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The Legal Tradition of the Ukrainian People as the Basis of State-Political System in the State-Building Ideals of Rostyslav Lashchenko

Słowa kluczowe: ustawodawstwo ukraińskie, sąd gminy wiejskiej, nowoczesny system prawny, sądy apelacyjne, Rada Centralna, rząd Skoropadsky.

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For thousands of years, the Ukrainian people created an original legal culture whose level at all stages of its formation and development corresponded to the progressive legal property of that time. The modern legal system of Ukraine is characterized by a number of peculiarities, which necessitates its detailed study taking into account Ukrainian ethno-national specificity. The structure of the domestic legal system is not a purely historical chance in comparison with the legal systems of other nations, but rather a manifestation of systemic historical patterns that reflect either the ethno genesis of the Ukrainian people or its political and socio-economic transformation. It is worth drawing attention to the directions of the development of the legal system are determined by the way of resolving its internal contradictions, which, finally, constitute the content of specific political and historical laws of the Ukrainian peoples in accordance with contemporary beliefs.

Fundamental investigations of the main stages of the evolution of the legal system of the Ukrainian people were carried out by R. Lash-

chenko, chronologically identifying its boundaries since the times of Kievan Rus'. The scientist analyzed the legal system of Kievan Rus' and the main provisions of the *Russkaya Pravda* as the most important components of the genesis of the national legal system that were undergoing transformation during the period of The Grand Duchy of Lithuania and the signing of The Union of Lublin in 1569. In a number of R. Lashchenko's works was substantiated the idea of the post ponement of the main provisions of *Russkaya Pravda* in the Lithuanian Statutes and their gradual evolution as a result of complex socio-economic and national-state transformations. He concludes that the significance of the legal tradition of Kievan Rus' in the formation of not only the legal system of The Grand Duchy of Lithuania, but also the rule of law, which existed in the lands of Kievan Rus' after the signing of The Union of Lublin (Шемченко Ю., 2002, p. 436).

On the basis of R. Lashchenko's works, we can highlight the advantages of national Ukrainian law: the superiority of the rules of private law over the public one, where in priority are the idea of preserving the freedom of the person, the idea of "personality", implementation of the principle of public solidarity as a counteraction to the offense; the principle of the participation of each citizen in the community life and the state; the realization of a humanistic idea through a humane attitude to individuals who violate the law; avoiding dogmatic interpretations of the events, finding out the essence of facts from the point of view of real life through specification, materialization of legal opinions as a vivid identification of the direct legal foundations of the Ukrainian people; use of deductive methods to fully understand events and phenomena in general; interpretation of the right as a truth (Лашченко Р., 1924, p. 29). It is important that these approaches still characterize the mental legal tradition of the Ukrainian people.

R. Lashchenko paid special attention in his research to an analysis of the basic structural elements of the Ukrainian national legal system. Thus, one of the most prominent manifestations of its expression, he called the Kopnyi Sud (Court of Rural community), which exercised judicial powers on the basis of the ancient legal national customs, specific national law of rural community. Rostyslav Lashchenko (1924, p. 29) says that: "The Kopnyi Sud – is a court of the rural community, a court of people in the broadest sense of the word". Importantly, in its organization and functioning, the official government institutions did not play a significant role, which provided grounds to understand the system of rural community courts as a factor in the decentralization of the system of state power.

The rural community courts performed a number of important socio-political and administrative functions. Rural community, with its ancient system, created a full-fledged structure for the consideration of local legal cases (especially of a land law nature), as well as for the prevention and combating of various types of crimes (Лашченко Р., 1924, p. 42). An indication of this was the fact that the certain provisions of the Ukrainian rural community law became as a national one in the codification of the Lithuanian Statutes in 1529, 1566 and 1588.

The researcher notes that the methods and paths that were used in the system of the rural community courts during the case processing and by which the people tried to restore the law, protecting their violated interests, looked quite primitive from the point of view of the present. However, such approaches to the construction of a judicial procedure revealed the special features of lawmaking, initiative and real understanding by the people of the real conditions of socio-political and economic life. In view of this, the scientist convinced that the similar tendencies should be reflected in modern legal systems (Лашченко Р., 1924, p. 30).

