

Traditions and innovations in Ukrainian jurisprudence: Ancient Greek roots

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Abstract. Ukraine's course toward European integration requires harmonisation of Ukrainian legislation with European law, which has its origins in the cultural and traditional foundations of the ancient era. Therefore, the research on the influence of the ancient Greek philosophy of law on the development of Ukrainian jurisprudence becomes relevant, and in the course of this, the problem of the clash of traditions of different legal families and areas of development of legal innovations arises. The purpose of this study – to identify the factor of the dialectic of traditions and innovations in Ukrainian jurisprudence as one of the driving factors of its development. The author uses the methods of axiological analysis, comparative legal method and the method of analogy to substantiate the results obtained and develop conclusions. As a result of the research, it was established that no matter how modified the forms of key legal values, doctrines and institutions are, they are always based on the fundamental ideas based on the intellectual traditions and philosophical and legal ideas of the thinkers of Ancient Greece. It is evidenced by the universalist approach they initiated, on which all European science (including legal science) is based, and modern anthropological concepts of law understanding in general and the justification of fundamental human rights, in particular, are based on principles genetically rooted in the teachings of Protagoras, Socrates and Aristotle. Therewith, it was established that the latest achievements in the organisation of democratic governance are focused on the implementation of the ancient Greek idea of democracy. The author demonstrates that in the dialectical process of development of any legal system, there is always an interaction of some established (traditional) components and various new developments conditioned upon the specifics of such development at each stage, and concludes that the time-influenced changeability of legal values, doctrines and institutions goes back to the intellectual tradition and philosophical and legal ideas of the thinkers of the Ancient period. The practical significance of this research is that the materials of the study can be used: in lawmaking – for the preparation and substantiation of draft laws on the further development of the legal system of Ukraine; in the educational process and research work – in teaching relevant disciplines

Keywords: ancient Greek philosophy of law, the idea of law, values of law, legal tradition, innovation of law, European integration

Introduction

The development of the legal system is a dialectical process in which there is always an interaction between some established – customary and traditional – components and some new developments caused by the specifics of such development at each stage of its life. This specificity is a natural consequence of the constantly changing economic, political and socio-cultural conditions of the functioning of law and, accordingly, its understanding in legal science.

Therewith, legal traditions embody the regulatory experience (both national and global) that has been tested for thousands of years, the preservation and transmission of which to future generations ensures the heredity and continuity of legal development, while value and legal innovations, embodying the cultural and historical specifics of legal relations within a particular society and the means of their regulation, are a kind of mediating link that connects and adapts traditional values to new conditions and deviations from past experience.

As noted by Yu. Oborotov (2004), the legal system, being a factor of stability in society, embodies traditions that are a link between the past, present and possibly even the future. Traditions in law – the fact of legal inheritance, a

synonym for absolute, eternal, life-affirming at different times, and their authority is asserted through usefulness, prevalence, mass application, effectiveness, etc. Thus, traditions in the field of law do not require coercion for the most part.

It is through the presence of some consolidating traditions that different legal systems integrate into a common legal family. Thus, for example, the common law family is dominated by the tradition of accumulating experience in similar and special cases of legal relations that require judicial resolution, and “algorithms” for making court decisions in these cases. Instead, the Romano-Germanic legal family is based on the tradition of regulatory generalisation of standards of lawful behaviour and the development of general criteria for its distinction from various types of offences. Therewith, in the first of these legal families, procedural law traditionally prevails over substantive law, and in the second – vice versa.

Innovations, on the other hand, are deviations from traditional experiences associated with creative development (Oborotov, 2004). Even at the level of legal understanding, i.e., the fundamental interpretation of the essential content of law in legal science (including Ukrainian), an “innovative branch” is being noticeably developed, designed to overcome the traditional one-sidedness of the interpretation of

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the said content, which consists either in a narrow positivist reduction of law to law or in its jus naturalistic reduction to some “natural foundations” of the normativity of human behaviour. This tradition dates back to the ancient philosophical and legal idea of distinguishing between “absolute” (“divine”, “universal”) and “relative” (“human”, “changeable”) laws.

However, as a regulatory requirement that is not justified by any “meta-legal” grounds is perceived not so much as a will that must be obeyed as a “whim of the authorities”, similarly, a “fair provision” not officially enshrined and not supported by appropriate state legal mechanisms will rely solely on the rather shaky foundation of “goodwill”. Therefore, “it is not accidental that there are attempts to overcome the narrowness of traditional Western conceptions of law, at least the positivist natural and sociological ones, by establishing a single integrated jurisprudence. This new jurisprudence (social theory of law) should be based both on reason and on feelings, intuition and faith” (Oborotov, 2004).

