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On Ensuring of the State Progress with Law

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The article develops the set of ideas that with the fixation in legal regulations allow to provide maximum progress of the state as the increasing subdual by people who are living here of their own and external nature. In particular, the formulation of two ideals in the law is supposed: first of all, models of the population transformation in any certain country into the collective of professionals of the highest world level in all areas of specialized human activity i.e. healthy, educated and highly cultured persons; secondly, the world state that is created during the competition among sovereign political formations, aspiring to reach the first etalon from the noted ones. These purposes are proposed to be carried out on the way of creation or development of democracy, as well as the wide system of legally bound rights and personal freedoms. The work analyses various ways of solving the highlighted problem that is grounded in scientific literature from the point of view of ensuring of the greatest state progress, and the best of these ways is the one that has been adhered by J. Madison and D.S. Mill.

Keywords: law, the state, progress, political ideal, H. Kelsen, democracy, G. Jellinek, regression, system of rights and freedoms of the person, C.L. Montesquieu, ideological pluralism, T. Jefferson, liberalism, J. Madison, the official state doctrine, D.S. Mill.

Point

It is known from the history course as a whole that there is always an increase of people domination over own and external nature. Sometimes this phenomenon is called a social progress (Pound, 1968)¹. But it is not always implemented on a wide scale in the state public relations of a certain era for various reasons. In particular, there are ideas which fixation in the law will yield results in the place where it is implemented, not only in the absence of progress, but in the destruction of the state organization as well. For example, similar results will obviously appear in the declaration of universal inactivity

of people living in the certain area in the state legal standards, abstinence of these people from communication with each other, wars of all against all, of course in the case if mentioned above rules are implemented in the human behavior (Drobyshevskiy, 2001).

However, there are also ideas that can cause absolutely different consequences in the situation of its recognition as the establishments of law. It could be said that the social progress in the state can be achieved if active labor, the ramified system of communication among people, and the maintenance of peace within the state boundaries as well are guaranteed by the legal standards.

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Moreover, with the help of labor activity and various forms of efforts cooperation of the individuals it is possible to achieve an increase of the degree of their domination over own and external nature. At the same time production of material wealth and intellectual values, as well as communication of the state population will give the best results only in the conditions of peace preservation in this community. However, mentioned above rules are not enough, if there is the purpose to provide the greatest possible progress in the analyzed social organism. In order to achieve it other standards should be fixed in the formal sources of the state law.

Example

Rather an extensive circle of ideas should be recognized as a theoretical basis for their formulation. First of all, it is necessary to include the following scientific conclusions. The state acts as the division between the organization of labor co-operation and other activities of people in a certain territory. And the quality of existence of any participant of the given social system is defined by this fact – the degree of promotion during the way to the progress, and, in particular, the degree of perfection that is used by the certain person for realization of own needs of other members efforts of the society that is organized by the state. The best situation for each individual in the state is consumption of work products and other results of human behavior that are excellent according to the point of view of the consumer requirements. Besides, such a situation can not be achieved, if at least one person in the politically organized society will show imperfect forms of own activity. Moreover, its negative consequences are directly or indirectly experienced by the fellow citizens without any exception.

And now there is a logical question: how is it possible to create conditions for the high-quality production and other activities of all the people

who are forming the community mentioned above? The answer is obvious. For the provision of other participants of the state community with excellent labor and other services, the person should possess good health and physical development and should have material means that allow not only to receive excellent training and education as well, but also should support and improve the acquired knowledge, abilities, skills and the state of his health during the whole life.

If the individual does not have sufficient resources, for example, financial resources, for the realization of everything that is listed here, he can't provide fellow citizens with the high-quality results of production and other activities. Therefore, the citizens can't have the good quality of life (i.e. use excellent products of labor and other efforts of the state community participants) when their partners in such interaction don't live very well: namely because the unsatisfactory material conditions of living are not able to provide perfect forms of human activity, so people don't acquire qualities that are necessary for this purpose (Drobyshevskiy, 2004).

For the force of argumentation under discussion, it is necessary to do two things to provide the greatest possible progress of any state. First of all, to encourage the acquisition of everything that might be necessary for the high-quality labor and other activities by members of the considered social organism without any exception in every possible way. Secondly, when human individuals have conditions to work and carry out other functions effectively, but they do not want to do it, it is necessary to convince or, as least, to force such efforts to overcome such unwillingness.

