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SYSTEMS APPROACH IN THE URBAN LEGAL SYSTEM AFFIRMATION

The article deals with the theoretical basis of using systematic approach to the study of urban legal system. On this basis, it is shown that conceptually the urban law and the municipal law are different. It is proved that the urban legal system becomes the cut of legal reality, which is closer than any other to the people in the cities and which exposes the valued-normative distinctiveness of every separate city. Based on systematic interpretation of the principle of pluralism, the features of the urban legal system are demonstrated.

Making emphasis on the actuality of the city law problems in modern historical aspect is the reflection of progress of the modern state trends. It is undeniable that today state institutes begin to lose their monopoly on the law which leads to the acceptance of the idea of legal pluralism and awareness of the fact that law is formed as a product of the society's vital functions, but not of the law-makers' activity. Thus, on the way of the modern urban legal system theory formation we ought to use all the arsenal of methodological tools, which the legal science can offer. At the same time, it is impossible to conduct such research without the use of general scientific methodology, which, in this case, is presented by the systems approach.

The purpose of the article is to explore the theoretical basis for the use of the systems approach in the urban legal system affirmation, as well as for the description of its main features.

In general, theoretic discourse, the issues of the urban legal system have remained quite scantily studied until now. However, the separate aspects of this topic were revealed in the works by R. A. Romashov, M. I. Korniyenko, V. V. Tabolin, A. V. Kornev and others.

Definition of the urban legal system specifics requires from us to apply not only the urban methodology, as the special multi-disciplinarian research programme, but also the system methodology, by means of which the structural-functional analysis of the urban law is made possible. Here we should agree with L. A. Luts' assertion that without methodology of systems analysis any judgments on the legal system are doomed to superficiality[1]. At the same time it is possible to accept the judgments, that considering law as a system implies many different approaches, as

[1] Луць, Л. А. (2001). Категорії системного аналізу – методологічні основи дослідження правової системи. *Вісник Львівського університету. Серія «Право»,* 36, 47–53.

the legal system is not the unique display of the systematic character of law. For this reason, we have to distinguish the sense in which the urban law will be understood as a system.

While researching the legal systems at the level of general theoretic jurisprudence, the important question is the matter of correlation between the notions of «law» and «legal system». With regards to the above mentioned issues, three basic approaches were formed:

a) the concepts «legal system» and «law» are identical on a volume and can be used as synonymous. For example, such statement of the question is often used in the sphere of comparative law, when it is possible to use concepts «the Ukrainian law» and «Ukrainian legal system», «the French law» and «French legal system» (and others like those) as identical ones. The basic feature of this approach is that law is researched as really existing one only then, when it is embodied in a certain institutional formation. In other words, there is no strict distinction between the law as it essentially is and the actual operating law;

b) the concept of «legal system» is wider than that of «law». Such point of view prevails today, which is linked, above all things, with the positivist tradition in perception of the contents of law. Typical are the assertions according to which «law… is the kernel of the legal system»[1]. Indeed, if we limit law only with the system of norms, then such approach can be justified. However, if we include into law some other elements connected with the existence of law, for example, legal relations, legal consciousness, legal values and others like those, such an approach does not work;

c) the third approach, is the one in which the concept of «law» is interpreted as a wider concept, than «legal system»[2]. Here, in addition, to the interpretation of law in the wide sense (when, except norms, it includes some non-normative elements of legal reality)[3], another argument is used. Law appears as an idea, a system of images of that how the society must be organized. The legal system is a special case of fulfillment of this idea. Thus, law can have other forms of its existence, for example, legal culture, legal life, legal reality and others.

[1] Матузов, Н. И., Малько, А. В. (2001). *Теория государства и права: курс лекций*. Москва: Юристъ, 528.

[2] Колесниченко, В. В. (2011). Категориальный статус правовой системы. *Правове життя сучасної України*, *1*. Одеса: Фенікс, 53–54.

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According exactly to the third variant of correlation between law and legal system the issues of the urban legal system will be examined.

