PUBLIC-PRIVATE FOUNDATIONS OF PUBLIC LAW REALITY

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Keywords: state-legal reality, the state, the essence of the state, the legal system, public law, private law.

The state-legal reality develops within the framework of the legal state and civil society. Its basis is the dialectical unity of public-private elements that ensure the interaction of collective and individual interests. According to Articles 1, 2 of the Constitution of the Republic of Belarus, the Republic of Belarus is a unitary democratic social state governed by the rule of law, where a person, his rights, freedoms and guarantees of their realization are the highest value and goal of society and the state [1, p. 3–4]. The relevance of the topic is related to its theoretical and practical significance, the ongoing changes in the digital society.

The purpose of the article is to analyze the state legal system through the prism of public and private law, their correlation and dynamics.

Material and methods. The article is written on the basis of doctrinal and legislative materials of the Republic of Belarus and foreign countries. Methods: analysis, synthesis, induction, deduction, interpretation of law, legal specification, legal modeling.

Results and their discussion. The State, as a public legal institution, is to ensure common, group and private interests. The question of what appears earlier, the idea of the necessity of the state or the organization itself, has not yet been resolved. According to some foreign authors, the idea of the state is associated with fetishization, mystification of political power, its camouflage.

Statehood is a form and way of civilized existence of a person and society, consonant with its biological, social and psychological nature. The previous history of political and legal thought, modern theory and practice do not offer alternative options for non-state existence.

The collapse of the state will lead to the impossibility of intensive human improvement, since it is the state that provides the best opportunities for their supra-biological development.

Therefore, it can be argued with good reason that the state is a social and cultural "body" of a person, his legal shell of protection and management, a means of realizing his natural inclinations and abilities, creating favorable living conditions.

The nature of the state has an anthropological, cultural and social (legal, democratic, fair) essence.

The state is a political and legal form of society's existence, a mould, a result of development, a kind of attempt to resolve the contradictions that have arisen. The number of definitions of the concept of "state" includes dozens and even hundreds [2, p. 145]. In this regard, the well-known Austrian jurist L. Gumplovich noted that "there were as many statesmen and philosophers as definitions of the state."

For Aristotle, Cicero, the state is a universal organization for achieving a common order; for N. Machiavelli, it is a common good that should be obtained from the

fulfillment of real state interests; for T. Hobbes, it is a single person, the supreme ruler, the sovereign, whose will is considered the will of all; for J. Hobbes, it is a single person, the supreme ruler, the sovereign, whose will is considered the will of all; for Locke – the common will as an expression of the prevailing force; for J. Boden – the organization of the supreme political power, which has sovereignty; for I. Kant – is an association of people subject to legal laws; for G.V.F. Hegel – the exercise of freedom and the absolute goal of reason; for G. Kelsen – the normative order; for N.M. Korkunov – the union of free people with compulsory law and order; for B.A. Kistyakovsky – the legal organization of the people with independent power; for M. Weber - a political institution that implements the monopoly of legitimate physical coercion (violence) on the state territory and against the state people in order to maintain legal order [3, pp. 144–147].

The number of definitions, concepts of the state from the legal fiction, the legal personification of the nation, the political union of people, the state-people, the state-nation, the state-citizens, the state-territorial community, the state-master or servant of society – is numerous [4, pp. 24–32]

Many authors (M.I. Baitin, M.N. Marchenko, T.N. Radko, V.E. Chirkin), considering the state in a broad historical aspect, include class and general social essence in the concept, emphasizing its main purpose for governance in order to ensure the rights, freedoms of citizens, legality, and the rule of law. So, T.N. Radko also highlights the official representation of the interests of the whole society, the monopoly on lawmaking, tax collection, the use of coercion [5, p. 74]. Considering the state in the context of cyclical politogenesis, Professor R.A. Romashov defines it as a form of social organization created for the purpose of regulating relations between people, protecting society from external and internal threats, as well as exercising public political power [6, p. 20]. Professor S.G. Drobyazko defines the state as a universal, the most perfect and most powerful, having a coercive apparatus, a political organization designed to manage society on the basis of law in order to ensure social progress [7, p. 186].

G.F. Shershenevich noted that we should not introduce into the concept of the state something that does not really exist, but at the same time, we should embrace the whole reality, not allowing arbitrary choice. However, any definition of the concept of “state” will be incomplete, since it is not able to absorb all the essential characteristics of the state in various historical epochs.

It is impossible to identify the state only with the state apparatus. The state is a universal organization of society that carries out management on the basis of law, with the help of a special mechanism in a certain territory. It is a political form of a socially organized people, exercising jurisdiction within State borders.

The question of the future of the state, its prospects and contradictions is relevant and does not yet have clear directions. Philosophers believe that the loss of spiritual fulfillment by the state, its transformation into an oligarchic corporation focused on its own ambitions, an indifferent attitude towards the people, a consumer attitude towards neighbors, will inevitably lead to a massive crisis of statehood as a form of anthropological existence of humanity and even its demise.

