

Ukraine's European choice: historical-legal and cultural aspects

Abstract: It is considered objective prerequisites of European choice of Ukraine. It is shown that despite various ways of different parts of Ukraine to receiving and formation of an own state, Ukrainian people realized and sufficiently mastered European values in legal and cultural construction (Lithuanian Regulations, Magdeburg Law, Constitution of Philip Orlick, Universals of UNR etc.). Mentality of Ukrainian people (individualism, aspiration to individualistic household and freedom) corresponds of individualistic society (open), i.e. a society of the western type. As rule, tragedies of Ukrainian people are connected with ignoring of stated mentality. It is pointed out that European course of Ukraine is not a result of American intrigues as pro-Russian observers say and this is natural process, which may coincides with interests of EU and USA.

Keywords: European choice of Ukraine; an open model of society; close model of society; individualistic culture; collective cultures; Russian aggression against Ukraine.

Discussions about the European choice of Ukraine acquire unprecedented sharpness and, unfortunately, bloody hue. Therefore, the objective consideration of controversial issues on this topic is relevant.

Scientific analysis of the historical - legal and cultural aspects of the European choice of Ukraine devoted insufficient amount of work even in Ukraine. More discusses how to approach Europe [1, 2 and others], but to a much lesser extent - why? Especially these questions are not required lighting outside the Ukraine, in particular, in Azerbaijan, though our countries are facing similar threats, especially

◆**Iurynets Julia Leonidovna** - PhD in Laws, Associate Professor of Chair for constitutional and administrative law of Juridical Institute of National Aviation University, Kiev. (Ukraine). E-mail: belkinajulia@list.ru

the threat of loss of territorial integrity. As pointed out by the Azerbaijani authors, “the occupation of Russia in Ukraine creates a threat of recurrence of similar steps against Azerbaijan” [3]. At the same time, some Azerbaijani authors see in the European aspirations of Ukraine, “the machinations of America”, by producing the appropriate parallels with Azerbaijan [4]. Therefore, an objective analysis of the laws of social development in Ukraine is important.

According h. 2 t. 11 of the Law of Ukraine “On the basis of domestic and foreign policy” one of the basic principles of Ukraine’s foreign policy is to ensure the integration of Ukraine into the European political, economic and legal environment for the purpose of gaining membership in the European Union. Thus, the course of European integration of Ukraine defined by law, and this provision in such a version of the Ukrainian Parliament voted by a majority focused on the ex-president of Ukraine V. Yanukovich. Implementation of this policy is the requirement Ukrainian law, but certainly not someone else’s machinations. However, the question arises whether such a course objective grounds.

Russian philosopher Prof. A. Ivin indicates that human history is known to us in five or six thousand years, moving between the two extremes. At one extreme - the society, which can be called collectivist (closed), on the other - the individualistic society (open). First maximum autonomy reject individual other - allow a broad range independence of the individual [5].

Properly built and system administration. As indicated in the textbook [6], in the modern science of administrative law adopted, with all possible nuances distinguish the two models: a closed model, widely used in the practice of countries that are not those reaching the proper level of democracy, when governance is seen as a tool for management purposes, while management objectives are defined by the ruling party or the elite, and not the interests of the public good and without the rights of citizens, and open model that reflects the nature of the European administrative law in the developed democratic countries, rule of law, when the government, is still in largely aimed at achieving the objectives of government, but with two distinct features: the first is expressed in the fact that these goals the board based on the notions of the

public good, defined through a series of democratic procedures; the second by the fact that the objectives of the board is adjusted to certain values and principles [6].

A similar classification is allocated and in the sphere of culture. According to Dutch researcher G. Hofstede, all cultures are classified as individualist or collectivist. In individualistic societies, people are guided by their own interests and goals. Among the core values of such companies dominate: respect for human rights and the high value of individual human life. In contrast to such a collectivist societies provide a complete “immersion” in the interests of the birth of the group (family, clan, etc.) in exchange for security (although often a relative). Own interests almost do not count unless contrary to or not supported by the group [7].