It is likely that there should be two ideals within the discussed circle of ideas. One of them is the theoretical model of transformation of the country population into the higher world level collective of professionals in all areas with

active, healthy, educated and highly cultured specialists. In this etalon there is the reflection of the maximum degree of progressive development, achievable in the state organization that is the member of the international community of similar structures. And the analyzed ideal ordinary acts in appropriate time in the form of much higher stage of the social progress demonstration, as the group of states existing in the world is being developed.

Competitions between sovereign political associations that have similar purpose in their legislation will inevitably persuade these state organizations to strengthen their mutual communication. And during the development, marked tendency is able to result to the establishment of the world state in the future that will regulate behavior of the whole mankind by its own system of legal standards together with the world sphere of activity. Grounded argumentation in favor of the formulated prospect of political and legal evolution is presented in the scientific literature about jurisprudence (Drobyshevskiy, 1995).

The world state is the second ideal of two ideals mentioned above. This ideal is necessary for the considered set of ideas for very simple reason. There are opportunities to reach the higher stage of social progress, and consequently the better life for people as well, rather than opportunities to implement the first ideal in the world state organization.

Indeed, progressive development of the state supposes expansion of the system of satisfied requirements from people living here. In the sovereign political association this system is improved with complication of division and cooperation of labor and other activities of its members. The usual precondition for such changes is the increase in quantity of participants of the analyzed communication. But just the world state applies to all the individuals. That is

the reason, why in comparison with the sovereign political communities that are not world ones, it is able to establish the more differentiated system of division and cooperation of people. It is not accidentally that in the world state it is possible to implement the principle that is unachievable in other states: activity of every person serves the needs of the whole mankind and, on the contrary, this individual uses products of efforts of all the inhabitants of the globe.

Certainly, since the ancient time interaction between the sovereign political associations and, first of all, international trade has given an opportunity for certain members of these groups to use the results of foreigners' activity in their own purposes. However, the very presence of boundaries and various restrictions of human communication that are deriving from it prevent any of contact countries from giving the possibility to any person to use results of activity of other people on the Earth in exchange of own production.

Creation of the world state in the given interpretation, i.e. as a political form that increases the degree of domination of the planet population over own and external nature, does not mean the completion of the social progress. On the contrary, the considered model of such community similarly to the etalon mentioned above supposes that there will be a lot of improvements of professionalism, health, physical development, erudition and culture of all human beings.

Described possibilities of the world state on ensuring of the public progress allow to understand why a lot of well-known scientists have written about this association, as a purpose of the Earth population. Here, it is important to remember the adherent of liberal views – lawyer H. Kelsen (Kelsen, 1970). But founders of Marxism also emphasized that in the future there will be the public association for the whole mankind that, from their point of view, will not

have the character of the state organization, but that will reach the higher level of progressive development, than in previous states (Marx, Engels, T.3,4,20,21).

To achieve two ideals mentioned above in the certain sovereign political community, there is the requirement to elaborate the model of the most progressive development and implement it in the law of the certain country. After all, at least the very peculiarity of the group of people here, without mentioning the uniqueness of the surrounding environment, will make specific transformations for the purpose of implementation of the etalon and making it common to all states and necessary for all the people.

This theoretical position should also be included in the circle of ideas and thoughts that gives opportunity to formulate legal standards for the state that wants to achieve the maximum progress. But, in the set of doctrine materials mentioned above, the presence of several more scientific concepts is also necessary.

First of all, in the state it is usually impossible to implement social transformations effectively and keep their results for a long time if huge mass of people are against it. State apparatus is able to force effectively only the part of population and prove that it's considerable by the support of several public layers, such as policy (Hart, 1961; Ehrlich, 1936).