In exploring this subject, it should be noted that Ukrainian scholars have not explored traditions and innovations in the process of reforming the legal system of Ukraine in terms of its ancient Greek roots, and accordingly, there are no dissertations on this subject. Therewith, Ukrainian scholars have explored some aspects of traditions in law, the influence of ancient Greek philosophy of law on Ukrainian jurisprudence, including the development of the institution of human rights, the establishment of a tradition of legal culture, the concept of punishment, the democratic foundations of society, the institution of private property, justice, etc. First of all, this refers to S.H. Melenko (2013), who explored the ancient Greek origins of Ukrainian philosophical and legal thought in his monograph of the same name, which is the most significant scientific study on this issue in Ukraine. The researcher traced the history of the assimilation and transformation of ancient ideas in Ukraine from the time of the adoption of Christianity in Kievan Rus, therewith, as and under the influence of which the ideas of Socrates, Plato and other thinkers came to the Ukrainian land, until the 20th century. In this way, the scholar demonstrated that over the centuries, ancient Greek philosophical and legal traditions have always been one of the most influential foundations of Ukrainian legal thought, but these foundations were frequently reinterpreted under the influence of Christianity, on the one hand, and national specifics, on the other.

P.I. Mamchyn (2021) considered in the philosophical and legal discourse the influence of ancient Greek law on modern Ukrainian justice and proved that the Ukrainian Constitution is based on the fundamental principles of the judicial system of ancient Greece, in particular the equality of all participants in hearings before the court, the competitiveness of the parties, the ability to freely provide convincing evidence, the right of the accused to defence, publicity, binding nature of court decisions, the possibility of collegial consideration of the case, etc.

T.O. Matvieieva (2021) explored the establishment of the continental system of European law, relevant to this research, using the example of ancient Athens and Sparta. In her research, the author proved that against the background of the oligarchic regimes of the time, the Athenian state legal system, despite being accessible only to free citizens, became a model of high political culture, as its legislation distinguished between crimes in the spheres of public life (state, family, property, against the person), by gravity and intent (intentional and unintentional); there was a clear system of

punishment; self-defence was provided for; the perpetrator and instigator of the crime were distinguished, etc. Thus, Athenian principles of law became the foundation of Western democratic values.

D.V. Slynko (2018), in his works, disclosed the emergence and development of procedural provisions on the territory of Ukraine, in the ancient era, having explored the specifics of consideration of legal disputes by judges in ancient Greek polises that existed on the territory of Ukraine. O. Minkovich-Slobodianik (2019) explored the development of legal culture from Ancient Greece to modern Ukraine. T.V. Kotenko (2020) explored the issue of the establishment of human rights and freedoms in the teachings of philosophers of Ancient Greece and Rome, and in the ideas of several Ukrainian scholars.

However, despite considerable attention to ancient sources and their reinterpretation in the Ukrainian philosophical and legal culture from the Middle Ages to modern times, rather little attention has been paid to the reception of ancient views in the 21st century. With this study, which is primarily designed to substantiate the conceptual significance of the ancient Greek philosophy of law for reforming Ukrainian jurisprudence at the present stage, the author intends to explore the driving factors of the development of Ukrainian jurisprudence, uncovering the dialectic of traditions and innovations present in it. This research is the first attempt to substantiate that, despite Ukraine’s long history of being under the harsh political influence of the Russian Empire and the Soviet Union, Ukrainian legal traditions and values are much closer to European ones, both in terms of content and genetics, which is of great scientific importance and has significant scientific potential in the context of the State’s European integration course.

Materials and Methods

In preparing this research, the author used both some primary sources that testify to the genesis of the foundations of evidentiary methodology in ancient Greece (in particular, the works of Plato, Aristotle, etc.) and the latest publications by Ukrainian authors.

In addition, the study included the Declaration of Principles “Building the Information Society: A Global Challenge to the New Millennium” (2003), Resolution of the Verkhovna Rada of Ukraine No. 3175-IV “On the Recommendations of the Parliamentary Hearings on the Development of the Information Society in Ukraine” (2005) and other regulations of Ukraine, registered draft laws and conclusions to draft laws.

In the course of the study of ancient sources, the author applied the method of axiological analysis, since at each stage of development of the legal regulation system of any country, the organisation of the latter is established and implemented under the determining influence of dialectically interacting traditional legal values and axiological shifts caused by dynamic changes in socio-political and cultural life. The axiological method of analysis allowed identifying the key values of ancient Greek philosophical and legal thought from the texts of primary sources to provide grounds for conclusions about the presence of ancient principles in modern Ukrainian legislation, and about the extent and manner of their rethinking, transformation, and modernisation.

To explore the traditions and innovations in the process of reforming the legal system of Ukraine, which is currently being implemented primarily in line with the European integration processes, and to substantiate the results and

formulate conclusions, the author uses the comparative legal method and the method of analogy. These methods allowed comparing the key principles of ancient law identified in the works of Plato and Aristotle and comparing them with the foundations of modern law in Ukraine, proving the continuity of ancient traditions and, therewith, demonstrating how they have changed and been updated under the influence of modern innovations, in particular in the context of the digitalisation of society.

