвол их индивидуального и коллективного поведения, праве как истинном смысле бытия.

В центре внимания статьи дискуссия философов права по проблеме реализации свободы человека. В статье исследованы взгляды ведущих европейских философов права (Э. Фромма, Ф. Петrarки, Л. Валла, Дж. Мирандолы, Дж. Бруно, М. Лютера, Б. Спинозы, Т. Гоббса, Дж. Локка, Ш. Монтескье, Ж.-Ж. Руссо) на понимание категории «свобода». Подавляющее большинство людей казалось бы имеют общее понимание того, что такое свобода, однако с точки зрения науки, то есть объективного и доказательного исследования, изучать и анализировать свободу как феномен чрезвычайно сложно. Этот парадокс – практическая, повседневная и очевидная ясность для большинства лиц и чрезвычайно сложное теоретическое понимание понятия свободы для представителей научного сообщества обусловлено определенными причинами.

Ключевые слова: свобода, идеал, философия права, либерализм, свобода человека, общество.

Articolul este dedicat analizei punctelor de vedere filosofice și juridice asupra axiologiei libertății umane. Conceptul filosofic și juridic modern al libertății ca categorie a dreptului natural se bazează pe realizările și punctele de vedere ale filosofilor din diferite epoci. Acest lucru se datorează faptului că libertatea este una dintre eternele probleme filozofice și juridice, deoarece pătrunde în toate aspectele activității umane. Una dintre cele mai importante probleme metodologice ale teoriei dreptului și practicii juridice este medierea dreptului la libertate atât la nivelul societății, cât mai ales la nivelul individului, pentru a crea condiții pentru o dezvoltare umană armonioasă, interacțiunea cu alte persoane, oameni, societate și natură. Importanța rezolvării acestei probleme se datorează faptului că adevărata libertate se bazează nu numai și nu atât pe drept, cât pe un sistem de norme juridice obligatorii, ci pe drept ca unul dintre cele mai importante elemente de reglementare socială ale vieții umane, ceea ce limitează arbitrarul comportamentului lor individual și colectiv. ca o adevărată înțelegere a ființei.

Articolul se concentrează pe discuția filosofilor dreptului asupra problemei realizării libertății umane. Articolul examinează punctele de vedere ale marilor filosofi europeni ai dreptului (E. Fromm, F. Petrarch, L. Walla, J. Mirandola, J. Bruno, M. Luther, B. Spinoza, T. Hobbes, J. Locke, S.-L. Montesquieu, J.-J. Rousseau) pentru a înțelege categoria „libertății”. Marea majoritate a oamenilor pare să aibă o înțelegere comună a ceea ce este libertatea, dar din punctul de vedere al științei, adică al cercetării obiective și probatorii, studiarea și analiza libertății ca fenomen este extrem de dificilă. Acest paradox este o claritate practică, cotidiană și evidentă pentru majoritatea oamenilor și o înțelegere teoretică extrem de dificilă a conceptului de libertate pentru membrii comunității științifice din anumite motive.

Cuvinte cheie: libertate, ideal, filosofie de drept, liberalism, libertate umană, societate.

The article is devoted to the analysis of philosophical and legal views on the axiology of human freedom. The modern philosophical and legal concept of freedom as a category of natural law is based on the achievements and views of philosophers of different eras. This is due to the fact that freedom is one of the eternal philosophical and legal problems, because it permeates all aspects of human activity. One of the most important methodological problems of the theory of law and legal practice is the mediation of the right to freedom both at the level of society and especially at the level of the individual in order to create conditions for harmonious human development, interaction with other people, society and nature. The importance of solving this problem is due to the fact that true freedom is based not only and not so much on law as a system of binding legal norms, but on law as one of the most important social regulatory elements of human life, which limits the arbitrariness of their individual and collective behavior. as a true understanding of being.

The article focuses on the discussion of philosophers of law on the problem of realization of human freedom. The article examines the views of leading European philosophers of law (E. Fromm, F. Petrarch, L. Walla, J. Mirandola, J. Bruno, M. Luther, B. Spinoza, T. Hobbes, J. Locke, S.-L. Montesquieu, J.-J. Rousseau) to understand the category of “freedom”. The vast majority of people seem to have a common understanding of what freedom is, but from the point of view of science, that is, objective and evidentiary research, to study and analyze freedom as a phenomenon is extremely difficult. This paradox is a practical, everyday and obvious clarity for most people and an extremely difficult theoretical understanding of the concept of freedom for members of the scientific community due to certain reasons.

Key words: freedom, ideal, philosophy of law, liberalism, human freedom, society.