A divided society is a threat to the national security of the state. It is necessary to agree with the statement that "the state union, which has lost its social foundations, does not contain any internal force and can be supported only by artificial means" [8, p. 114]. At the same time, we are talking not so much about the material, but about the spiritual profitability of the state, following traditions and national peculiarities. A high innovative level of development of the market economy, legality, legitimacy, social orientation, organic unity of the people and the government, the rule of law and civil society, spiritual culture – a prerequisite for the preservation and prosperity of the state. So far, only the potential of statehood (especially in a positive aspect) has been used very little. The state form will be in demand until it has realized its true nature and purpose and a more attractive and ideal form of political organization of the people has been found.

The problem of the essence of the state is ambiguous. From the point of view of V.S. Nersesyants, M.N. Marchenko, S.G. Drobyazko, the essence of the state is the organization of political power (and, according to V.S. Nersesyants, introduced into the legal framework), designed to manage in order to ensure social progress. For V.N. Sinyukov, the essence of the state is a single spiritual and legal community, governed by a single supreme authority and bound by the unity of the lifestyle, culture and historical destiny of citizens.

The state, being the political organization of the whole society, solves both class, group, and general social tasks, and their correlation is historically changing and, as historical progress progresses, it is increasingly filled with general social content. The level of civilization and progressiveness of the state is manifested in the state of political and economic freedom of individuals, the level of their material and cultural well-being. Being a kind of mould of the development of society, a reflection of its essence, the state acts as an integral social institution with its inherent laws and trends.

Thus, the main, fundamental thing in the state is power, its affiliation, purpose and functioning in society. In other words, the question of the essence of the state is the question of who owns state power, who exercises it and in whose interests.

In democratic countries, the State is gradually becoming an effective mechanism for overcoming social contradictions by achieving social compromise rather than violence and suppression. The very existence of the state in our time is connected not so much with classes and class struggle as with general social needs and interests, which implies reasonable cooperation of various, including contradictory, forces. Such a state focuses its activities on ensuring social compromise, on managing the affairs of the whole society. In other words, in a democratic state, its general social essence becomes more significant than the class, elite side.

The essence of a modern social, democratic, rule-of-law state is that it is an instrument for achieving social compromise and consent in a socially heterogeneous society.

The legal system in the broad sense of the word unites everything related to law, namely the integrity of a stable legal consciousness, all legal norms, the form of their expression (sources) and implementation, law-making and law-

implementing procedures that ensure the regulation of public relations along the path of their progressive development.

Professor G.I. Muromtsev includes a set of heterogeneous elements in the legal system: doctrinal-philosophical, or ideological (legal understanding, concept and categories of law, etc.); normative (a set of legal norms in force in society); institutional (legal institutions); sociological (legal relations, application of law, legal practice).

Professor G.A. Vasilevich, taking into account the integral essence of the legal system, identifies its normative, organizational and ideological sides. At the same time, the legal system is considered by him as a set of legal norms, principles and institutions; legal institutions; legal views, ideas and views peculiar to this society.

It is necessary to agree with Professor M.N. Marchenko that any legal system has never been reduced and is not reduced only to a set of legal norms issued or sanctioned by the state. "It also includes legal culture, legal ideology, legal consciousness, legal mentality, legal traditions and customs, and many other components that are directly related not to the state, but to social life, society."

In the general theory of law, the system of law in the narrow sense of the word is understood as the internal structure of law as a set, interaction, unification of its main elements: the norms of law, institutions (subinstitutions) of law and branches (sub-branches) of law. The system of law is an open and closed integrity, which is in a state of rest and mobile equilibrium, manifested at the macro level unchanged, stable, formalized and fixed in the system of legislation, and at the micro level – mobile, dynamic, changeable, clearly responding to the changing needs of society, the state, people.

The core of the legal system is national legal values, ideals, symbols, legal principles arising from the history, culture, traditions, mentality of the people and fixed at the state level primarily in constitutional norms.

It is necessary to agree with Professor V.D. Perevalov that all legal systems of modern positive law are more or less based on natural law, contain natural-legal principles.

The quality of the legal system can be judged by solving the following tasks: 1) how correctly and adequately the legal system expresses the needs and interests of the people, society and the state and whether it is able to respond quickly and adequately to the challenges of the time; 2) how perfect and effective is its legal form; 3) what is the degree of its legality and legitimacy; 4) to what extent it contributes to solving the tasks facing society, especially in terms of building a rule of law state, civil society; 5) whether it is able to ensure, guarantee reliable protection of human rights and freedoms, life, health, honor, dignity and security; 6) how viable it is and whether it has the potential to optimize the fight against negative phenomena; 7) whether it is able to perceive all the best in the world legal experience; 8) what are the main ways of its further development.

The legal system is a complex, multilevel, deterministic and probabilistic integrity. The consistency of law requires the adoption of normative legal acts

based on the objective needs of society, in a complex, in a system, comprehensively, dialectically and logically interconnected.

The legal system includes public and private law. There are about two dozen doctrines of the division of law into public and private. So N.M. Korkunov warned against the opposition of private and public law. He stated that the common interest is a set of private interests [9, p. 166]. The famous French comparativist L. Dugi denied the division of law into public and private. According to his position, there is no right to private property, since property is a social function. This position was also held by the founder of the "pure theory of law" G. Kelsen.

