ANO
RELAÇÕES INTERNACIONAIS NO MUNDO ATUAL 2021
CENTRO UNIVERSITÁRIO CURITIBA - UNICURITIBA - VOLUME 2 - NÚMERO 31/2021 - CURITIBA/PARANÁ/BRASIL - PÁGINAS 204 A 2020 - ISSN: 2316-2880

INTERPRETATION OF THE VALUE OF HUMAN RIGHTS IN THE CONTEXT OF MODERN FORMS OF LEGAL UNDERSTANDING

MARYNA A. PANFOROVA
Department of Constitutional and Administrative Law National Transport University 01010, 1 M Omelianovycha-Pavlenka Str., Kyiv, Ukraine/ Str., Lviv, Ukraine.

OLEKSANDRA YE. PROTS
Drohobych Ivan Franko State Pedagogical University Department of Law, Sociology and Political Science Faculty of History/ Str., Lviv, Ukraine.

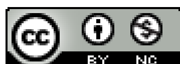
VIRA O. KACHUR
Department of Theory and History of State and Law Faculty of Law National University of Life and Environmental Sciences of Ukraine 03040, 17 Vasylkivska Str., Kyiv, Ukraine.

KHRYSTYNA M. MORIAK-PROTOPOPOVA
Department of History of the State Law and Political Law Teachings Faculty of Law Ivan Franko National University of Lviv 79000, 1 Universytetska Str., Lviv, Ukraine.

LIUDMYLA S. PROTOSAVITSKA
Department of Theory and History of State and Law Faculty of Law National University of Life and Environmental Sciences of Ukraine 03040, 17 Vasylkivska Str., Kyiv, Ukraine

ABSTRACT

A long-term discussion about legal understanding has identified some main approaches to defining its concept, in particular among them: natural law and positive law. In this context, the question of the value of human rights in the context of these types of legal understanding is fundamental to legal science. Considering the above, inter alia, it is also important to find out whether human rights are natural or whether they require formal recognition and consolidation, being positive. The aim of the study is to consider the main features of the interpretation of the value of human rights in the context of natural and positive types of legal understanding, as well as to compare them. Consideration of the subject of research was carried out within the framework of an integrated approach, which involves a combination of such special methods as structural-functional, comparative-legal and formal-legal analysis methods. The article examines the two most popular types of legal understanding, in particular, natural law and legal positivism. According to positive law, human rights should be enshrined in laws, regulations and sources of legal norms. It should be noted that in the modern world, law, which includes human rights, is understood as a system of legal norms that are issued and protected by the state, which to a greater extent reflects a positive legal understanding. The essence of the theory of natural law is that in addition to positive law, which is created by the state, there is a common natural law for all people, standing above positive law. That is why natural law is realized in



[Received/Recebido: Maio 05, 2021; Accepted/Aceito Junho 26, 2021]
Este obra está licenciado com uma Licença Creative Commons Atribuição-NãoComercial 4.0 Internacional.

unicuritiba

positive law and becomes its content. Thus, human rights and freedoms enshrined in the generally recognized principles and norms of international law have become the criterion of the legal basis for national systems of positive law.

Keywords: legal understanding, lex naturalis, natural law, positivism, international law.

1 INTRODUCTION

The problem of ensuring human rights and freedoms is constantly in the focus of legal science and practice. However, the interpretation of the value of human rights in the context of modern types of legal understanding is also extremely important. It should be noted that the legal science of the modern period is in an intensive search for an internally consistent concept of legal understanding, which has integrative effect, capable of understanding the true essence of law. The process of legal understanding is an important and relevant category, because its implementation and application depend on the understanding of law (Misheglina, 2018). That is, legal understanding is a form of knowledge of the essence and role of law in the regulation of social relations.