In this context, the famous Russian author, prof. S. Kara-Murza [8] frankly admits that the state and law in Russia are **not being** built on the principles inherent in the modern state of “western” type and civil society. According to its type, according to S. Kara-Murza [8, p. 38], “the Russian state during the time of the Russian Empire and the Soviet period, clearly falls into the category of the traditional society, was the state of “non-Western” type”. At the same time S. Kara-Murza also recognizes [8, p. 38] that the so-called states “traditional” type of power relations and hierarchies of subjects, such states base their power on, through religion or ideology. Liberal state as a modern civil society derives its legitimacy from the bottom, the voices of citizens.

Being the product of a traditional society, further notes S. Kara-Murza, and the Russian state has developed such a society the proper legal system. *In many ways, it is fundamentally different from the rights of civil society*. People who think in terms of Europe centrism, do not understand the traditional law, it seems to them lawlessness. But the word “legal state” resident of Russia perceives is not the case, as in the West. It is meant just liberal state rendering unconditional priority to the rights of the individual. And in ordinary consciousness Russia considered that the legal state - is one that strictly adheres to established and known to all the rules and forces them to comply with all [8, p. 80]. It is very appropriate to recall that, as reported at the same time denied the right in the textbook [9], the ideology of fascism Germany

declared «legal» state is due to the fact that there was a set of strict and clear comply with the law, even the madman.

Therefore, you need to understand which type of mental civilization belongs to the Ukrainian people.

In Internet addresses phrase attributed to the Russian writer A. Tolstoy: “There are two of Russia. First Kiev has its root in the world, and, at least in European culture. Ideas of good, honor, freedom, justice understood that Russia so as understood by the western world. And then there is the second Russia - Moscow. This is Taiga Russia, Mongolian, wild, ferocious. This Russ made his national ideal bloody despotism and savage ferocity. This Moscow Russia from ancient times has been, is, and will be a complete negation of the entire European and bitter enemy of Europe” [10]. At the same time, some observers deny its affiliation was A. Tolstoy [10]. However, regardless of authorship, this phrase very accurately reflects the mental difference between Kiev and Moscow.

S. Huntington and other thinkers of the West allocate a separate Orthodox civilization centered in Russia different from Western Christianity because of its Byzantine roots, three hundred years of the Tatar yoke, the bureaucratic despotism and limited influence over the Renaissance, the Reformation, and the Enlightenment [11]. It is these moments separated and Ukraine from Russia [12].

Historical and legal analysis of the legal and social traditions of the Ukrainian people is partially made in [13]. In particular, the almost constant dissociation of Ukraine between East and West traditions prevented the creation of their own state, cause some differences in the implementation of these traditions. Western Ukrainian lands, despite some harassment of religious and national character, developed in the spirit of the West European humanist law [14, p. 75]. The city received Magdeburg rights. In this thesis [15] notes that stay within the legal framework of the Grand Duchy of Lithuania and the Polish-Lithuanian Commonwealth enriched the privileged class in Ukraine experience in their class-representative bodies of state [15, p. 27].

In it is noted [16] that the legal system under the Charter of the Grand Duchy of Lithuania in 1588 (Charter III) - is a successful synthesis of the principles of caste system and new legal concepts aimed at the future. The best proof that this synthesis was successful and met the requirements of the era, i.e. two and a half centuries of the Charter was a model for legislators and had satisfied jurisprudence on Lithuanian, Ukrainian and Belarusian lands. In the introduction to III of the Constitution emphasized that the purpose of the rule of law is the protection of the rights and freedoms of citizens. However, at this stage, this principle applies only to the top of the public [17]. Since the II of the Constitution (1566) begins the process of formation of the judiciary as a separate branch of government [17].

Period of Ukrainian history of 1648-1657 is marked by the creation of the Ukrainian state, with all its characteristic of public-legal institutions. It was a special state-political system in which the elements of customary law Cossack combined with progressive Lithuanian statutes and regulations of Magdeburg law. Creates a complete system of legal proceedings, in the number of positive features which include: transparency and democratic process; equality of all before the law; identification of the main criteria of justice, based on the idea of humanism. There is a high authority of the court, and a significant level of legal consciousness of the Ukrainian people during the time of Hetman [18].