The concept of the system, in particular, is extraordinarily multi-faceted and pluralistic. Thus, as A. Y. Tsofnas noticed, it is necessary to differentiate the systems approach from the systematic method, as they are two different methodological units. The systems approach is used not only by those, who consciously apply some of the numerous theories of the systems, but also by those, who consider the subject of their studies as the system, distinguishes it from other systems or from anything that, on their opinion, is not a system, and gets certain results from it. At the same time, the systematic method is the conscious application of certain theory of the systems, when one can be limited by the presentation of the subject as a system and its specific system description, or can move forwards and apply the theory of systems in full – with all its distinctions, with clearly sequenced steps and operations, determined to gain some new knowledge or a particular practical result[1].

Turning to the systems approach within the framework of humanitarian and social science, we get the grounds for the contemporary understanding of various phenomena. The development of general theory of the systems in philosophical works, with the reference to its features of language of ternary description, is really valuable[2]. The use of the theory of the systems in jurisprudence creates the new possibilities in order to reveal and determine the parameters of any subject of research. Thus, the effectiveness of this process can be related not only to the clear exposure of the features of a phenomenon being researched, but also with its formal definiteness.

The assumption that any subject is the system, provided that some relations between its components can be realized within this subject and that it has some certain characteristics, enables us to verify or to falsify it in the scope of jurisprudence. Also, a system is studied from the position of the three basic notions: a concept that is the idea from the point of which the system is understood; a substrate, which consists of the elements that this concept is realized on; a structure, which means the aggregate of connections between the elements of the substrate.

Study of a city within the framework of general theoretic jurisprudence is one of the factors that confirm understanding of urban law as a legal system. Positioning a city as a concept in the center of the certain system

[1] Цофнас, А. Ю. (1999). *Теория систем и теория познания*. Одесса: Астропринт, 26-27.

[2] Уёмов, А., Сараева, И., Цофнас, А. (2001). *Общая теория систем для гуманитариев*. Варшава: Wydavnictwo Universitas Rediviva, 42.

gives the grounds for the construction of the special model of the system of urban law, which can be supported by the arguments of its existence both in historical, and in modern context.

As it has already been marked, the urban law is the display of legal pluralism, as in fact it exists alongside and parallel with other systems, such as national law, integrative law and others like that. Nevertheless, the idea of pluralism often is not accepted because of its closeness to eclecticism, i.e. the simple aggregate of methods, approaches and conceptions, connected only by the occasion. For this reason, it is important to clarify the contents of the principle of methodological pluralism. For this purpose, the use of methodology of general theory of the systems is justified. From this point of view, pluralism appears to be the meta-principle, and it can be formulated in two ways: «pluralism is the possibility of construction of the same system on the basis of different concepts»; or «pluralism is the possibility of construction of the different systems on the basis of one concept»[1].

Certainly, law is a complicated system, and that is why, it is impossible to define the unique concept, that means the only sense, in which we understand it as a system. For this reason, there is no single presentation of law as a system which can claim to be the absolute truth. This thesis can be explained especially by a logical way, without turning to the ideas of pluralism of legal understanding. The prominent logician of the 20 th century A. Tarskiy, one of the authors of the non-positivist interpretation of the truth, asserted that for the highly developed languages (both natural and artificial) the unique criterion of truth cannot exist. This conclusion is supported by the incompleteness theorem by Godel: a system of deductive judgements cannot have the unique criterion of the truth, if a system is not completed (not closed); it implies that even the most well-organized system of deductive judgements (for example, mathematical theory) is impossible to be reduced to the unique logically veritable judgement[2].

Even such a superficial look at the pluralism from the point of the systems approach demonstrates that law is pluralistic in a greater measure, than it used to be talked about, as in fact, it is not a totally deductive system. Attempts to reason law from the positions of the deductive systems, which were traditional for the soviet jurisprudence, are hard to be considered successful because law is the open system the

[1] Уёмов, А. И. (1978). *Системный подход и общая теория систем*. Москва: Мысль, 245.