Results and Discussion

The concept and meaning of traditions in law: Ancient roots
Modern integrative approaches to the law are developed on various grounds (sociological, psychological, religious, axiological, etc.). However, the most common among them are ontological versions based on the idea of the organisational and principled unity of actual and proper being. In addition, law is not a pure idea, an entity that seems to “hover” in the space of human activity. Law, as an idea, is always connected in an ontological sense with the world’s existence, where the legal order is established based on law. Thus, it is quite utopian to consider the existence of law without linking it to the rule of law, and thus, the realisation of legal existence is possible only if the conditions of its existence in the world are correlated (Stovba, 2005).

As for the deontological and value dimension of law, in the projects of its integration based on legal existence as such, the value space is an organic component of the system of social existence, since both natural and biological inclinations of a person and the communication mechanisms of their integration into social relations and their assimilation of the legal standards of their social existence are determined by the so-called “axiological matrices” indicating the degree of importance of each of these inclinations for the individual and their social environment. In addition, this valuable space is the closest to the subject’s consciousness and, being not in the depths of existence but on its surface, completes the pyramid of the ontological hierarchy (Timush, 2009). Accordingly, the dynamics of establishment and functioning of regulatory guidelines is primarily determined by the values of the subject as the main carrier of the generation and implementation of the law. Thus, the system of integral legal ontology should be crowned with an axiological layer of human existence, where the value attractors of the dynamics of legal phenomena are concentrated (Tsymbaliuk, 2008).

Such innovative approaches to the integration of ontological and deontological aspects of the law are conditioned upon the fact that its essential foundations cannot be unambiguously defined either by actual existential or purely regulatory boundaries. The main reason for this, as A. Kaufmann (1997), is the fact that law manifests itself as a kind of connecting channel through which “mutual coherence between the existing and the proper” occurs. Indeed, “there is no point in thinking about the reality of Ought, which is fundamentally different from the reality of Being (Is)... In general, people comprehend the Proper first of all as an objective reality, although they do not understand it clearly and still believe in its existence” (Pattaro, 2005), since developing ideas about the “proper”, “desirable” order, somehow foresee its potential *realisation* (i.e. transformation from the mental ideal into the real one), and, consequently, harmonise such ideas with organisational principles and conditions of reality, as otherwise these ideas of the “proper” will never be realised in the system of existing legal relations.

It is traditional for Ukrainian law to belong to the Romano-Germanic legal family with its inherent tendency to develop general rules for regulating social relations, which are the foundation for distinguishing between lawful and unlawful behaviour, and for qualifying offences and determining appropriate legal sanctions in case of their commission. Therewith, it must be noted that the overly abstract and generalised nature of legal provisions always provides for a fair significant range of “own discretion” of law enforcement entities in the course of development and decision-making in specific cases, and, therefore, the real content and scope of rights are ultimately determined not so much by legal provisions as by judicial decisions in a particular situation, the specifics of each of which cannot be foreseen by law (Hirsin, 2013). It is primarily for this reason that the current democratisation processes are leading to the fact that even in the countries traditionally dominated by the Romano-Germanic (European continental) legal system, “the crisis of parliamentarism and the strengthening of the role of courts” (Van Hoেকে, 2002) is becoming increasingly noticeable.

Moreover, the preference for a casuistic approach to the law over a regulatory one is the central idea of legal realism in jurisprudence, whose representatives believe that even obvious facts, let alone any generalised rules or abstract principles, are always interpreted individually, being evaluated by different people with different worldview, political, moral, gender, psychological and other attitudes. Therefore, as one of the brightest representatives of this school, F. Cohen (1960), “this dependence of individual meaning on a personal system of correlations is something that the majority take for granted when refusing to argue about religious matters” – the scientist convinces and asks several questions: is not the same dependence of meaning and truth on a variable context observed outside religion, even in those secular areas that are the subject of the activities of lawyers and their clients? Isn’t it even appropriate to say that law, as a field of constant dispute, is a field within which the imposition of different meanings on the same oral formula appears as its most characteristic and essential attribute? (Cohen, 1960).

In general, considering the above circumstances, representatives of legal realism have concluded that absolutely uniform and logically consistent application of the law is unrealistic in principle. Therewith, lawyers should be aware of their preferences, ideological attitudes and prejudices that establish significant obstacles to the objective application of the law. Thus, just as no two judges have the same mindset, no two cases have identical factual circumstances, which means that judges should make decisions not so much based on abstract legal provisions as on the unique circumstances of each case (Merezhko, 2002).