From the point of view of the present, R. Laschenko (Лашченко Р., 1925, p. 87) correctly predicted that during the period of the national revival of Ukraine and the restoration of its state life, interest to the history of Ukrainian law, domestic legal traditions will increase, especially among Ukrainian youth. Thus, without knowledge of the legal foundations of national law can not be created the state, which should function only on legal norms. The profound opinion is that each people, each nation, developing their national culture, should take care of the development and preservation of their national legal traditions

In Ukrainian realities, the legal idea has always taken key positions in state-making processes and was identified in people's beliefs with the idea of equality and fraternity. Even in the extremely difficult conditions of the process of state self-determination, as Rostyslav Lashchenko (1918, p. 19) noted, the Ukrainian people retained the old slavic interpretation of law as the truth.

The history of Ukrainian law had its own definite stages, which collectively formed a holistic process for the genesis of the legal life of the Ukrainian people. On the basis of R. Lashchenko's works one we can distinguish four main periods of development of Ukrainian law. The first era – zemsky, or knyaz one, encompassing the period from the middle of the 9th century (the beginning of the formation of the Kievan Rus') until the second half of the 14th century (the forced joining of the West Ukrainian lands to Poland, on the one hand, and the submission of central Ukrainian lands to the Grand Duchy of Lithuania – on the other).

He defines the second era as Lithuanian-Polish one, which lasted from the second half of the 14th century until the middle of the 17th century (to the time of Khmelnytsky uprising). The third era is hetman one, established in the middle of the 17th century (1648) and continued until the second half of the 18th century. It is marked by the abolition of the Hetmanate, the destruction of Zaporizhian Sich, the establishment of all-Russian provincial institutes in Ukrainian territories. And the last era – Moscow one, or Moscow-imperial one, which covered the period from the second half of the 18th century until 1917. This era ended with abduction of royal power in Russia and the restoration of Ukrainian statehood. For Galicia and Bukovyna, it was characterized by Austrian domination from the 70's of the 18th century until 1918 (Лашенко Р., 1918, p. 32).

Being a direct participant in the state-creative process during the liberation struggle of the Ukrainian people, R. Laschenko particularly attached importance to the judicial system characteristic of the newly created state of the UNR during the period 1917–1920. At the same time, he became not only a theorist, but also a practitioner in the process of development the legal basis of the UNR (Чернушенко, Журавель та Самойлюк, 2011).

In that time, political tendencies affected on the peculiarities of the Ukrainian judicial system, which in the period from 1917–1922 was unstable and tendentiously dependent on the establishment of political centers of influence on the territory of Ukraine. This, in turn, led to numerous unsystematic, and, hence, often ineffective reforms in the judicial field.

R. Laschenko noted that the goals of the Central Council (The Tsen-tralna Rada) of Ukraine in the reform of the judicial system were fixed in the III Universal. In particular, it was said that the trial in Ukraine should be fair and consistent with national traditions (Чернушенко, Журавель та Самойлюк, 2011). On this basis, the Secretary – General of the Court Cases were created to solve an important problem – the creation of a democratic judicial system of the UNR. During the December of 1917, the Central Council adopted a number of legal acts, namely, the Law “On the Establishment of the General Court”, the Law “On the Establishment of Appellate Courts”, the Law “On the Conditions of Establishment and the Election Procedure of Judges of the General and Appellate Courts” (Чернушенко, Журавель та Самойлюк, 2011).