An attempt to preserve and sometimes restore legality in the Hetman state was the so-called Constitution of P. Orlik [19]. The document (Section VI) states: «If the actions of the Most Serene Hetman be seen anything incompatible with the rights and liberties, harmful and useless for the Fatherland, then [citation needed] His Excellency to express reproach of violating the rights and liberties ... At the reproaches Serene Hetman should not be offended and take revenge, but rather should try to fix the awkwardness». That is, it was quite clear about the inadmissibility by the Hetman's power to violate the existing rules relating to the rights and liberties of the population. In addition, the document provides a broad system of election. However, this document is not received practical implementation and has more doctrinal and not a legal value.

Joining the Russian completely abolished on annexed land all the «rights and liberties». The legal system of these sites is fully dissolved in the legal system of Tsarist Russia, with all its shortcomings. Style lawlessness inherent in the whole of imperial Russia, was extended to Ukraine. So, doctor of historical sciences, V. Verstyuk [20, p. 613] writes: “By joining the military and political alliance with Moscow, Ukraine rather quickly lost its fragile state, which did not have a long tradition, and by the end of the XVIII century. Ukraine was fully incorporated by the Russian Empire, the information in the rank of Russian territory. It had a profound impact on the Ukrainian ethno-social people. If memoir, travel notes traveler XVII-XVIII centuries *full of striking differences seen between Russia and Ukraine, the type of culture, behavior, mentality of the population*, to the XIX century these differences are rapidly disappearing. Losing state, Ukrainians lost their social and public-political elite, losing the state apparatus, they lost the city, under the authority given to the Russian administration. In the XVIII century Ukrainians were considered more educated and involved in European culture than the Russians, by the end of the XIX century. They consisted of 80% of illiterates”.

Problem is to restore Ukrainian statehood on the principles of the rule of law and European values attempted to resolve the Ukrainian National Republic (UNR). In particular, III Universal of the Ukrainian Central Rada [21] that “in the Ukrainian People’s Republic should be provided with all the freedom, obtained the All-Russian revolution (meaning the February Revolution of 1917): freedom of speech, press, religion, assembly, unions, strikes, security of persons and residence, the right and the possibility of using local languages in relations with all agencies”. Guaranteed “Great Russian peoples, Jewish, Polish and others in Ukraine... national-personal autonomy to ensure that their rights and freedom of self-government in matters of national life”.

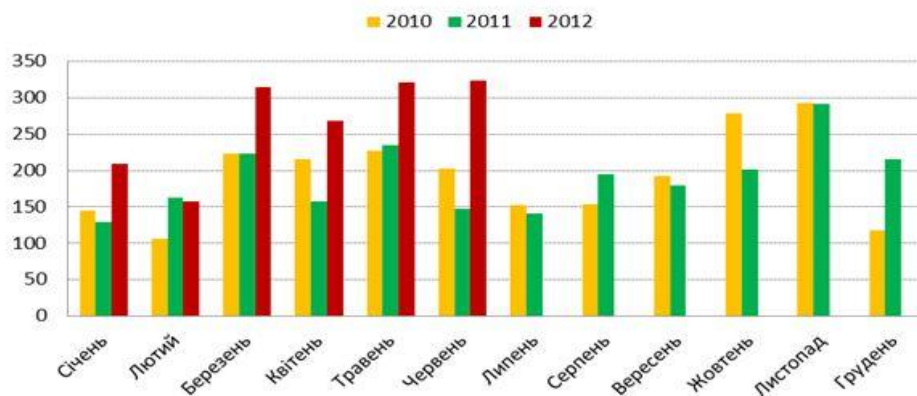
In this thesis [22, p. 1, 12] to the characteristic features of the Ukrainian national character attributed love for his native land, hard work, tolerance, *commitment to individual freedom*, a close relationship with nature, *individuality*. In [23, p. 15] noted that in Ukraine Stolypin agrarian reform had more success than 40 provinces of

Russia, due to the peculiarities of the Ukrainian mentality, *craving for individual management*, relatively lower prevalence in Ukraine peasant communities.

Thus, the interrelated features of individualism, the pursuit of individual management, the pursuit of freedom are related to characteristic of the Ukrainian people. Therefore, mentally, these properties correspond to an individualistic society (open), society of the Western type.