Formulation of the problem. One of the most important methodological problems of the theory of law and legal practice is the mediation of the right to freedom both at the level of society and especially at the level of the individual in order to create conditions for harmonious human development, interaction with other people, society and nature. The importance of solving this problem is due to the fact that true freedom is based not only and not so much on law as a system of binding legal norms, but on law as one of the most important social regulatory elements of human life, which limits the arbitrariness of their individual and collective behavior. as a true understanding of being.

Analysis of recent research and publications. The study of freedom as a philosophical and legal category in the European philosophy of law was carried out by A.S. Romanova [5], S.S. Slyvka [7], etc. Despite the fact that the topic of

the relationship between law and freedom has long attracted the attention of researchers, it has not lost its relevance. Most researchers focus on the relationship between freedom and specific legal phenomena, without going into detail on the principles underlying the interaction of categories of law and freedom.

Formulation of the goals of the article is to define discourses on philosophical and legal views on human freedom.

Presenting main material. The modern philosophical and legal concept of freedom as a category of natural law is based on the achievements and views of philosophers of different eras. This is due to the fact that freedom is one of the eternal philosophical and legal problems, because it permeates all aspects of human activity.

The vast majority of people seem to have a common understanding of what freedom is, but

from the point of view of science, that is, objective and evidentiary research, to study and analyze freedom as a phenomenon is extremely difficult. This paradox is a practical, everyday and obvious clarity for most people and an extremely difficult theoretical understanding of the concept of freedom for members of the scientific community due to certain reasons. This is largely due to the fact that «freedom is thoroughly dualistic and antinomic, internally contradictory and ambivalent ...» [8, p. 3] Therefore, among modern researchers, the dominant position is that «in philosophical thought there is no more complex and confusing category than freedom» [6, p. 189]. However, there are difficulties in understanding this concept due to the variety of approaches to its interpretation in philosophical and legal thought. Another XVI century. Montesquieu, in his treatise *On the Spirit of Laws*, rightly remarked that “there is no word. which would have so many different meanings and would have such a different impact on people as the word “freedom” [1, p. 154]. Each of the scientists has their own evaluative and subjective ideas about freedom, formed in them on the basis of their own life experience, or as a result of theoretical interpretation of this concept.

The variety of approaches to the category of freedom, apparently, was the reason why D. Redko notes that «freedom is a relative concept and the substance is etheric, in kilograms or even in kilobytes is not measured» [4]. In the humanities, there are more specific approaches to defining freedom, which are discussed in this paper.

Thus, analyzing the different contexts of using the concept of freedom, V. Mukhina and V. Basyuk give several interpretations of the understanding of freedom: as independence, expressed in the ability to make their own choices and act in accordance with their interests and goals, focusing on rights and obligations relations between citizens and the state; as a product of the interaction of the individual, society and the state, formalized in the legislative enshrinement of the fundamental rights, freedoms and responsibilities of citizens of the country, formulated in the Universal Declaration of Human Rights of the United Nations [2, c. 37-51].

However, the above definitions are mainly only state, but do not reveal the essential freedoms, which necessitates further philosophical and legal search, which, without a properly formed methodology will not help solve the problem, and further deepen the contradictions among a large number of different approaches to interpretations. phenomenon. Therefore, in order to avoid diversity of interpretations of the concept of freedom, it is necessary to adhere to such methodological principles and approaches that would allow to achieve greater clarity and unambiguity in the interpretation of freedom and its analysis. All this will allow in the process of studying this complex and invariant phenomenon and achieve greater unity in understanding its essence.

The semantic manifestation of the category «freedom» can be considered in two aspects: in natural law – as a possibility of choice given to man by nature, and in the positive – as a principle that establishes the limits of freedom, provides an opportunity to characterize it in legal terms. Functioning and development of the individual, society, state and determines the guarantees of freedom through law. In turn, the category of «freedom in law» is a space legitimized and sanctioned by the state for the implementation of the behavior of subjects, normatively defined in the rights and responsibilities of man and citizen, in which law is the boundary between freedom and arbitrariness, indicates a certain degree (balance), which ensures the freedom of the individual, society and the state.

Freedom as a legal value has its own features: it is fundamental, defining the limits of interference in the sphere of individual space and autonomy of the individual by both the state and individual citizens; is the foundation, the basis for conflicts between individuals; has an individual and at the same time universal character.