It, evidently, should not be understood as a complete rejection of the regulatory approach to law. Subjective judicial discretion should be exercised within some objective legal framework that would limit judicial arbitrariness and serve as a general regulatory foundation for legal equality (at least in terms of the applicable law common to all participants in legal relations). However, in the context of the European integration course of the Ukrainian state, there is a growing need for convergent innovations of national law in the field of its assimilation with European law, where there is a fairly stable trend towards convergence of regulatory and case law. Therefore, in the context of national legal science, the attitude to judicial precedent should be rethought, which is essentially at least a specification of an existing legal provision,

and sometimes the actual foundation for its fundamental reform or establishment of a fundamentally new regulatory provision. Approximation of national law with European law, signing of the Association Agreement with the European Union (Association agreement between..., 2014), ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), adoption of the Laws of Ukraine “On the Ratification of the Convention on the Protection of Human Rights and Fundamental Freedoms of 1950, the First Protocol and Protocols No. 2, 4, 7 and 11 to the Convention” (1997) and “On the Ratification of Protocols No. 15 and No. 16 to the Convention on the Protection of Human Rights and Fundamental Freedoms” (2017) necessitate appropriate changes in the traditional Ukrainian legal mentality of inappropriate attitude to judicial precedent as a source of national law. Moreover, the *de facto* judicial precedent has been used as a source of law in Ukraine for quite some time. In the end, it is already quite obvious that over the past two decades, the attitude to judicial precedent as a source of law in Ukrainian jurisprudence has been changing significantly, although, admittedly, the inertia of conventional thinking is still evident in both general legal theory and specialised legal sciences. However, “due to the active convergence of national and European law, the issue of the need to introduce legal precedent and determine its place in the national legal system of Ukraine is more relevant and necessary than ever, especially against the background of judicial reform” (Stepanenko, 2018).

Innovations in law against the background of historical and modern legal traditions: Meaning, development, and application in Ukrainian jurisprudence

For more than three decades, the tradition of prioritising state interests over personal ones, which national law inherited from the Soviet system, has been innovatively replaced by a tradition based on the principle of legal equality of all subjects of legal relations – state, public and individual. In this regard, the rights and freedoms of man and citizen, the universality of which is conceptually based on the principles of the intellectual tradition of antiquity, acquire a fundamental status. However, in modern conditions, these fundamental rights themselves are subject to constant adjustment given economic, political, cultural and other transformations in the course of social and dynamic processes.

The first generation of human rights was mainly of a public and political nature, enshrining guarantees of personal and civil security (prohibition of slavery, torture and other inhumane treatment of people), freedom of religion, the right to participate in political life, etc. The second generation is economic, social and cultural rights, which provide for guaranteed equal access to basic public goods, services and opportunities (including the right to work, education, health care, recreation, etc.). The third generation includes, thus defined, “self-determining” rights: the right to a peaceful existence, to determine one’s future, to a safe environment, etc. Therewith, the rapid technological development of modern society results in the expansion of not only human capabilities but the demands of the people themselves. Accordingly, discussions about the next – fourth – generation of human rights, which include primarily “somatic” rights (the right to euthanasia, transplantation, gender reassignment, etc.), are becoming more and more relevant and heated. An important reason for the controversial nature of issues associated with the legalisation of such rights is that there are not yet sufficient

opportunities to recognise such requests as universal rights in terms of developing mechanisms for their implementation for any person.

In addition, progress in the field of information technology has resulted in the phenomenon of virtualisation of life, which has necessitated the development of appropriate legal and regulatory tools to govern relations in the network space (“digital law”). The latter usually include: the right to freedom and personal security in online space; privacy; freedom of expression in online space; the right to peaceful assembly, association, and use of electronic tools of democracy; the right to digital self-determination; the right to disconnect from online, etc (Marushchak, 2021). The modern era of social history is no longer just an information society, whose main difference is generally a shift from an industrial dominant to an information one, but a so-called digital or digitalised society.

Considering this, the Declaration of Principles entitled “Building the Information Society: A Global Challenge for the New Millennium” (2003) adopted in Geneva at the World Summit under the auspices of the United Nations proclaimed that international governance of the Internet should be multilateral, transparent and democratic. Several fundamental provisions have been developed concerning this task. First, political authority over Internet-related national policy issues should be the sovereign right of states; second, the private sector should continue to play an important role in Internet development; third, civil society participation, especially at the community level, should be maximised; and fourth, intergovernmental organisations should promote coordination of national Internet policies.

An important step in terms of legislative promotion of the development of the information society in Ukraine was the adoption of the Resolution of the Verkhovna Rada of Ukraine “On the Recommendations of the Parliamentary Hearings on the Development of the Information Society in Ukraine” (2005), which stated that the level of development of the Ukrainian information society was insufficient compared to world achievements in this area. The main reasons for this situation in Ukraine as of 2005 were: the absence of a national strategy for the development of the information society in Ukraine and an action plan for its implementation, insufficient development of the information regulations, the slow establishment of the national information infrastructure for the provision of information services by state authorities and local self-government bodies to legal entities and individuals using the Internet, absence of coordination of efforts of the public and private sectors for efficient use of available resources, low level of information representation of Ukraine in the Internet space, insufficient presence of Ukrainian-language information resources on the Internet, uneven access of the population to computers and telecommunications, deepening of “information inequality” between particular regions, economic sectors and different segments of the population (Resolution of the Verkhovna Rada of Ukraine “On the Recommendations...”, 2005).