The contradiction between the totalitarian control methods and individualistic mentality of the Ukrainian peasantry resulted in 20-30 years 20 century in the tragedy of the Holodomor. In the NEP period, receiving inventory and some cattle, hardworking Ukrainian poor often turned into a middle peasant. Landless peasants, having put on, and passed into a different category. As for the middle peasants, then the accumulation of the means and instruments of production, it is automatically converted to the «fist», the existence of which the Communists at all was unacceptable phenomenon [24, p. 184]. Obviously, a former KGB general A. Nezdolya knew that he wrote when he pointed out [25, p. 295] that Postyshev and the Central Committee of the CPSU(b) “crushed Ukrainian mentality”. Importantly, the authors point out that Stalin’s struggle against “aggressive Ukrainian petty bourgeois nationalism” in 1928 turned into a political persecution and repression against the whole Ukrainian spirituality and national identity. Broaden the scope of the struggle against “Petlyura nationalism” promoted mass indignation Ukrainian selyanstva against “forcible conversion to collective farmers” and prohibitively excessive grain procurement plans, which caused a total hunger in the country. It is important to emphasize that this is characteristic of both the Left Bank, and for the Right-Bank Ukraine. [26].

Similarly, attempts to control Ukraine’s authoritarian administration of ex-president of Ukraine V. Yanukovych met with resistance democratic-minded people. So, in July 2012 were published aggregate data on the number of protest events in Ukraine in 2010 - 2012. It is seen that from June («червень») 2011 to June 2012 the number of protest events to show steady growth. All this, and not “the machinations of the CIA” and resulted in mass protests in November 2013 - February 2014.



Number of protest events data (for each month: the column on the left - 2010, in the center - in 2011, on the right - 2012) [27]

Due to the tragic events in Ukraine, many authors pay attention to the different treatment of the Ukrainian and Russian people to preserve the lives of their soldiers as a reflection of the relationship to the value of life in general. As the author of [28], Ukraine is difficult to fight, not because we have a small army or not art. Matter is in another. For us, the death of any of the military - it's a personal tragedy for each of us. Life and human dignity for us core values. In principle, for Russia, neither the first nor the second are the values for a long time.

The same topic raises well-known Russian journalist and writer J. Latynina. In discussing the reasons for the agreement on Ukraine Minsk minutes of September 09, 2014 (minutes of the “truce”) J. Latynina noted [29] that the Ukrainian side it was a necessary measure, as a democratic state, such as Ukraine, cannot afford such large losses (up to 1,000 people). Russia’s losses were comparable, but Russia - a country undemocratic. In addition, J. Latynina points [29], with the introduction of Russian troops in the Donetsk and Lugansk, it became clear that the city not proceed. The country’s army, tending to Europe, in principle, cannot take a million citizen city from the enemy, which is superior to its quantity and quality of weapons, *does not hold to any rules of warfare, uses civilians as hostages* and knows that any civilian casualties will write to the “Ukrainian fascists”. Irreparable damage inflicted Ukrainian-Russian relations, Russia's aggressive actions in 2014 after the annexation of the Crimea two-thirds, or 67.1% of Ukrainian citizens have worsened their attitude

to the Russian Federation. Even in the eastern region of the 40.2% of respondents indicate a deterioration of the relationship [30]. February-June the number of positively disposed to the Russian Ukrainians decreased from 78% to 52%. The share of those who have a negative attitude to Russia has increased from 13% to 38% [31].

In a survey in May 2014 56% of respondents said that they prefer Europe Russia, while 19% said that Russia is closer to them. Another 22% said that the two sides are far for them, 3% were undecided on this issue. Most of the population of Ukraine (54%) believes that Ukraine should join the European Union. 82% also stated that the presence of Russian troops in Ukraine unacceptable. 67% of Ukrainians support economic sanctions against Russia, while only 29% opposed the sanctions [32].

According to a survey mid-July 2014 among Ukrainians is growing support for a boycott of Russian goods - this month it rose from 52% to 57%. The number of those who have personally boycotting Russian goods increased from 40% to 46% [33].

Conclusions. Historical experience and mentality of the Ukrainian people did not correspond to the Eurasian direction of development, and because the European direction of development is fully consistent with the mentality of the Ukrainian people.

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