The division of law into public and private is characteristic primarily of the Russian-German legal family. However, there are serious differences within it. For example, in the French legal system, constitutional, administrative, financial and international public law are referred to public law disciplines. Private law includes commercial law, maritime law, civil procedure law, criminal law, labor law, agricultural law, industrial property law, intellectual property law, forestry law, social security law, transport, air law, law regulating relations in the coal industry, international statutory law. So in Germany, public legal disciplines, in addition to traditional ones, include criminal, criminal procedure, civil procedure law, legal norms regulating the relations of the parties arising as a result of bankruptcy, ecclesiastical, "conciliation" law. Paradoxically, labor law does not apply to either public or private law.

The division of law into public and private comes from Roman lawyers. However, even in Roman law, such a division appeared at one of the last stages of its development, in the classical period, when a clear distinction was made between the law of the state, on the one hand, and the law of individuals, on the other hand. The classical distinction between public and private law was given by the ancient Roman lawyer D. Ulpian. For him, public law is that which relates to the position of the Roman state, private law – to the benefit of individuals.

Public law is a set of legal norms of a predominantly imperative nature that establish the interests of the state (constitutional, administrative, criminal, public international law).

Private law is a set of legal norms that protect and regulate the interests of individuals (civil, business, family, labor law). The classics of Marxism linked private law with private property (the rights of the owner), civil society and free will.

Public law protects public state interests and determines the legal status of the State and its organs, while private law protects the private interests of an individual and his relationship with other people. The subject of legal regulation of private law is property relations of a private, property nature, that of public law – non–property.

In private law, the method of coordination, agreement of the parties prevails, in public law – the method of subordination. Private law regulates the relations of individuals among themselves, public law regulates relations of private individuals with the state, or between state organizations. For private law, an individual is an autonomous, independent subject of legal relations, for public law, he is in the sphere of power and subordination.

In reality, there is no absolute public law or private law branch. Public law elements are present in the branches of private law, and vice versa. For example, in family law (private), the public-legal elements include the judicial procedure for the dissolution of marriage, division of property, deprivation of parental rights, recovery of alimony; in land law (private); the public-legal element is the definition of the order of land management, provision, allotment, seizure of land, etc. Public law and private law relations also take place in labor law and social security law.

Each industry has its own combination of these legal techniques. The system of public law includes the following branches of law: constitutional law; administrative law; criminal law; criminal procedure law; civil procedure law; business process; financial law; environmental law; public international law.

The system of private law includes civil law, business law, family law, labor law, private international law.

Conclusion. The dynamic development of the electronic state and the law of the digital society is changing the previous stereotypes of rigid structuring of the state-legal system on public-private grounds. The state-private interest becomes predominant and contributes to the organic unity of the state-civil society, the establishment of direct and feedback links.

Currently, the legal system of the Republic of Belarus is experiencing, on the one hand, the growth of public-legal relations associated with the increasing role of the state and the executive power, on the other hand, the growth of the private legal sphere with civil society strengthening and market relations developing.

The state-legal reality needs a harmonious combination of public and private interests, their coordination with the help of a social democratic state, legal and legitimate law. It is impossible to absolutize (exaggerate or downplay) the role of civil society and the rule of law. They cannot exist without each other, because civil society, controlling the state, does not allow it to usurp political power, and the state, with the help of law, does not allow individual, group egoistic interest to win and reminds them about a social orientation [10, pp. 129-134].

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АКТУАЛЬНЫЕ ПРОБЛЕМЫ ПОДГОТОВКИ И ПРОВЕДЕНИЯ СЛЕДСТВЕННОГО ЭКСПЕРИМЕНТА

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Ключевые слова: следственный эксперимент, следственные действия, участники следственного эксперимента, процессуальная регламентация, подготовка к проведению следственного эксперимента, порядок проведения следственного эксперимента, экспериментальное исследование.

Уголовно-процессуальное законодательство предусматривает организацию и проведение следственных действий, основное предназначение которых заключается в подтверждении объективной возможности возникновения и развития конкретных событий, наступления определенных последствий, что облегчает процесс раскрытия преступлений в сжатые сроки.

К числу важнейших следственных действий следует отнести следственный эксперимент, который способствуют установлению истины по уголовным делам. В правоприменительной практике достаточно распространены случаи, при которых объективные проверка и оценка полученных доказательств возможны йтолько в условиях проведения следственного эксперимента.

Актуальность данной темы состоит в том, что большое значение в достижении целей раскрытия преступлений имеет профессиональное и грамотное проведение следственного эксперимента. Но для того, чтобы следственный эксперимент произвести правильно, необходимо разбираться в его характерных особенностях. Неправильное толкование норм права и ошибки при производстве следственного эксперимента могут привести к тому, что затрудняется, а иногда и полностью утрачивается возможность следователя выявить необходимые факты и обстоятельства.

Целью данной темы является исследования уголовно-процессуальных основ следственного эксперимента, а также выявление проблем и