In accordance with the Central Council Draft Law of December 16, 1917, “On the Establishment of the General Court”, was made for the establishment of a provisional General Court as a higher court, consist-

ing three departments: civil, criminal and administrative. The General Court exercised control over existing judicial authorities and judicial workers. Somewhat later, the Central Council adopted the Law "On the Establishment of Court of Appeals", according to which the judicial chambers would be replaced by newly formed appellate courts, in particular, in Kyiv, Kharkiv and Odessa, whose competence was extended to neighboring provinces. In addition, R. Lashchenko pointed out the fact of parallel validity of the legal norms, which were fixed by the Order of the Court Regulations of 1864 and, with a few exceptions, determined the basis of the activity of the judicial chambers. At the same time, the chairman and senior judge of the judicial department were liquidated. All orders belonging to the chairmen's competence in the judicial chambers would perform the functions of departments that were elected by the general meeting of judges of the Appellate Court by a simple majority of votes for a term of three years (Чернушенко, Журавель та Самойлюк, 2011). R. Lashchenko was elected as a I chairman of the department of the Kyiv Court of Appeal (Дорошенко Д., 2002, p. 188).

The government of P. Skoropadsky came with his own, distinctive program for the development of the Ukrainian state's judicial system and has replaced purposeful judicial reform of the Central Council of Ukraine (CCU), which, according to the scholar, had a clear line of government and the program objectives that were clearly set out in the III Universal. At the initial stage of Hetmanate's rule in the Ukrainian State, the so-called mixed judicial system was operated. It is a question of the simultaneous functioning of the courts formed by the Provisional Government established by the CCU and even the judicial institutions of the time of the Russian Empire, which actively were revived by the Hetman P. Skoropadsky's government. However, since May 13, 1918, the proceedings were conducted only on behalf of the Ukrainian State, and the laws of the CCU on the judiciary were abolished. R. Lashchenko also points out the fact that certain democratic principles of legal proceedings have been formally preserved, for example: independence of the court, the right to protection, immutability of judges, participation in trial of jurors, transparency of proceedings, equality of parties, etc (Центральний державний історичний архів України [ЦДІАУ], ф. 370, оп. 1, спр. 5, арк. 1–18).

On the basis of the law of 8 July 1918 "On the Chambers and the State Senate" Hetman P. Skoropadsky eliminated the structure of general and appellate courts, but instead formed the State Senate and the Judicial Chambers. Thus, the government of P. Skoropadsky made every effort to bring the Ukrainian judicial institutions closer to the Russian

counterpart. Accordingly, “the original, creative thought in this important reform for Ukraine, the legislature did not reveal any, but when it was discovered, it was only in the direction of the extreme destruction of the legislative thought of the previous time” (Лашченко Р., 1918, p. 7). In this way R. Laschenko declared a categorical rejection of the policy of the government of P. Skoropadsky in reforming the judicial structures.

According to R. Lashchenko, the situation was unjustified concerning the liquidation of the Court of Appeal. So, instead of him, the judicial chamber restored, and therefore all members of the Kyiv Court of Appeal were dismissed from their posts in violation of the principle of immutability of judges. Instead, only those judges were employed, the actions of which met the criteria of the new Hetmanate authorities. At the same time, R. Laschenko stressed that by abolishing the General and Appeal Courts and dismissing Ukrainian permanent judges elected by the people, the new law also set absolutely other requirements for the length of the work experience. These innovations also applied to those judges who worked at the judicial institutions at the time of the CCU, in accordance with its laws.

As a lawyer, R. Laschenko stressed that such legislative innovation did not meet the generally accepted legal norms and reversed the sense of justice. He called (Лашченко Р., 1918, p. 9) for a legal rule that the law has no retroactive effect: “The law does not return back – it is such an elementary” truth “for a lawyer, which should not even be mentioned”. Invincible judges were elected to their posts on the basis of the existing previous laws, which in a certain period fully met the norms of the Central Council Law “On the Court of Appeal” of December 17, 1917 (Лашченко Р., 1918, p. 10). Moreover, judges had the right to hold positions of members and chairmen and chambers of justice, and senators of the Russian Senate.

It is clear that such actions by the government of P. Skoropadsky, R. Lashchenko, were regarded not only as unlawful, but also in their content unfounded in accordance with the needs of that time. He stressed (Лашченко Р., 1918, p. 11) that the law cannot be cancelled, because it is as a “alphabet”, but “reformers” of the government of P. Skoropadsky did not pay much attention to it (Лашченко Р., 1918, p. 12). In order to free himself from the formal responsibility for the commission of a number of unlawful acts, the legislators completely abolished the structure, such as the General Court, by returning the former name of it. However, according to R. Lashchenko, such measures did not escape liability from the Ministry of Justice, but rather strengthened it. The researcher appeals to the content of the third article of the

Law "On Chambers" of July 8, 1918, which clearly states: "To leave the chambers on previous bases with the following changes" (Лашченко Р., 1918, p. 13). So, it is about reforming the previous judicial institution, rather than creating an entirely new structure in its place.