Moreover, the problem of understanding the law without exaggeration can be attributed to the eternal. For hundreds and thousands of years, thinkers of different nations - philosophers, sociologists, jurists - have tried to solve it. It has been the subject of heated debate since the Greco-Roman period. At present, this problem is at the center of discussion of the public and the scientific community, remains central to jurisprudence and is actively discussed by scholars (Durnov, 2020). Although, today there is no single developed definition of what is essentially legal understanding. For example, M. Kozyubra (2010) notes that the type of legal understanding is due to the worldview of the cognitive subject of the image of law, which reflects the most significant, according to this position, the features of law. According to S. Alais (2003), legal understanding is an expression of various views, judgments and assessments - approaches to understanding the essence of law in the form of separate legal concepts.

At the same time, despite the variety of definitions of legal thinking developed in jurisprudence, the opinion of scientists that this is primarily a process of cognition,

[Received/Recebido: Maio 05, 2021; Accepted/Aceito Junho 26, 2021]
Este obra está licenciado com uma Licença Creative Commons Atribuição-NãoComercial 4.0 Internacional.

unicuritiba

CENTRO UNIVERSITÁRIO CURITIBA - UNICURITIBA - VOLUME 2 - NÚMERO 31/2021 - CURITIBA/PARANÁ/BRASIL - PÁGINAS 204 A 2020 - ISSN: 2316-2880

cognitive activity aimed at studying, explaining and developing the concept of law, determining the system of elements that make up its essence remains unchanged. It should also be noted that legal understanding has the following features:

1) cognitive nature, i.e. legal understanding is a process of cognition and the result of awareness of the essence and content, functioning and purpose of law in human life, society and state;

2) common law character, i.e. the content of legal understanding is knowledge about the essence and content of law, its functioning and purpose in the life of man, society and the state;

3) theoretical nature, i.e. legal understanding is not aimed at obtaining facts, but at identifying internal links, general and specific patterns of development of legal reality;

4) integrative nature, i.e. legal understanding is both a process and a result of knowledge of the essence of law, a characteristic and assessment of the attitude to the image of law in public legal consciousness (Kryvytskyi, 2017).

A long-term discussion about legal understanding has identified some main approaches to defining its concept, in particular among them, inter alia: natural law and positive law. In this context, the question of the value of human rights in the context of these types of legal understanding is fundamental to legal science. Considering the above, the value of human rights in the context of modern types of legal understanding should be analyzed. It is also important to find out whether human rights are natural or whether they require formal recognition and consolidation, being positive.

2 LITERATURE REVIEW

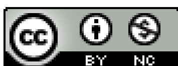
Legal positivism and natural law remain much-used tools in the legal scholar's toolbox. Among other things, they stand for competing ways of thinking about legal reasoning, about the foundations of political authority, and about the existence of necessary connections between law and morality (Priel, 2017). At the same time, the issue

[Received/Recebido: Maio 05, 2021; Accepted/Aceito Junho 26, 2021]
Este obra está licenciado com uma Licença Creative Commons Atribuição-NãoComercial 4.0 Internacional.

of the value of human rights in the context of modern types of legal understanding is a central concept in the general theory of law. It has attracted the attention of many researchers. It should be mentioned, that the works of G. Berman (1983), M. Totaro (2008), C. Invernizzi (2017), S. Liao and A. Etinson (2012), M. Kravchuk (2016) who made a research of the genesis and evolution of legal understanding and the role of human rights according to different types of legal understanding are important for a comprehensive understanding of the research question.

Traditionally, the main competing types of legal understanding are legal positivism and the theory of natural law, that is why we will consider them in this article. For example, F. Nicholson (1981) mentioned, that the renewed concern for human rights since Second World War attests to the revival of the natural law as a source of international legal rules. The natural law postulates that each human being possesses a dignity in himself, something he did not get from other human beings. He has certain rights and duties which no man has a right to destroy. This bundle of rights and duties makes him sui juris. Proponents of natural law argue that the only protection from the human degradation sanctioned by the laws of totalitarian states available to individuals is to subordinate the state to the individual. Obviously, the natural law position is diametrically opposed to juridical positivism's "command theory" of law. Bad experiences with the totalitarian state have also driven legal philosophers away from legal positivism and back to natural law.