Accordingly, to offset the existing reasons for the extremely low level of development of the information society in Ukraine, several key areas of activity were proposed to remedy this situation, namely: accelerated introduction of information and communication technologies in all spheres of public life, in the activities of state authorities and local governments; state support for the economic growth of new “electronic” sectors of the economy (trade, utilities and

banking services, etc.), resolving regulations on electronic interaction, protecting the information rights of citizens, primarily in terms of access to information, protecting personal information, supporting democratic institutions, improving the legal regulation of intellectual property issues and minimising the risk of information inequality, etc (Marushchak, 2021). In particular, the basic principles for the development of the information society in Ukraine from 2007-2015 were enshrined in law, which resulted from Ukraine's integration into global international systems and infrastructure.

Modern society varies in many respects from all its previous historical forms, and therefore, referring to the European legal traditions that began in ancient Greece, it is necessary to consider this specificity when using the legal experience of the past in the current environment. It applies both to legal practice and jurisprudence in general. As noted by N.V. Kushakova-Kostytska (2019), "in the light of modern information threats and challenges, Ukrainian society must determine its future by developing an optimal information policy that covers the establishment of e-jurisprudence, and the development of a legislative framework for combating crimes in the information sphere, the development of legal awareness of citizens in the context of information and psychological wars (considering the emergence of a new type of personality – *Homo virtualis*), and, finally, the development of new legal disciplines related to the theoretical and didactic substantiation of various aspects of the information society". Therewith, it is necessary to consider the global nature of modern legal science, the impact on its nature and content of the processes of integration of various branches of humanitarian and natural scientific knowledge and the interconnection of scientific, philosophical and religious ideas at the worldview level of understanding of legal phenomena. Thus, in the philosophical and legal context, such concepts as information, information society, information law, information security, etc. are being reinterpreted, and, therefore, multifaceted scientific research in these innovative areas is being encouraged.

Moreover, the virtualisation of modern society ultimately results in a shift in basic values in society, in particular, the importance of instrumental rationality is diminishing, and postmodern values, such as the rights, freedoms and legitimate interests of the individual ("second-order values" according to Plato), are beginning to prevail. It is reflected in the necessity to respect human rights and freedoms to produce, receive, use and transmit information (Kushakova-Kostytska, 2019). In addition, considering the transnational nature of information, the necessity for the legal regulation of information exchange on an interstate and global scale is becoming more urgent, which in turn stimulates the design and development of such new branches of law as Internet law, international telecommunications law, international information law, media law, etc.

The current body of international regulations in the information sphere should address the regulatory content of its provisions to protect universal human values (axiological dimension), and influence social, economic, political and other significant factors of society (ontological dimension), religious preferences, moral, ethical and cultural traditions, respect for state sovereignty, mentality and other differences of the population (cultural and identification dimension). As for the legal regulation of the information society in Ukraine, the sources of international law on such regulation are represented by general legal provisions, legal provisions concerning specific categories of people (children, disabled

persons, journalists, etc.), legal provisions regulating the information sphere at the regional level, legal provisions on cybercrime, legal provisions on the principles of using information and communication technologies in lawmaking, and various recommendations designed to develop e-governance and e-justice (Kushakova-Kostytska, 2019).

Evidently, the informatisation of society is a significant factor in its tendency toward "openness" and globalisation. Therewith, it should be noted that such transformations of the modern world are rather ambiguously assessed in the political and legal literature: "On the one hand, globalisation can be considered a driving force of progress, as it provides each country with the opportunity to join the information technology of exchange of goods, services, information, capital, etc. ... However, on the other hand, globalisation can pose significant threats to the national system of social life, traditions, worldview and other social values" (Humeniuk, 2007).

Therewith, such ambiguity in assessments of globalisation processes in the modern world is largely explained by their internal dialectic, which is as follows: any systemic entity (including national-political) does not exist as a completely isolated object and, accordingly, interacts with other similar entities in its environment, it thereby develops higher-order integrity (metasystem), in the context of which it functions according to both to its principles of organisation and the laws of interaction within the established metasystem. In turn, such interdependence implies the existence of some differentiated (and, therefore, relatively autonomous) elements between which this interaction occurs. Therefore, it would be incorrect to reduce the movement towards global unity of the world to the processes of its homogenisation. In this regard, it is rather a question of the functional unity of heterogeneous and relatively independent national and cultural communities. Moreover, it is impossible to foresee and ensure the realisation of variable and dynamic human interests, purposes and requirements on a purely global scale. Effective mechanisms for such implementation can be developed and function only at the local level – in the system of national statehood and public self-organisation (Hirsin, 2013). Therefore, the unfolding of globalisation processes dialectically combines such opposing (and, therewith, supporting and balancing each other) aspects as "homogenisation" and "heterogenisation" (in this regard, R. Robertson (1995) uses the term "glocalisation" to emphasise the unity of the tendencies towards "global alignment" and "local identification"), objective determination and subjective motivation.