Unfortunately, legislative activity in the Ukrainian state, according to R. Lashchenko, did not take into account the legal traditions developed by the legal practice. Government reformers did not take into account the ideas and proposals of their predecessors and associates, including the work of Russian lawyers, who unanimously argued that such laws would "be unfair, inappropriate" because they present a real threat to the very idea of Ukrainian law and imply loss of public trust in bodies of state power (Лашченко Р., 1918, p. 14).

The same policy, which was conducted by the government of P. Skoropadsky, was regarded by the scientist as a gross violation, leveling of legal norms as a "punitive expedition" directed against the Ukrainian judicial system. He has repeatedly emphasized the fact that there is no law in nature that allows judges to return previous positions (Лашченко Р., 1917, p. 11).

The scientist recalled speech of the Minister of Justice of Professor M. Chubinsky of May 17, 1918, who assured members of the legal delegation, including R. Laschenko, that the members of the Kyiv Court of Appeal will not be dismissed from their positions. The Minister appealed to the principle of immutability of judges, and, thus, showed his complete understanding of its content. But during the next two months, R. Laschenko remarks (Лашченко Р., 1918, p. 10), such an approach was abolished by the law of July 8, 1918, on the abolition of Ukrainian judicial institutions and the dismissal of judges: "It is clear: words and illusions are perishing, facts remain".

According to R. Lashchenko, the judge could only impartially carry out his official duties when he was unchanged, that is, independent on outside subjective influence, and did not feel pressure from other persons, but was only responsible in front of the conscience and law. R. Laschenko noted (Лашченко Р., 1918, p. 19) the importance of such an approach and argued that "the court and only the court is the judge for the judge".

Regarding the situation that developed in the conditions of the Ukrainian state, R. Laschenko as a lawyer advised to look for alternative ways of its solution, since the "new ministerial novel" struck a devastating blow to the very idea of justice, and the legal system of the UNR in general (Лашченко Р., 1918, p. 20).

It is worth to note that after the liquidation of Hetmanate of P. Skoropadsky in Ukraine, a new stage of state building began. The Declara-

tion of the Directorate of December 26, 1918, announced the restoration of the previous name of the state that existed during the Central Rada – the Ukrainian People's Republic. At the same time, the preliminary legal basis came into force. The restoration of the legal system took place in difficult political conditions, and therefore R. Laschenko pointed out (Лашченко Р., 1919, p. 3) that since the beginning of existence, the new government was in an extremely difficult socio-political and economic situation.

With the coming of the Directory in November 1918, the new law was adopted according to which the Hetmanate State Senate was liquidated, and in its place the Senate of the UNR was formed. The Senate of the UNR consisted of only senators who were general judges and were chosen by the Central Council. Out of the staff posts there were senators appointed by Hetman P. Skoropadsky. The previous composition of the former General Court had the opportunity to elect candidates for the replacement of new jobs created after the liberation of Hetmanate's court specialists. On this basis, the initiative to elect senators was transferred to the board of judges but not to the minister of justice. Such an approach to the organization of the national judicial system was completely understood by R. Lashchenko, and he interpreted it as democratic and fully in line with professional and state-creative interests, reflects the continuity of legal tradition by restoring the previous composition of the former General Court elected by the representatives of the Ukrainian Democratic forces of the CCU (Лашченко Р., 1919, p. 4).

The next stage of the functioning of the legal system of the UNR can be called emigration. The archival documents show that already in July 1920, in view of the revolutionary events, the composition of the Kyiv Court of Appeal was released abroad in Tarniv (Poland). On this basis, on August 5, 1920, the law "On temporary wages in the Polish currency for the employees of central and local institutions of the U.N.R." that were extracted from the territory of the Dnieper Ukraine from the territory of the Dnieper Ukraine, was adopted, according to which the amounts of material assistance to the employees of the central state institutions of the UNR, which were in the territory of Poland ([ІІІІІА], ф. 370, оп. 1, спр. 3, арк. 1–18).