In the current Constitution of Ukraine, the term «freedom» is used 48 times in different interpretations. It contains different content. The legislator used a wide range of terminology in the Constitution of Ukraine: «freedom», «freedom», «free», «free», «right to freedom», which indicates the versatility of freedom as a legal category: freedom is a broader concept than law;

the freedom enshrined in the phrase «right to liberty» is narrower than the freedom enshrined in the term «freedom»; The «freedom» of something (for example, political activity) covers a whole range of possibilities for its realization, while the «right to freedom» of something (for example, association in political parties) is only a separate aspect; «Law» and «freedom» are not identical concepts, although they have some similarities and are defined through the category of jurisdiction, which means the ability to choose a particular behavior.

There are many provisions in the text of the Basic Law of Ukraine in which «law» is included in the concept of «freedom». Yes, Art. 28 the concept of «freedom of movement» includes «the right to leave the territory of Ukraine freely». We believe that freedom is interrelated with subjective law, as it allows individuals not only to exercise the powers enshrined in law, but also to model their behavior to satisfy their own interests. In order for the subject to be fully independent, the subject is guaranteed independence from the interference of other persons, and the subject himself must not violate the interests of others by his actions.

In addition, in Part 2 of Art. 32, part 2 of Art. 34, part 2 of Art. 35, part 1-2 of Art. 36, part 1 of Art. 54 of the Constitution of Ukraine, along with the categories of «rights» and «freedom» uses the category of «interest», which in the absence of a common understanding of the terms, further complicates the clarification of constitutional provisions. The category of «interest» in terms of content is much broader than rights and freedoms. Legislative consolidation of the interests of the individual, which have the quality of significance for citizens and society, translates them into the category of official law. In this case, the interest is the cause of its legislative recognition, and rights and freedoms – a consequence, ie a kind of result of their recognition by society. But not all rights and freedoms absorb interests, as their range is very large and diverse.

In its decision of December 1, 2004, the Constitutional Court of Ukraine determined that in legal acts the term «interest», taking into account both its etymological and general so-

ciological, psychological meaning, is used in a broad or narrow sense as an independent object of legal relations. whether blocked by regulations.

Thus, revealing the elements (rights, freedoms and interests) through which human freedom is qualitatively and quantitatively enshrined in the Constitution of Ukraine, it is necessary to characterize the fundamental human freedoms, which are enshrined in the Basic Law of Ukraine.

In Art. 29 of the Constitution of Ukraine enshrines the right to liberty and security of person as a fundamental principle of human legal status, which provides state-guaranteed personal security and liberty, which consists in preventing, terminating and punishing for encroachment on life, health, sexual freedom, etc. This principle is filled with content with the help of such subjective rights as the right to life (Article 27 of the Constitution of Ukraine), the right to respect for dignity (Article 21 of the Constitution of Ukraine).

At the same time, we agree with VV According to Kozhan, the right to liberty and the right to personal integrity should be enshrined as two separate rights, as they have a similar but different meaning. The right to liberty is the ability to do or not to do things that are not prohibited by law. The right to personal inviolability is a prohibition enshrined in regulations to interfere in certain areas of human life by the state, any organizations or other persons.

Freedom of movement (Article 33 of the Constitution of Ukraine) includes the right of a person (a citizen of Ukraine, as well as a foreigner and a stateless person) who is legally present in Ukraine to move freely and unhindered in Ukraine in any direction, in any way, at any time, except for restrictions established by law, without violating the rights and freedoms of other subjects of law (paragraph 1, part 1 of Article 3 of the Law of Ukraine «On Freedom of Movement and Free Choice place of residence in Ukraine»). The content of freedom of movement is the ability of an individual to move freely not only within a single room, but also within the city, throughout the state (including their citizenship or permanent residence), the ability to

travel abroad and return to any time. The movements of an individual can be different in duration, regularity and direction without change of residence, associated with a change of location.

Freedom of speech (Article 33 of the Constitution of Ukraine) consists of certain rights that ensure its implementation, establish conditions and guarantees for its implementation. The structure of freedom of speech can be divided into the following elements: search, receipt, production, transmission and dissemination of information. Each of them is guaranteed by the legislation and is represented by several norms contained in the Constitution of Ukraine. An important element of the legal regulation of freedom of speech is the prohibition of censorship (Part 3 of Article 15 of the Constitution of Ukraine).

Freedom of worldview (conscience) (Article 28 of the Constitution of Ukraine, Article 3 of the Law of Ukraine «On Freedom of Conscience and Religious Organizations») – an institutional legal principle that reflects the nature, role and direction of legal regulation of human self-determination in their attitude to religion and other spiritual values, without violating the rights of other subjects, guaranteed by the state. Freedom of conscience includes the freedom to have, accept and change a religion or belief of one's choice and the freedom to profess or not to profess any religion alone or with others, to practice religious cults, to openly express and freely disseminate one's religious or atheistic beliefs. The legal postulates that ensure the implementation of this principle include the following constitutional provisions: no ideology can be recognized by the state as mandatory (Part 2 of Article 15); the church and religious organizations in Ukraine are separated from the state, and the school – from the church (Part 3 of Article 35); no religion can be recognized by the state as mandatory (Part 3 of Article 35); no one may be relieved of his duties to the state or refuse to comply with the law on the grounds of religious belief (Part 4 of Article 35).