According to L.H. Udovyka (2011), globalisation is an objective process, in other words, the need of humanity for unity, a specific megatrend of world-historical development, a product of global informatisation, where the changing role of finance is recognised both as a positive aspect and as a process with not so positive trends, such as environmental problems, the rapid growth of the world's population, uneven distribution of resources, etc. While the danger associated with the subjective aspect of globalisation is expressed in the desire of specific participants in geopolitics to use objective globalisation processes and their consequences in their interests, subjective globalisation relays the ideology of the market, the content and rules of which are dictated by industrialised states, oligarchic clans, the IMF, and the IMB. Thus, Ukrainian scholars are concerned about the contradictory combination of objective and subjective components of globalisation, which can increase the risks, in particular, of various forms of destabilisation, anthropological disasters and

the destruction of society in all spheres of public life. “Risk is becoming a permanent phenomenon in modern global society” (Udovyka, 2011). Therefore, Ukrainian jurisprudence is currently facing a growing demand for rethinking many conventional approaches to legal regulation of modern society, and for developing effective innovative mechanisms for its implementation.

In this regard, one of the key issues that are the subject of active debate in Ukrainian and international political and legal literature is the problem of revising the classical concept of democracy as a fundamental value of European law. Therewith, the democratic traditions that began in the era of Ancient Greece are largely demonstrating their insufficiency to the current socio-political realities.

Notably, how democracy is exercised have been constantly subjected to critical analysis, revision, and innovative improvement since the very beginning of this form of government (especially after the “democratic trial” of Socrates). Already Plato (2000) tried to resolve such contradictions of democracy, which were expressed, on the one hand, in the desire for universal happiness in the state and the preservation of the “dignity of the soul of every citizen”, and, on the other hand, in the lack of natural inclinations of a “reasonable and just ruler” in most of them. After all, just as eyes and ears have completely different purposes, thus different human souls have different ways of realising themselves in life (Plato, 2000). “In a worthless soul, government and care will be bad, but a good soul will conduct its affairs well” (Plato, 2000), and therefore Plato insisted that not everyone should be involved in democratic government, but only the “elect”, i.e. the wisest, since they are the ones who best understand what the Good is, both “divine” and “human” (Plato, 2016).

The fact that ancient Greek thinkers already realised that democracy can take different forms is manifested in Aristotle’s (2005) distinction of five types of democracy. The first implies the participation of all in public administration, i.e. equality, as a manifestation of democracy, in which neither rich nor poor have specific advantages, and the decisions of the majority have a levelling effect. In the second case, the achievement of public office is conditioned by a low property price. The third type of democracy provides for the right to hold public office to all those who are citizens of the state by birth, and the fourth extends this right to persons who have acquired citizenship. However, in both of these forms of democratic government, according to Aristotle, “the law is the ruler.” Finally, the fifth type of democracy is one in which the same conditions are necessary as in the fourth type, but power belongs to the demos rather than to the law (here, popular decrees rather than the law are decisive and are achieved through demagogues) (Aristotle, 2005).

Therewith, it should be noted that democratic legal traditions are an integral component of the history of Ukrainian law. Even under the autocratic rule of the Russian Empire, the Ukrainian Cossacks, as a symbol of freedom as the highest value, founded the Zaporozhian Sich, whose organisational foundations contained many “republican” elements characteristic of ancient Greek and Roman statehood. Although the Constitution of Pylyp Orlyk (Agreements and decrees on the rights..., 1710) enshrined the hetman’s lifelong power, this power was limited in every way by the Constitution and was designed to be coordinated with the decisions of the Cossack council (similar to the popular assembly in Greek polities). Therewith, the hetman was elected at a Cossack assembly, attended by all adult men. Thus, Article 6 of this Constitution

emphasises that even in autocratic European countries, “always, regardless of whether it is peace or war, councils are held privately and publicly for the common good of the Fatherland, where the autocrats themselves, present at them, do not prohibit their decisions to be criticised (discussed and approved) by ministers and advisers. Therefore, why can’t such a good system be preserved among a free people? In the Zaporozhian Army under the hetmans, according to ancient rights and freedoms, it was definitely preserved. If something incompatible with the rights and liberties, harmful and unprofitable for the Fatherland is noticed in the actions of the Hetman, then the General Elders, colonels and general advisers will be authorised to reproach His Majesty for violating the rights and liberties with free votes either privately or, if necessary, publicly at the council without censure and the slightest insult to the high regional honour. The Hetman should not be offended and take revenge, but, on the contrary, try to correct the imperfections” (Agreements and decrees on the rights..., 1710). Thus, the very first sprouts of independent Ukrainian statehood that emerged against the backdrop of imperial autocracy were imbued with the spirit of European constitutionalism and the democratic traditions of antiquity.