On August 12, 1920, the Council of People's Ministers adopted a resolution "On Issuing Assistance to Officials of State Central and Local Institutions of the Ukrainian People's Republic, which were removed from the territory of the Dnieper Ukraine" ([ІІІІІА], ф. 370, оп. 1, спр. 3, арк. 46). This decree provided for "all officials and employees of state institutions, both central and local, who during the evacuation of June

8 – July 9, 1920, did not leave with the government, and stayed on the territory of the UNR, occupied by the enemy, are considered to be dismissed for the state from the 9th day July 1920” ([ЦДІА], ф. 370, оп. 1, спр. 3, арк. 3).

R. Laschenko argued that the representatives of the judicial system of the UNR abroad worked in difficult conditions, in particular material ones. Acting as Head of the Kyiv Court of Appeal, R. Lashchenko sent a letter to the Ministry of Justice on December 14, 1920 asking for the opening of a loan at his disposal, the funds from which should have been used to retain the personal membership of the Kyiv Court of Appeal. In the petition, he noted that personal Court demands certain funds having been evacuated to the UNR abroad in 1920, because, “despite the difficult modern conditions, the court should make the travel and location expenses, as well as the possible costs of hiring their own apartment, at least one room for the office” (Чернушенко, Журавель та Самойлюк, 2011).

On January 9, 1921, the Council of People’s Ministers adopted the Law “On the Council of the Republic”, according to which “because of the impossibility of convening on the alien territory of the National People’s Council, in accordance with the law of November 12, 1920, during the stay of the Government of the UNR outside the territory of the Republic, formed Council of the Republic as the interim supreme body of the people’s power, which belongs to the fullness of power” (Чернушенко, Журавель та Самойлюк, 2011). March 4, 1921, the Council of the Republic passed the law “On the pre-trial transfer of the investigation in the territory of Poland”, according to which the Kyiv Court of Appeal was entitled to resume its activities. It was important that R. Laschenko holding the office of Interim Head of the Kyiv Court of Appeal, on April 7, 1921, in writing form, appealed to the Ministry of Justice to take the necessary measures to ensure that the employees of the Kyiv Court of Appeals by status were equated with the employees of the central institutions ([ЦДІА], ф. 370, оп. 1, спр. 3, арк. 46).

Thus, investigating the history of the formation of the judicial system in the era of the national liberation struggle of the Ukrainian People of 1917–1920, on the basis of the memoirs of R. Lashchenko we can distinguish several stages of its formation: the Central Council, the Hetmanate, the Directory and the Government of the UNR in the exile (Tarniv Town, Poland).

Therefore, we conclude that R. Laschenko positively characterized the reform of the CCU court system, pointing to the democratization of the judiciary of the UNR. It is about creating fair and independent courts of various instances that acted on the principles of openness, equality,

the possibility of appealing judicial decisions, etc. However, he argues that similar tasks in judicial practice were not immediately implemented, which was explained largely due to constant contradictions, the struggle between different political forces, the results of hostilities that took place in the territory of that time in Ukraine.

Characterizing the next stage in the development of the UNR's judicial system, R. Laschenko critically evaluated the policy of the government of P. Skoropadsky, describing it as aimed at the denationalization of judicial institutions. At the same time, the principle of immutability of judges was violated, which testified to the existence of legal paradoxes, as well as inconsistencies of laws in the legal field of the Ukrainian State. The researcher came to the conclusion that the judicial reforms carried out by the government of P. Skoropadsky were in fact threatening the ideas of national law, and also led to the loss of public confidence in representatives of the then state power. Consequently, the judicial reform of the Hetmanate's government, R. Lashchenko defined as illegitimate and those who contradicted to the mental characteristics of the Ukrainian people, his legal national traditions.