Yu. Tsurkan-Saifulinova (2017) has similar views, noting that the natural law doctrine, which experienced a powerful renaissance in Europe and North America after the Second World War, today has a significant number of supporters. Indeed, modern human rights documents are rooted in the concepts of natural law. The greatest achievement in the fight for human rights is The Universal Declaration of Human Rights enacted in 1948 by United Nations - the first document listing the 30 rights to which every human being is entitled. It is the first internationally accepted document in which human rights are treated as universal. They are universal because they belong to no one civilization, nation neither philosophical nor religious system. Human rights according to

[Received/Recebido: Maio 05, 2021; Accepted/Aceito Junho 26, 2021]

Este obra está licenciado com uma Licença Creative Commons Atribuição-NãoComercial 4.0 Internacional.
unicuritiba

The Universal Declaration are deeply embedded in the nature of each member of the human family (Orbic, 2019).

From the other side, M. Tatro offers a theoretical framework for separating moral norms from legal human rights in international human rights law. He argues that the dominant academic paradigm conflates human rights as they exist under international law with the way proponents of this trend want them to be (Tatro, 2008). Comparing the relationship between legal positivism and human rights, C. Invernizzi (2017) emphasized, that the two are in tension, or that there exists at most a contingent relationship between them, whereby legal positivists can only recognize the normative validity of human rights if they happen to be inscribed in positive law.

3 MATERIALS AND METHODS

The methodology used in the article is determined by the objectives of the study. In particular, the methods of scientific research were used to learn about the objective reality of the interpretation of the value of human rights in the context of modern types of legal understanding. It should be noted that the formulation of conceptual provisions on the interpretation of the value of human rights in the context of modern types of legal understanding was carried out taking into account the methodological principles of the current stage of development of science. The research was conducted on the basis of a dialectical materialist methodology that reflects the relationship between theory and practice, according to which research methods were used. The methodological basis of the study was formed by a dialectical approach to understanding the interpretation of the value of human rights in the context of modern types of legal understanding.

At the same time, the scientific tools of the work were based on the principles of objectivity and pluralism of knowledge of the interpretation of the value of human rights in the context of modern types of legal understanding. In addition, the methodological basis of the article were methods that allow to solve problems and achieve research goals. In

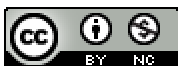
[Received/Recebido: Maio 05, 2021; Accepted/Aceito Junho 26, 2021]
Este obra está licenciado com uma Licença Creative Commons Atribuição-NãoComercial 4.0 Internacional.
unicuritiba

solving problems, the author relied on modern methods of cognition, defined and developed by modern science and tested in practice. In particular, the methodological basis of the study are general and special methods and techniques of cognition. For example, during the writing of the article, such general scientific methods as analysis, synthesis, comparison, analogy, deduction, induction, abstraction, were used as methods to achieve new knowledge.

Thus, the inductive method allowed to generalize and formulate the approaches of scientists to the interpretation of the value of human rights in the context of modern types of legal understanding. The deductive method allowed to consistently argue the position of the author. Other formal logical methods, such as analysis, synthesis, generalization, abstraction, were used to draw conclusions. Consideration of the subject of research was carried out within the framework of an integrated approach, which involves a combination of such special methods as structural-functional, comparative-legal and formal-legal analysis.

For example, the formal legal method has helped to understand the essence of the interpretation of the value of human rights in the context of modern types of legal understanding. The structural-functional method helped in the process of identifying specific features inherent in natural law and positivist types of legal understanding. The comparative law method was used to compare the role of human rights in the context of natural law and positivist types of legal understanding. In addition, the comparative legal study of the interpretation of the value of human rights through the prism of natural law and positivist types of legal understanding contributed to the formation of a holistic doctrine of human rights in science. The use of the above methods made it possible to explore as deeply as possible the issues considered in the study. In addition, a study using the above methods and approaches found that the issue is not only theoretical but also of great practical importance.