[2] Тарский, А. (1999). Понятие истины в языках дедуктивных наук. *Философия и логика Львовско-Варшавской школы*. Москва: Мысль, 14–178.

essence of which is not confined to the judgments (normative or non-normative).

Presentation of a city as a concept of the urban law, which exists along with the other levels of law (national, integrative and international), provides a basis for more in-depth study and categorical justification of the urban legal space. In this case, the possibility to use the systems approach is obvious; hence, the city will be the concept, the substrate of the system will be the urban legal space, and its axiological, normative, subjective, institutional and communicative fullness will be its structural components.

Applying the systems approach to the definition of category status of the city legal system also results in the clear differentiation of the urban and municipal law. A great number of specialists who study the municipal law accepted the point that the municipal law is the complex branch of law, the subject of which is local self-government[1]. Thus, the municipal law equates with the urban law, and the notion of «urban» law becomes written in brackets, explaining the priority of municipality[2]. However, the use of the systems approach to determination of municipal and urban law helps to discover the substantial differences between them.

The interesting fact is that the basis for the other understanding can be built on the ideas of A. V. Korniev who, referring to the urban law in historical context, claims that it contains the norms of the civil, tax, financial, criminal, constitutional, municipal and international law[3]. That means that a city as an economic, cultural, political and legal subject (as a concept in the framework of parametric theory of systems), in the course of its existence, has been able to create such a unique phenomenon as the urban law which regulates relations both within the city's area and beyond its boundaries.

So, the municipal law is a part of the legal system of a state, an element in the public legal life of a society on the whole, its norms and values are spread on all the administrative-territorial units of the state (not only on cities but also on villages, settlements, areas etc.). The urban law exists, above all, at the level of cities. Thus, it is independent from the state,

[1] Корнієнко, М. І. (2005). *Муніципальне право України. Концептуальні та організаційно-правові питання*. Київ: Алерта, 14.

[2] Таболин, В. В., Корнев, А. В. (2000). *Муниципальное городское право. Правовые и организационные основы деятельности органов местного самоуправления*. Москва: Формула права.

[3] Корнев, А. В. (2008). К вопросу об исторических предпосылках формирования городского самоуправления и городского права. *Город как явление социокультурной и экономико-правовой реальности*. Санкт-Петербург: Издательство СПбГУП, 112.

formed and changed not by the legislative activity, but in the process of activity of its residents and the city authority.

This implies that it would be inaccurate to reduce the urban law to local self-government, since historically the urban law defined not only the right of a city to elect its power institutions and make laws but also to judge the citizens and to maintain legal order. So, a feature of self-regulation that cannot be reduced only to self-government is immanent to the urban law. Moreover, a city is a specific space in which the occasional connections between the different agents are possible, and it already urges to determine some systematic parameters (e.g., stability or instability) in researcher's methodology of the urban law.

Thus, if the urban law is considered only as a part of the municipal law, this will narrow and limit the potential of legal science. On the contrary, the urban law is a complex phenomenon which, considering its historical prerequisites as well as its modern vision, can be regarded to be a new self-sufficient direction in the jurisprudence.

According to this, the urban law, its structure which corresponds to the concept (the city), also includes the features of the legal status of a city, its typology, its impact on the legal sphere and on the specifics of the city dweller's legal image. Law in this context is seen as creation of the urban culture. With regard to this, it is important to highlight the fact that law as the historically constituted value-normative system is primarily thought to be an urban phenomenon, and the whole history of the archaic law is, in its essence, the history of the urban law. It should be noted, that today a city is the central core not only in the territorial development, but also in the legal and state development. Therefore, the urban law is the legal system with its components in the form of special subjects, legal sources, institutions, set of functions, value-normative grounds and multi-level legal relations, which can be substantiated only from the point of its understanding through the prism of the systems approach.

So, the urban law and the municipal law are different systems, as they are based on two different concepts. The concept for the municipal law is the municipality (local self-government), and the concept for the urban law is the city.