R. Lashchenko also analyzed the process of reforming the judiciary during the Directorate's period, calling it positive and rehabilitation. He noted that, despite the difficult socio-political and economic situation, the reformers of that time acted from the standpoint of a democratic approach to the organization of the national judicial system, which fully corresponded to the state-building interests and legal ideals of the Ukrainian people (Лашченко Р., 1919, p. 5).

After the defeat of the national liberation struggles, the state centre of the UNR was in Poland (Tarniv), and therefore the state-building work in various directions, including in the court, was carried out there. The work of the Government of the UNR in exile was carried out through the activities of various ministries and institutions, including the Ministry of Justice. R. Lashchenko actively participated in the organization of judicial institutions of the UNR Government in emigration, which functioned in difficult material and political conditions.

Theoretical approaches of the scientist on the organization of legal relations can be used at the present stage of development of Ukraine during the establishment of the rule of law and the development of civil society, reforming the legal system. After all, the positive development of the state, as a major political institution, depends to a large extent on the effectiveness of the functioning of the legal system, its interaction with the political system, as is evidenced by the experience of the Ukrainian revolution of 1917–1920.

PRAWNA TRADYCJA NARODU UKRAIŃSKIEGO JAKO PODSTAWA SYSTEMU POLITYCZNO-PAŃSTWOWEGO W IDEI BUDOWANIA PAŃSTWA ROSTISŁAWA ŁASZCZENKI

(STRESZCZENIE)

W artykule przedstawiono poglądy Rostisława Łaszczenki odnośnie do idei budowania państwa ukraińskiego. Rostisław Łaszczenko był ukraińskim prawnikiem, mężem stanu z czasów walk narodowowyzwoleńczych narodu ukraińskiego o niepodległość w latach 1917–1920. Pokazano, że zdaniem Łaszczenki początków ukraińskiej państwowości można się doszukiwać już w czasach Rusi Kijowskiej, gdyż wówczas zaczęły funkcjonować w ukraińskim społeczeństwie określone tradycje prawne i normy. Według Łaszczenki w kolejnych wiekach tradycje te i normy zostały następnie rozwinięte aż wreszcie zaowocowały powstaniem Państwa Ukraińskiego w 1918 r., kiedy to gen. Pawło Skoropadski, popierany przez państwa centralne, dokonał przewrotu politycznego. Wskutek tego przewrotu formalnie powstało Państwo Ukraińskie i rozpoczął się proces tworzenia struktur państwowych. Nowo powstałe państwo szybko jednak upadło, a jego terytorium zostało wchłonięte przez państwa ościenne: Polskę, Czechosłowację, Rumunię i przede wszystkim ZSRR. W artykule wskazuje się, że według R. Łaszczenki jedną z przyczyn niepowodzenia w latach 1917–1920 budowy trwałego i stabilnego Państwa Ukraińskiego była niedoskonałość jego systemu prawnego.

THE LEGAL TRADITION OF THE UKRAINIAN PEOPLE AS THE BASIS OF STATE-POLITICAL SYSTEM IN THE STATE-BUILDING IDEALS OF ROSTYSLAV LASHCHENKO

(SUMMARY)

This article presents the views of Rostislav Laszczenko on the idea of building a Ukrainian state. Rostislav Laszczenko was a Ukrainian lawyer, a statesman from the time of the national liberation struggles of the Ukrainian nation for independence in 1917–1920. It was shown that, according to Laszczenko, the beginnings of Ukrainian statehood can be traced back to the times of Kievan Rus, because then certain legal traditions and norms began to function in Ukrainian society. According to Laszczenko, in the following centuries, these traditions and norms were then developed and finally resulted in the creation of the Ukrainian State in 1918, when General Pawło Skoropadski, supported by the central states, made a political upheaval. As a result of this coup, the Ukrainian State was formally established and the process of creating state structures began. The newly formed state quickly collapsed, and its territory was absorbed by neighboring countries: Poland, Czechoslovakia, Romania and above all the USSR. The article indicates that according to R. Laszczenko, one of the reasons for the failure of the construction of a stable and stable Ukrainian State in 1917–1920 was the imperfection of its legal system.

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