It is worth noting that the study of the interpretation of the value of human rights in the context of modern types of legal understanding was implemented by performing the following steps. First of all, the study generally analyzed the natural law and positivist



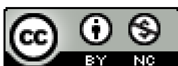
[Received/Recebido: Maio 05, 2021; Accepted/Aceito Junho 26, 2021]
Este obra está licenciado com uma Licença Creative Commons Atribuição-NãoComercial 4.0 Internacional.

unicuritiba

types of legal understanding, in particular, clarified their historical origin, features and characteristics. Next, an analysis of the place of human rights through the prism of natural law and positivist types of legal understanding. Based on the analyzed material, two types of legal understanding were compared, general conclusions were made, as well as perspectives and recommendations in the field of interpretation of the value of human rights in the context of modern types of legal understanding were presented. In the course of the work the materials of law-making, law-enforcement and interpretive practice were studied. In particular, the empirical basis of the study was case law on research issues, as well as materials of scientific conferences and seminars, reports, discussions, reflecting the views of their participants on various aspects of issues in the theory of state and law, international human rights law, constitutional law, etc.

4 RESULTS

The problem of understanding the law without exaggeration can be attributed to the «eternal» one. Since the emergence of professional legal activity and to this day, there has not been a lawyer who would not think about the question of what is a law, and did not try to answer it (Kozyubra, 2010). At the same time, among modern scientific types of legal understanding the most popular are such as: natural law (ideological, axiological) and positive law (normative). So it is necessary to analize in detail at the main characteristics of these two types of legal understanding. We will start with the natural-legal type of legal understanding, which is one of the oldest. According to one longstanding account, the naturalistic conception of human rights, human rights are those that we have simply in virtue of being human. (Liao & Etinson, 2012) It should be noted that in ancient times the origin of law was explained through the laws of nature, which governs all living things. Natural laws that force people to protect themselves, take care of themselves and their property, get married, have children, and so on. Natural law was the same pattern as birth and subsequent death (Kravtsov, 2018).



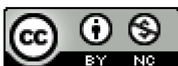
[Received/Recebido: Maio 05, 2021; Accepted/Aceito Junho 26, 2021]
Este obra está licenciado com uma Licença Creative Commons Atribuição-NãoComercial 4.0 Internacional.

unicuritiba

Nowasays, the values of natural law are universal and have an absolute character, and this is perhaps their most important feature. Their universality lies in the fact that they apply to everyone, regardless of any signs of social, national, professional, etc. plan (Titomir-Zotova, 2015). The requirements and values of natural law provide the subject of law with the highest right, if he acts in accordance with them, and, conversely, the denial of these requirements, rules, values in the natural legal consciousness is associated with destruction.

Natural law is the ideal law to which the legislator aspires when adopting legal norms. Norms of natural law are embodied in positive law, as a result of which they are consolidated and sanctioned. Natural law is a certain limitation of the legislator and a legal guarantee of protection against his arbitrariness (Popov, 2014). Natural law doctrine is based on the recognition of all people as equal by nature and endowed (by nature) with passions and aspirations, reason and free will. The laws of nature determine the requirements of natural law, which must comply with positive (established, ie valid) law. The main principles of natural law ideology were individualization, equality of all before the law (Kravchuk, 2016).

Various natural law concepts emphasize the need to enshrine natural law in positive norms. However, such consolidation does not diminish the role of natural law in the social regulation of social relations, because it is in natural law that the requirements of life are formed, which pass through the so-called “filter”, where they acquire special natural legal status, originality and categoricalness state and legal life to acquire a categorically imperative character and to be embodied as fundamental principles in the system of positive law (Storozhuk, 2018). Thus, the next type of legal understanding that we will consider is legal positivism. It should be noted that legal positivism emerged as an independent concept at the end of the 18th - first half of the 19th centuries. I. Bentham, T. Hobbes, D. Austin are considered its founders. In the second half of the XIX century - XX century legal positivism was significantly developed in the works of K. Bergbom, P. Berger, B. Windsheid, G. Kelsen, P. Laband.