Studies on the urban law as the special legal system allow us to assert that it forms the legal systems of a new type: urban legal systems. They include the legal systems of a city and the urban legal systems:

a) the legal system of a city is made in the process of formation of the institutes in the urban legal space, when within the limits of a city some special rules of conduct are created, and get their normative legal fixing and social recognition. The legal system of a city is also related to

selection of some special organizational institutes which operate within the limits of this or that city. Thus, in historical aspect a lot of European cities were formed by their own urban legal systems, many of them exist until now (in particular, in England, France, Germany, the Czech Republic, and also in the cities which own their autonomous status in the state – for example, Macao and Hong Kong in China). If we talk about Ukraine, then today the prospect of forming the autonomous legal system is owned by the city of Kyiv, as such an opportunity is given to it at the legislative level. Other cities can realize this opportunity to create the legal systems only at embryonic level – by the implementation of the statutes of the territorial communities in the cities, which (the statutes) in a great deal are very alike and represent the specific of that or another city rather poorly. It should be hoped that as a result of the decentralization of city declared by the Government they will have wider opportunities in order to form the autonomous legal systems;

b) the urban legal system exists as the legal system of a city, which went beyond the boundaries of its legal space, and is used as a standard for the construction of other cities' legal systems. So, many models of the city legal systems are historically known – Magdeburg Law, Gotland Law, Riga Law and others. Formed and sharp-cut in the so-called maternal cities, they later began to be used according to trans-frontal principle (that is, the existence of the city legal systems was not related to the legislation of one or another state, those legal systems existed as the paralleled).

Thus, the use of the systems approach in understanding of the urban law leads to the recognition of the urban legal system (Calm law, the Freeports' law etc.) and the legal system of a city which includes the urban law of a particular city (Lviv city law, Kyiv city law, Odessa city law etc.). Accordingly, the urban law is the urban legal system or the legal system of a city, which consists of the particular relevant components, such as: subjective (status), axiological, normative, institutional and communicative ones.

The urban law can deal, from one side, with the legal relations between a city and a state, between the cities, a city and an individual city dweller and others like that, where a city acquires its special legal status. On the others hand, the concept of the municipal law is too wide, as it embraces the questions of local self-government not only in the cities. Consequently, there are two different systems with their own concepts, which, correspondently, have their different structural organization.

Different system peculiarities of the municipal and the urban law are also explained by the fact that the urban law has its specific teleological

features. As it was marked by B. V. Malyshev, the legal system always appears as an integral autonomous internally coordinated aggregate of the legal phenomena, which functions with the purpose to achieve the public ideals (values) of justice, equality, freedom and humanism[1]. Another interpretation of the special determination of the legal systems is given by Z. K. Ayupova, who studied the legal system as a multi-system complex of normative, ideological and organizational levels of the legal reality, binding it to the integrative, regulatory and communicative functions which are used with the purpose of strengthening the legal order. Also, the author claims that the main function of the legal system is integrative, which makes her points rather different from the wide-spread opinion considering the regulatory function to be the main function of law[2].

As a rule, the purpose of one or another element of the legal reality in the normative measuring is set in the preamble of a legal-normative act. As it is said in the preamble to The Law of Ukraine «On the local self-government in Ukraine», «this Law, in accordance with the Constitution of Ukraine, determines the system and guarantees of the local self-government in Ukraine, principles of organization and activity, legal status and responsibility of the organs and public servants of the local self-government»[3]. At the same time, one can see that the key teleological description of the urban law is maintenance of the integrity of the city legal space, provision of the uniqueness and cultural originality of every city, and also development of the cities on the basis of the inclusive system of city management.

Taking everything into consideration, we can state that in order to form the urban law theory the general theory of the systems ought to be used, which will enable us to reveal the features of the modern urban legal development. The urban law becomes that cut of the legal reality which is the closest to the residents of the cities today; it exposes the value-normative definiteness of every separate city. And the system methodology, in particular, allows us to give conceptual, substrate and structural descriptions of the city law and to define the place of this phenomenon in the variegated legal field of the transient modern world.

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