Freedom of association in political parties and public organizations means that such associations are created by citizens of their choice in the manner prescribed by the legislation of

Ukraine to exercise and protect their rights and freedoms and to satisfy political, economic, social, cultural and other interests (Art. 36 of the Constitution of Ukraine).

Freedom of literary, artistic, scientific and technical creativity (Part 1 of Article 54 of the Constitution of Ukraine) provides for personal independence and autonomy in the realization of creative potential, creative ideas of the individual.

Freedom of creativity in the age of information technology is an important principle of intellectual property law. The constitutional consolidation of the freedom of human creativity as a state-guaranteed opportunity includes the following elements: the choice to engage in creativity or not; choice of type of creativity, method of participation in it; forms and organization of the creative process; the right to develop creative abilities; the right to state support for creative activity; the right to dispose of the results of their creative activity; the right to protect the freedom of creativity and the results of creative work. The first three elements of creative freedom do not fall under legal regulation, as they cover the creative process, which is based on the inner experience of the individual and is based on self-regulation. The freedom of creativity guaranteed in the Basic Law means the creation of conditions for the use of this freedom, first of all, by establishing the protection of intellectual property.

The current legislation provides for other freedoms, in particular: «freedom of contract», «freedom of entrepreneurial activity, which is not prohibited by law» (paragraphs 3-4 of Part 1 of Article 3 of the CCU); «Freedom to conduct business activities using information and telecommunications systems», «freedom to choose a counterparty, electronic means, types and forms of activity», «freedom of competition and ensuring its integrity», «freedom to conduct electronic transactions» (paragraphs 1-4 h. 1 of Article 5), «freedom in the choice of types, forms and pace of education, educational program, educational institution, other subjects of educational activity» (Article 6); «Academic freedom, including freedom of teaching, freedom from interference in pedagogical,

scientific-pedagogical and scientific activities, free choice of forms, methods and means of teaching that correspond to the educational program» (paragraph 1, part 1 of Article 54); «Freedom of creativity in the field of theatrical art» (Article 5); «Freedom of information exchange», «freedom of expression of views and beliefs»; «Freedom from self-disclosure» (Article 18), «freedom in the submission of evidence by the parties and in proving before the court» (Article 22), etc.

Conclusions. The principle of human freedom quite clearly formulates and reflects the main purpose for which the legal regulation of relations – the progressive development of the individual by guaranteeing the necessary conditions, especially conditions for the manifestation of its individuality, taking into account the interests of society and state.

REFERENCES

1. Montesk'ye SH. Izbrannyye sochineniya / SH. Montesk'ye; pod red. M. P. Baskina. M.: Izd-vo politicheskoy literatury, 1955. 799 s.
2. Mukhina V., Basyuk V. Initsiatsii podro- stkov kak usloviye lichnostnogo rosta: prove- deniye initsiatsiy svobodoy. Razvitiye lichnosti. 2010. № 4. S. 37–51.
3. Pozdnyakov E. A. Filosofiya svobody. M., 2004 590 s
4. Red'ko D. Svoboda pysaty i perehortaty. Chasopys "YI". 2004. № 32. URL: <http://www.ji.lviv.ua/n32texts/redko.htm>
5. Romanova A.S. Pravovyj ideal jak re- ghuljator povedinky ljudyny u pryrodno-pra- vovomu prostori: intelighibeljne i sensybeljne osmyslennja. Mytna sprava. № 6 (96). 2014. Chastyna 2. Knygha 1. S. 78–82.
6. Skvortsov, A. A. Etika : uchebnik dlya bakalavrov / A. A. Skvortsov ; pod obshch. red. A. A. Guseynova. 2-ye izd., ispr. i dop. M. : Izdatel'stvo Yurayt, 2014. 310 s.
7. Slyvka S.S. Objekt i predmet filosofiji prava. Problemy filsofiji prava. 2008–2009. Tom VI–VII. S. 42–48.
8. Zav'yalova G.I. Filosofskiy analiz trans- formatsiy svobody (logiko-istoricheskij aspekt): avtoref. dis... kand. filos. nauk: 09.00.01. Oren- burg, 2005. 21 s.