Then, for example, G. Jellinek wrote that in every developed state in the early years of XX century approximate equality between the number of citizens and holders of governmental power was reached during the process of the long social progress. As a result, according to this fact adult people usually simultaneously played two roles – both subordinates and masters. During the preceding historical periods even in the states that were advanced for those days, frequently there were less dominant people, than ordinary citizens (Jellinek, 1908). In order to return to the

position, in the countries where this situation has been overcome, there would be not the progressive development, but regression. In addition, this is the first noted phenomenon that is the purpose of consideration in the given work and that is considered in the conditions where not all the adult people are owners of the governmental power. That is the reason, why the increase in the degree of domination of the modern states population over own and external nature should be carried out either in the conditions of democracy, or by means of progress in this field by undemocratic sovereign political associations.

Within the circle of ideas under discussion, it is necessary to present the following theoretical idea. There is the certain legally binding system of personal rights and freedoms in the state. Besides, it has been developed historically as the result of the public progress (Malevich, 2004). Therefore, when there is the aim to provide continuation and acceleration of this process, it is necessary not only to keep the system mentioned above, but also to expand it.

Certainly, it might be doubtful, whether improvement of personal rights and freedoms in the country is connected to the progress taking place here by directly proportional dependence or not. However, it is unreasonable. Indeed, there is complication in the process of progressive development of the state with two functioning systems – firstly, divisions and cooperation of activity of people, and secondly, satisfied requirements of the person are carried out in the course of normative regulation of considered behavior, including obligatory influence from the sovereign power. And the noted processes of formulation and implementation of the rules include an increase of the freedoms and rights of the person that are recognized in the country – both legal and illegal. Therefore, without such increase there is no country with the wish to achieve maximum progress that is able to do it.

So, ideals mentioned above that are common for all the states should be reached during the creation or development of democracy, and also the development of the wide system of legally bound rights and freedoms of the person in every similar community. And again there is a problem about the possibility to achieve the established purpose as fast as possible.

For the correct solution of these issues, it is necessary to understand two theoretical positions about the appropriate organization of the state that are offered by the liberal tradition of political-legal researches. One position is offered by C. Montesquieu, T. Jefferson and L. Duguit in particular. As the first researcher wrote, «in the free country it is indifferent very often whether people argue well or badly. The only important thing is to let them argue, because it generates freedom, that prevents from bad consequences of such arguments» (Montesquieu, 1955. P.431). In other words, according to the point of view of C. Montesquieu when people suggest choosing between true and erroneous ideas, including preference to the social progress, people usually appear reasonable enough to follow the correct idea. Similar ideas were also supported by T. Jefferson. According to him, «in any country where the person is free to think and speak, differences in opinions occur because of differences in perception and imperfections of human mind. But these differences when they are freely admitted, ... make themselves clear in free discussion and become something like clouds floating in the sky over our earth after which we see our horizons even more brightly, even more clearly» (Thomas Jefferson, 1992. P.69). And according to the opinion of T. Jefferson, «truth will triumph, if it is given its own forces, ... it is an appropriate and worthy opponent of delusion and it is not necessary to be afraid of an outcome of its collision until human intervention does not deprive truth of its natural weapon – freedom

of arguments and discussions: delusions cease to be dangerous when it is permitted to oppose them freely» (Thomas Jefferson, 1992.P.200). So, «only delusion requires the governmental support. Truth is able to stand as it is» (Thomas Jefferson, 1992. P. 195).

Studying the validity of the given judgments, L. Duguit came to the conclusion: the state shouldn't have its own ideology (Duguit, 1908.). It should «respect all the doctrines and protect them all» (Duguit, 1908. P. 799-800).

Another theoretical position about the organization of the state within the limits of the liberal tradition of political and legal researches consists of the following. In the conditions of freedom and democracy people facing the choice between the correct and incorrect ways of solution of the certain issue from the point of view of general welfare provision including the maximum social progress, will often act in rather definite manner. They will prefer an erroneous way (The Federalist, 1993; Mill, 1907).

That is the reason why professional politicians and lawyers who define work of the system of state bodies, urge to help broad masses to accept the decisions made by these state bodies independently with the help of the complex of special measures. And the purpose of such assistance is to keep people from errors that will preserve the democratic system and promote the implementation of the wide system of state population rights and freedoms in every possible way (The Federalist, 1993; Mill, 1907).