[Received/Recebido: Maio 05, 2021; Accepted/Aceito Junho 26, 2021]
Este obra está licenciado com uma Licença Creative Commons Atribuição-NãoComercial 4.0 Internacional.

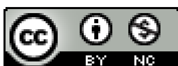
unicuritiba

One of the leading representatives of the positivist school of law was the Austrian lawyer Hans Kelzen (1881-1973). His theoretical views were finally formed during the collapse of the Austro-Hungarian monarchy. At that time, Kelzen taught at the University of Vienna and was active in politics, acting as a legal adviser to the first republican government. On behalf of K. Renner, the head of the Cabinet, Kelzen led the preparation of the draft Constitution of 1920. After the accession of Austria to Nazi Germany, the scientist emigrated to the United States. Kelzen's most famous work is called Pure Theory of Law. Kelzen was convinced that legal science is designed to deal not with the social preconditions or moral grounds of law, as argued by the proponents of the relevant concepts, and specifically the legal (regulatory) content of law (Lutsky, 2011).

The rule of law in the view of the English jurist J. Austin is an order of the sovereign, secured by a sanction. The positivists identified law. From the point of view of legal positivism, there is no right outside the law. Law is considered by them as something logically complete - it has the same impenetrability as the physical body (Krestovskaya & Matveeva, 2008). Thus, positivist legal understanding is characterized by the idea of law as a set of norms established or sanctioned by the state, the implementation of which is enforced. The specificity of law is seen by representatives of this type of legal thinking in its coercion, which is provided either by state power or by social recognition. Thus, the representatives of legal positivism have done a lot to justify the rule of law, the assertion of law and order, systematization of legislation and interpretation of the law. Thus, each of the above types of legal thinking, as already noted, gives its own interpretation of human rights, the ratio of rights and obligations. At the same time, the most polar interpretations are given by positivist approaches and natural law theory.

5 DISCUSSION

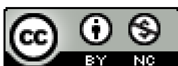
Human rights research should be closely linked to the analysis of the understanding of law. It should be noted that law and human rights are not different phenomena that lead

[Received/Recebido: Maio 05, 2021; Accepted/Aceito Junho 26, 2021]

Este obra está licenciado com uma Licença Creative Commons Atribuição-NãoComercial 4.0 Internacional.
unicuritiba

independently, but phenomena of fundamentally the same order and the same type. Human rights are a necessary, integral and inevitable component of any law, a certain aspect of expressing the essence of law. Law without human rights is as impossible as human rights without law. In this context, the study of human rights within the framework of natural law and positivist types of legal understanding is relevant. The emergence of human rights is inextricably linked with the emergence of the concept of "natural law". The natural-legal doctrine gives priority to the individual, puts forward the thesis of its autonomy and individuality. This theory substantiates the understanding of human rights as inalienable and sacred imperatives.

The meaning invested in the concepts of "natural", "inalienable", should be considered not from the point of view of attaching the specified meaning to them due to their origin, but as a result of the achievement in the development of law of such a stage at which human rights and freedoms are recognized as the highest value and they are given the value of innate, inalienable, natural. This becomes possible only when the law contains the necessary set of legal norms that ensure the realization of fundamental human rights, and the legal system has a well-functioning legal mechanism for the protection of violated rights, supplemented by special social and legal guarantees for the copyright holder, including in the form of material compensation with side of the state.

According to the natural law doctrine, human rights are natural and innate, they are independent of the discretion and arbitrariness of state power; the latter is designed to ensure for a person the rights assigned to him/her by its nature. The natural legal doctrine is aimed at limiting the claims of the state at its discretion to determine the scope of human rights and freedoms, regardless of the set of rights necessary for the normal life of an individual, which are objectively inherent in him from birth and are inalienable and independent of the will the state. Natural-legal doctrine focused its attention on such values, as human life, dignity, equality, justice, etc.; these values have been promoted as a powerful incentive to assert human rights. This is a theory about the justice in the field of law.