The state of innovation in modern Ukrainian jurisprudence

The objective tendency of the dynamics of modern political and legal reality to increase the degree of openness of society and increase its self-organising potential contributes to the corresponding innovative changes in understanding the very content of democracy and the forms of its implementation. In particular, its purpose is increasingly becoming not so much the development of certain “strict directives” on the regulation of legal relations as the development of a common opinion in a decentralised mode (Habermas, 1996). If even on the rather “modest” (compared to modern states) scale of the ancient Greek polis such a purpose would not always be achievable, then at present it should be considered utopian. However, with the development of information and communication technologies, the possibilities for covering both the population of a particular nation-state and its transboundary (up to the global) reach by discursive democratic processes have significantly expanded. In the current environment, an effective way to overcome the deficit is electronic democracy (or e-democracy), which can involve more citizens in democratic processes. Therewith, using electronic resources is becoming both one of the auxiliary means of its implementation and a necessary condition for it, since, as current trends demonstrate, the ties between citizens and government representatives are weakening. Hence the necessity to use electronic Internet tools (websites, social networks) that can strengthen the relationship between elected representatives, citizens, civil society and political authorities. In addition, they can help mobilise and activate voters, including increasing citizen participation in various discussions, promoting innovation and economic growth, and ultimately even strengthening democracy (Marushchak, 2021). One of the most striking examples of successful e-democracy is Estonia, which chose to develop a digital society a quarter of a century ago when it launched an e-government system where public services are provided online.

N.V. Hrytsiak and S.H. Solovyov (2015) propose to distinguish between the broad and narrow meaning of the concept of “e-democracy”. In a broader sense, this is reflected in the form of community involvement in addressing various socio-political issues through information technology. In a narrower

sense, this concept covers the technological side of the procedures for submitting various applications, appeals and requests to the authorities to receive a particular service. Such opportunities, among other things, provide for the more accessible implementation of citizens' rights, in particular the right to send individual or collective appeals, as defined in Article 40 of the Constitution of Ukraine (1996).

As an example of e-democracy in the broadest sense, the authors cite the model of providing citizens with the opportunity to participate in local council meetings, when, through online broadcasting via the Internet, everyone can express themselves and influence a particular position of participants, government officials, etc. (Hrytsiak & Solovyov, 2015).

The main purpose of e-democracy is to establish opportunities for those who are even apolitical to be heard and involved in the political life of the country. Therewith, the key role in the functioning of e-democracy in Ukraine is played by the websites of central and local governments, which simplify access to open data and public services and inform the public about their activities (Makhnachova, 2018).

However, the intended meaning of e-democracy (in particular, in Ukraine) is both to provide access to public information and to ensure direct participation in the process of governance by citizens who can communicate with the authorities by submitting questions, suggestions and complaints, and participate in discussions of draft laws and decisions without leaving their homes.

The currently known e-democracy tools include: electronic petitions (introduced in 2015); e-declarations (introduced in 2016); open data portals, etc. Several regulations govern the procedure for exercising and ensuring the right of citizens to access public information, including the Law of Ukraine "On Information" (1992), the Law of Ukraine "On Access to Public Information" (2011), etc. Therewith, the adoption of the draft laws "On Public Consultations" and "On the All-Ukrainian Referendum" in Ukraine is quite important for the further development of e-democracy (Buchkovska & Veremchuk, 2020).

One of the most convincing proofs of the effectiveness of the Internet in the process of public administration is the example of Iceland, which faced the necessity to modernise its state system in connection with the 2008 crisis. In this regard, virtual communication of citizens has proven to be a very effective tool. The new fundamental law of this state was written online with broad public participation. In the course of this online discourse, Icelanders were asked to approve a text prepared by a group of politicians elected by citizens to the council of 25 representatives who were preparing a draft constitution on Facebook. In the process of its preparation, they received more than 370 proposals and thousands of comments, and after considering them, they had to vote for the new constitution (Hrytsiak & Solovyov, 2015).

E-democracy is one component of a broader innovation system such as e-government. From the standpoint of legal science, the latter is considered in terms of the integration of the state into the digital space by organising public administration (including local governments and other public authorities) through the Internet. In addition, e-government can be implemented through the provision of public services by the state to individuals and legal entities. A separate aspect of such governance is the organisation of public communication between public authorities and citizens, other individuals and legal entities. Finally, e-government is the management activities of public authorities integrated into

the Internet (Bernaziuk, 2019). Therewith, the structure of e-government is based on the following three key sections: e-democracy, e-services, and e-administration. In this list, the automation of document flow and the introduction of an electronic archive is of particular importance (Konoval, 2018).

As for e-services, they are essentially information, communication, and transactional services provided in various areas of social activity, such as healthcare, social security, education, etc. (Konoval, 2018). The list of state e-services provided to citizens in Ukraine is published on the Government Portal in the section "Electronic Services" (Buchkovska & Veremchuk, 2020). Admittedly, using such services greatly simplifies administrative procedures and saves time, materials, and effort, as it is much faster and easier to apply for any service from your computer or phone than to visit government offices in person and complete the relevant documents manually. In addition, electronic services minimise any manifestations of corruption, as they eliminate the necessity for citizens and businesses to meet with officials in person.

Notably, Ukraine has now established an appropriate regulation framework for the full implementation of e-government functions. However, according to N.V. Kushakova-Kostytska (2019), its implementation in practice is moving too slowly. According to the scientist, the main reasons for this slowdown are the presence of a corruption component in the activities of public authorities and the low level of computer literacy of a large part of the population.