For example, J. Madison believed, that the majority of ordinary people will start to make less incorrect decisions within the country with the large territory and considerable number of citizens, and with the representative government that is characterized by the division of powers, than in the conditions of the direct democracy that exists just in the narrow circle of individuals and on the small territory (The Federalist, 1993).

According to the opinion of D.S. Mill, measures that are resulted from this idea in many cases do not lead to the provision when people do not make rather serious errors. To achieve such result, it is required to organize in the state the system of government that is named by D.S. Mill as the “pure democracy” (Mill, 1907. P.127) and that differs radically from the content that J. Madison put in the term (The Federalist, 1993).

According to the comparison of the judgments made by C. Montesquieu, T. Jefferson and L. Duguit, on the one hand, and the judgments made by J. Madison and D.S. Mill, on the other hand, first of all, it is evident that there are features common to both theoretical positions and providing of possibilities for the social progress is referred to both of them. In addition, analyzed scientific platforms are assumed to have ideological pluralism, i.e. absence of the official state doctrine in the country that is understood in the form of system of opinions, obligatory for the population. The scientist admits that in modern Russia, in particular paragraph 2, article 13 of the Constitution sets the following: “No ideology can be established as state or obligatory” (The Constitution of Russian Federation, 2009.P. 9).

However, comparison of two theoretical positions mentioned above also reveals differences between them. So, it is necessary to notice, that the scientific platform that is adherent by J. Madison and D.S. Mill, gives the best chances for realization of the social progress. Moreover, according to it, some special programs are conducted on behalf of the state and intended to help people to make independent decisions in the interests of strengthening the domination over own and external nature. Using the theoretical approach of C. Montesquieu, T. Jefferson and L.

Duguit, professionals who define the policy of the system of state bodies, refuse to assist broad masses in this relation.

Therefore, there is the certain conclusion about the content of the circle of ideas and reflections that make it possible to formulate legal standards for the country in order to achieve the greatest progress. Here, it is necessary to include to scientific platform about the establishment of the due organization of the state that is proposed by J. Madison and D.S. Mill. Besides, it follows from the originality of each sovereign political association that the discussed circle of ideas requires even one addition and it is the question of the following.

On the basis of the theoretical position shared by J. Madison and D.S. Mill, it is necessary with the reference to specificity of any certain state to create the complex of measures that are unique for these states with the purpose to help people to act correctly in order to increase domination over own and external nature as soon as possible. This special program is also required to be entered into the set of doctrine materials that are necessary to serve in the certain country as the scientific base for formulation of legal standards.

Resume

Certainly, during the process of implementation of the resulted judgments in legal standards of any certain state it is necessary to make a lot of efforts by the huge number of people. However, without ideas that should be put into the basis of the law, its establishment is impossible. Therefore, the established theoretical concepts in case of their validity are able to improve the state organization both in Russia and abroad.

¹ Besides, noted phenomenon includes ecological researches and implementation of its results in practice. After all, the specified works also subordinate nature to mankind, creating a favorable natural environment for people.

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Об обеспечении правом прогресса государства

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В статье изложена совокупность идей, позволяющих при закреплении в юридических нормах обеспечить максимальный прогресс государства как все большее подчинение живущими здесь людьми собственной и внешней природы. В частности, предполагается формулирование в праве двух идеалов: во-первых, модели превращения населения всякой конкретной страны в коллектив профессионалов высшего в мире уровня во всех сферах специализированной человеческой деятельности, здоровых, образованных и высококультурных лиц; во-вторых, мирового государства, создаваемого в ходе соревнования между суверенными политическими образованиями, стремящимися достичь первый эталон из отмеченных. Эти цели предлагается осуществлять на пути создания или развития демократии, а также широкой системы юридически закрепленных прав и свобод личности. В работе анализируются обоснованные в научной литературе различные пути решения выделенной задачи с точки зрения обеспечения наибольшего прогресса государства, и признается лучшим из них тот, приверженцами которого некогда являлись Д.Мэдисон и Д.С.Милль.

Ключевые слова: право, государство, прогресс, политический идеал, Г.Кельзен, демократия, Г.Еллинек, регресс, система прав и свобод человека, Ш.Л.Монтескье, идеологический плюрализм, Т.Джефферсон, либерализм, Д.Мэдисон, официальная государственная доктрина, Д.С.Милль.