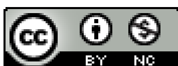
[Received/Recebido: Maio 05, 2021; Accepted/Aceito Junho 26, 2021]
Este obra está licenciado com uma Licença Creative Commons Atribuição-NãoComercial 4.0 Internacional.

The significance of the interpretation of human rights given by natural law theory is an evaluative approach to this institution, the idea of rights as an independent value belonging to a person from his nature, and of national legislation as fair, based on the idea of civil rights and freedoms. In the modern world, fundamental rights are proclaimed as belonging to every person. They are formulated in international declarations, pacts, conventions, in the constitutions of individual states. Human rights are at the core of legal legislation. Human rights are a criterion for distinguishing between legal and offensive laws.

At the same time, as supporters of positivism note, the declaration of fundamental rights and freedoms is not synonymous with the real existence of these rights and freedoms in the national legal system. The real existence of rights and freedoms must have legal support and social and legal guarantees. Human rights need the force of the law, which asserts, develops and concretizes them. The positivist theory of law emphasizes such a sign of human rights as their normative nature, legislative formulation, security and protection by the state, which makes natural rights, as rights in a legal sense.

Within the positivist type of legal understanding, human rights are understood as formally defined, legally guaranteed opportunities to enjoy social benefits in the area described by law, an official measure of possible behavior. Public authority, according to this doctrine, can either grant certain rights or take them away. The state authority determines the scope and content of these rights. This theory focuses on the subordination of the individual to the state as a supreme power, endowed with the right to dispose of it at its discretion. Legal positivism in all its manifestations goes back to Austin’s “command” theory of law, which argued that law is an order of the sovereign to its subordinates, that is, the requirement of proper behavior, directly or indirectly from a person or group of persons exercising supreme sovereign power within a certain political community. (Austin, 1832)

Moreover, legal positivism proceeds from the fundamental distinction between law and morality, which, in turn, means any standards for assessing human behavior that are not law, that is, they have not received in one way or another the status of mandatory and



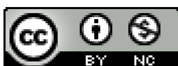
[Received/Recebido: Maio 05, 2021; Accepted/Aceito Junho 26, 2021]
Este obra está licenciado com uma Licença Creative Commons Atribuição-NãoComercial 4.0 Internacional.
unicuritiba

CENTRO UNIVERSITÁRIO CURITIBA - UNICURITIBA - VOLUME 2 - NÚMERO 31/2021 - CURITIBA/PARANÁ/BRASIL - PÁGINAS 204 A 2020 - ISSN: 2316-2880

compulsorily supported rules of behavior. (Fuller, 2005). Law, in order to be considered as such, does not need moral (religious, etc.) justification: without the presence of a direct constitutional or legal provision, it cannot be considered that a norm that violates moral principles is not a rule of law; and, conversely, from the mere fact that the norm is morally desirable, it should not be endowed with legal status (Hart, 2005).

Of course, human rights, like any legal claim, need the rule of law. Legal laws and other legal formal acts protect and concretize human rights. But this does not mean that human rights are born of the will or wisdom of legislators. Legislators cannot "create" human rights even by the force of official regulations. The law can protect or violate human rights, but it cannot "create" them. Fundamental rights and freedoms exist not by virtue of the law, but by virtue of their mutual recognition within the circle of subjects of state-legal communication. In this sense, fundamental rights can be called natural, because they manifest themselves before and independently of their official recognition. A law will be legal only if it is based on morality and if human rights and human welfare are the reference point for regulation. Law, legal laws are laws that are consistent with human rights.