It is interesting to note that according to the results of the United Nations E-Government Survey 2016, conducted by United Nations, Ukraine was ranked 62nd among 193 countries (Department of Economic and Social Affairs..., 2016), while only two years later, according to the E-Government Survey 2018, Ukraine was ranked 82nd (Ukraine in international rankings, 2019).

As can be seen, the e-government development index in Ukraine has slightly decreased. However, it is difficult to deny the positive changes in legislation towards the development of e-governance, as evidenced by the recently adopted laws, including the Law of Ukraine "On Access to Public Information", the Law of Ukraine "On Electronic Trust Services", the Law of Ukraine "On Approval of the Concept of E-Governance Development in Ukraine until 2020", etc. Therewith, the number of portals and websites of state and local government agencies has grown exponentially, and the public service sector has been successfully modernised, including the opening of administrative service centres (ASCs), the establishment of electronic registers and databases, etc. (Buchkovska & Veremchuk, 2020).

Thus, Ukraine (not without the pressure of today's Internet) has made significant progress, both at the legislative level and in practical application, towards using information and communication technologies in all spheres of activity, and this is impossible without innovations at the legislative level, which in turn try not to contradict legal traditions dating back to ancient times.

Conclusions

As a result of the study, it can be stated that even modified forms of legal values, doctrines and institutions are based on the fundamental ideas that are based on the intellectual traditions and philosophical and legal ideas of the thinkers of ancient Greece. And the universalist approach proposed by them is the foundation of modern democratic governance, including electronic governance. Moreover, the legal traditions

developed over the centuries, originating from the ideas of ancient thinkers, even nowadays, in the age of the Internet, are oriented towards the embodiment of the ancient Greek idea of democracy. This study demonstrates that in the dialectical process of development of any legal system, there is always an interaction between specific established (traditional) components and various new developments which are conditioned upon the specifics of such development at each stage of its establishment and implementation.

Having achieved the purpose of the study, based on the results obtained, it can be stated that this subject is extremely relevant in terms of Ukraine's course towards European integration and, therewith, has not been explored

at all. Probably, this study will be an impetus for new research in this area of scientific knowledge, as it should be remembered that the above conclusions were developed only at the stage of active reform of Ukrainian legislation in line with the standards (traditions) of European law, and any reform always gives room for innovations, and they can be based on the ideas of ancient thinkers.

The study of traditions and innovations in Ukrainian jurisprudence gives impetus to the continuation of scientific research in this area, based both on the Hellenic philosophy of law and the theory and provisions of Roman law and Christian ethics, which are methodological sources of Western and, consequently, Ukrainian law.

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Традиції та новації в українській юриспруденції: давньогрецькі корені

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Анотація. Курс України на євроінтеграцію зумовлює гармонізацію українського законодавства з європейським, яке бере свій початок з культурно-традиційних основ епохи Античності. Тому набуває актуальності дослідження впливу давньогрецької філософії права на розвиток української юриспруденції, у процесі якого постає проблема зіткнення традицій різних правових сімей та напрямів розвитку правових новацій. Мета цього дослідження – розкрити фактор діалектики традицій і новацій в українській юриспруденції як один з рушійних чинників її розвитку. Для обґрунтування здобутих результатів та формулювання висновків застосовано методи аксіологічного аналізу, порівняльно-правовий метод та метод аналогії. У результаті проведеного дослідження з'ясовано, що як би не модифікувалися форми ключових правових цінностей, доктрин та інститутів, у їхній основі завжди відстежуються ті фундаментальні ідеї, які базуються на інтелектуальних традиціях та філософсько-правових уявленнях мислителів Античної Греції. Свідченням тому є започаткований ними універсалістський підхід, на якому будується вся європейська наука (у тому числі й юридична), а сучасні антропологічні концепції праворозуміння загалом та обґрунтування основоположних прав людини зокрема, ґрунтуються на принципах, генетично укорінених ідеях у вченнях Протагора, Сократа та Аристотеля. Поряд з цим також з'ясовано, що новітні досягнення в організації демократичного урядування зорієнтовані на втілення давньогрецької ідеї народовладдя. Виявлено, що в діалектичному процесі розвитку будь-якої правової системи завжди має місце взаємодія певних усталених (традиційних) компонентів й тих чи інших новоутворень, зумовлених специфікою такого розвитку на кожному його етапі схиляє до висновку, що змінюваність під впливом часу правових цінностей, доктрин та інститутів сягає своїм ідейним корінням до надбання інтелектуальної традиції та філософсько-правових уявлень мислителів Античної доби. Практична значущість цієї статті полягає в тому, що матеріали дослідження можуть бути використаними: у законотворчій діяльності – для підготовки та обґрунтування законопроектів щодо подальшого розвитку правової системи України; в освітньому процесі та науково-дослідній роботі – у викладанні відповідних навчальних дисциплін

Ключові слова: давньогрецька філософія права, ідея права, цінності права, правова традиція, інноватизація права, євроінтеграція