In this context, Judge Tanaka's dissenting opinion in the 1966 judgment of the International Court of Justice in the South West African Cases stated: the principle of the protection of human rights is derived from the concept of man as a person and his relationship with society which cannot be separated from universal human nature. The existence of human rights does not depend on the will of a State; neither internally on its laws or on any other legislative measure, nor internationally on treaty or custom, in which the express or tacit will of a State constitutes the essential element. ... If a law exists independently of the will of the States and, accordingly, cannot be abolished or modified even by its constitution, because it is deeply rooted in the conscience of mankind and of any reasonable man, it may be called "natural law" in contrast to "positive law" (Judge Tanaka's…, 1966). Also, L. Marceau (1942) mentioned, that the great weakness in juristic positivism, as that doctrine is expounded by its more aggressive proponents, lies in its dogmatic assumption that (aside from the accomplishments of positive law itself) there is



[Received/Recebido: Maio 05, 2021; Accepted/Aceito Junho 26, 2021]
Este obra está licenciado com uma Licença Creative Commons Atribuição-NãoComercial 4.0 Internacional.

no invariant principle of nature under which one's actions inevitably draw upon one such consequences as they merit.

If we compare the role of human rights, according to the natural-legal and positive type of legal understanding, then, for example, legal theorist A. Polyakov (1999) differentiates between natural and positivist types of legal understanding in relation to values. The first type of legal understanding, says the scientist, is based on the idea that law is a value phenomenon, which gives the theoretical temptation to reduce the whole right to certain values (equality, freedom, human rights, common good, justice, etc.). The opposite concept tries to completely exclude the law from the sphere of values, substantiating it not organically - as a plurality (including the value aspect), but mechanistically - as a set of certain homogeneous elements - due rules or laws established by the state, although it does not deny its own value. The opposition of the concept of natural law and normative legal understanding carries with it dangerous tendencies. If the state is bound by law, then the laws it issues should not contradict the human rights and, in particular, those human rights that in theory are called natural and inalienable. At the same time, positive law, established by the state, should consolidate and express natural law.

6 CONCLUSION

Issues related to the choice and justification of the type of legal thinking are among the most fundamental and debatable problems of the theory of law. The entire history of the development of jurisprudence is the history of the confrontation between different approaches to understanding what is the essence of law as a specific phenomenon of social life. Today, the central problem of the general theory of law is the problem of legal understanding. Legal understanding itself is a complex mechanism of research tools for studying law, its meaning, essence and place among social values. At the same time, today there is no leading concept of legal thinking, since modern jurisprudence is

Este obra está licenciado com uma Licença Creative Commons Atribuição-NãoComercial 4.0 Internacional.

characterized by ideological pluralism. At the same time, the article examines the two most popular types of legal thinking, in particular, natural law and legal positizism. According to positive law, it is identified with laws, regulations and sources of legal norms. In other words, a positive right is permissible and not permissible rules of conduct enshrined in legal documents.

It should be noted that in the modern world, law is understood as a system of legal norms that are issued and protected by the state, which to a greater extent reflects a positive legal thinking. The theory of natural law as a scientific trend has a long history. Its main provisions were formed in antiquity. The essence of this theory is that in addition to positive law, which is created by the state, there is a natural law common to all people, standing above positive law. Natural law ascribes to a person inherent and inalienable rights that exist independently of the state and that arose before it. Such rights arise by virtue of the birth of a person. At the same time, in the context of natural law, human rights are perceived not as legal constructions, but rather as ideological slogans, declarations that should be given their due, but which do not necessarily have to be guided in practice. Natural law and human rights are assigned the role of moral categories and phenomena.

That is why natural law is realized in positive law and becomes its content. For example, it should be noted that human rights and freedoms, enshrined in universally recognized principles and norms of international law and positive at the constitutional level, have become a criterion of the legal basis for national systems of positive law.

REFERENCES

Alais, S. (2003). *The problem of legal understanding in the main schools of law*. Kyiv: Institute of State and Law VM Koretsky NAS of Ukraine, 20 p.

Austin, J. (1832). The Province of Jurisprudence Determined and the Study of Jurisprudence. London. Retrieved from http://www.koeblergerhard.de/Fontes/AustinJohnTheprovinceofjurisprudencedetermined1832.pdf.

[Received/Recebido: Maio 05, 2021; Accepted/Aceito Junho 26, 2021]
Este obra está licenciado com uma Licença Creative Commons Atribuição-NãoComercial 4.0 Internacional.

unicuritiba

Berman, H.J. (1983). *Law and revolution: the formation of the western legal tradition*. Cambridge, Massachusetts, London: Harvard University Press: 115 p.

Durnov, E. (2020). Concepts and types of functions of law understanding. *Enterprise, Economy and Law, 9*, 164-159.

Fuller, L. (2005). Positivism and fidelity to law. Reply to professor Hart. *Jurisprudence, 6*, 124-159.

Hart, G. (2005). Positivism and the delimitation of law and morality. *Jurisprudence, 5*, 102-136.

Invernizzi, C. (2017). Reconciling legal positivism and human rights: Hans Kelsen's argument from relativism. *Journal of Human Rights, 17*, 215-228.

Judge Tanaka's dissenting opinion in the 1966 judgment of the International Court of Justice in the South West African Cases. Retrieved from https://www.icj-cij.org/public/files/case-related/47/047-19660718-JUD-01-06-EN.pdf.

Kozyubra, M. (2010). Legal understanding: concepts, types and levels. *Law of Ukraine, 4*, 14.

Kravchuk, M. (2016). Legal understanding is an important scientific problem of the legal life of Ukraine. *Current Issues of Jurisprudence, 1*, 19-25.

Kravtsov, I. (2018) The concept and main types of legal understanding. *European Political and Law Discourse, 5*, 66-71.

Krestovskaya, N., & Matveeva, L. (2008). *Theory of state and law: an elementary course. 2nd edition*. Kharkiv: Odyssey LLC, 432 p.

Kryvytskyi, Yu. (2017). Legal understanding as a worldview and methodological foundation of legal reform. *Law and Society, 2*, 25-30.

Liao, S., & Etinson, A. (2012), Political and naturalistic conceptions of human rights: a false polemic? *Journal of Moral Philosophy, 9*, 327–352.

Lutsky, R. (2011). Basic types of legal understanding. *Scientific Bulletin of Uzhhorod University, 15*, 53-56.

Marceau, L. (1942). Relation of natural to positive law. *Notre Dame Law Review, 1*, 22-35.

Misheglina, V. (2018) Legal symbols in integrative legal understanding: theoretical aspects. *Law and Society, 2*, 36-41.

[Received/Recebido: Maio 05, 2021; Accepted/Aceito Junho 26, 2021]
Este obra está licenciado com uma Licença Creative Commons Atribuição-NãoComercial 4.0 Internacional.

unicuritiba

Nicholson, F. (1981). *Juridical positivism and human rights*. New York: Hippocrene Books, Inc, 406 p.

Orbic, Z. (2019). Human rights in the light of the concepts of natural law. *Scientific Papers of Silesian University of Technology, 140,* 275-284.

Polyakov, A. (1999). Natural school of law. *State and Law, 4*, 12-19.

Popov, D. (2014). *Application of natural law in the implementation of judicial review.* Lviv: Lviv State University of Internal Affairs, 231 p.

Priel, D. (2017). The possibility of naturalistic jurisprudence legal positivism and natural law theory revisited. *The Province of Jurisprudence Naturalised, 32*, 7-35.

Storozhuk, D. (2018). Ontology of legal progress through the prism of typology of legal understanding. *University Scientific Notes, 66*, 167-179.

Titomir-Zotova, O. (2015). Natural and legal understanding of law as an ideological basis of legal education. *Scientific Bulletin of Uzhhorod National University, 1*, 47-50.

Totaro, M. (2008). Legal positivism, constructivism, and international human rights law: the case of participatory development. *Virginia Journal of International Law, 48*, 71-79.

Tsurkan-Saifulinova, Yu. (2017). Modern interpretations of the natural-legal doctrine of law and authority. *National Law journal*, 19-24.

[Received/Recebido: Maio 05, 2021; Accepted/Aceito Junho 26, 2021]
Este obra está licenciado com uma Licença Creative Commons Atribuição-NãoComercial 4.0 Internacional.

unicuritiba