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Taras HARASYMIV

Lviv Polytechnic National University,
Educational and Research Institute of Law,
Psychology and Innovative Education,
Professor of the International and Criminal Law Department,
Dr. habil. (Law), Full Professor
taras.z.harasymiv@lpnu.ua
ORCID: 0000-0002-4627-4774

Volodymyr KANTSIR

Lviv Polytechnic National University,
Educational and Research Institute of Law,
Psychology and Innovative Education,
Professor of the International and Criminal Law Department,
Dr. habil. (Law), Professor
volodymyr.s.kantsir@lpnu.ua
ORCID: 0000-0002-3689-4697

TOLERANCE AS A LEGAL BASIS FOR THE DEVELOPMENT OF CIVIL SOCIETY

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The article notes that legal values are a defining element of legal influence on society, which have a significant impact on the mechanism of legal regulation. Values are the result of the generalization of social experience and the standard of what is proper, since they embody social ideals. Legal values are a phenomenon that is dynamically developing. One of the values that is already habitually correlated with the European style of legal thinking is tolerance. Tolerance is not just a value that is given legal significance (i. e., a value-goal), but a value that is legal in its content (i. e., a value-means). It is noted that a loyal, polite attitude towards another, unconventional, alien is, undoubtedly, a logical embodiment of the idea of equality (if it does not interfere with personal autonomy and state sovereignty). In this aspect, the idea of tolerance has a really pronounced legal coloring, because the law itself can and should ensure equality.

It has been found that tolerance does not imply passive conformism, indifference, tolerance of social injustice, violation of the law, discrimination, violence, etc. Tolerance is one of the legal values, which implies respect and recognition of equality, attitude towards another person as an equal person, respect for his rights and freedoms through understanding and dialogue, refusal to reduce diversity to uniformity or the dominance of any one position, as well as from domination, violence and violent actions against others. Tolerance is one of the necessary and important guarantees of the development of civil society, which has its limit – restriction of freedom by harm caused to other members of society, which provokes such antipodes as intolerance on the one hand, and hypertolerance on the other.

In conclusion, we note that the tolerance of social relations is inextricably linked with the application of law, the forms of its implementation, the implementation of legal activities, as well as the provision of rights and legitimate interests of the individual. From a theoretical perspective, the importance of the problem of tolerance in legal life lies in the fact that it belongs to the universal categories of legal science, is a special tool of scientific analysis in the legal sphere, ensures the implementation of law, observance of human rights, etc. Tolerance acquires exceptional importance in the practical life of a legal state and civil society. Ideally, the entire legal system should be built on tolerance, serve as a means of its expression, consolidation, protection and defense.

Keywords: tolerance, law, legal imperatives, legal value, society, social relations, democratic culture, tolerance of social relations.

Formulation of the problem. In the conditions of military aggression and the widespread use of violent means to solve national, socio-political, ethnic, religious, ethnic problems, it is absolutely natural to develop a new philosophy of tolerance through the prism of legal imperatives, which would substantiate a different system of moral and legal values and life priorities, and would provide for the construction of social relations on the basis of dialogue and understanding. The controversy between the growing demand of society to affirm tolerance as a strategy for the development of social relations, as an imperative for interaction between social groups and people, as a moral and legal value, and the insufficient attractiveness of the standards and practices of tolerant models of behavior existing in society, actualizes the issues we have chosen.

Today, tolerance is not only a theoretical concept, but also an objectively existing social phenomenon that requires both theoretical and philosophical reflection and a certain practical implementation. The problem of tolerance is connected with a number of fundamental philosophical and worldview issues that concern the understanding of a person, his identity, civic position, the possibilities and limits of nation- and state-building, the democratization of public life, the dialogue of cultures and civilizations, the search for a “Sophia” discourse of tolerance. In view of this, it is important to define the legal imperatives of tolerance and the strategy of tolerating social relations in the modern world. In the words of I. Kant, in the conditions of globalization of the world, tolerance acquires the status of a metacategory.

Analysis of the study of the problem. The phenomenon of tolerance has been the research interest of a fairly wide range of representatives of various branches of science. Unfortunately, in jurisprudence this issue has not yet become the subject of in-depth scientific study, which made the choice of this topic relevant. Thus, individual legal aspects of this issue were studied by such scientists as: D. Vovk, D. Boychuk, O. Busol, K. Gorobets, O. Hryshchuk, A. Danilov, N. Kuzminska, S. Maksimov, B. Melkevik, P. Rabinovich, N. Satokhin, O. Serdyuk, O. Stovba and others.

In particular, S. Maksimov defines the outlines of understanding the connections between law and tolerance, where the latter is assigned the role of a cultural prerequisite for modern law based on the idea of human rights, its ideal source and mechanism for actualizing humanistic meaning. The classic of domestic legal theory is P. Rabinovich, philosophers of law Yu. Permyakov, N. Satokhin, K. Horobets and O. Stovba consider the idea of tolerance in the context of values, principles and norms of law, rule-making and law enforcement activities. However, in the context of today’s threats and challenges that have arisen before Ukrainian society in the context of war, this problem requires special relevance and new scientific understanding.

The purpose of the article is to define the legal imperatives of tolerance and outline a strategy for tolerating social relations in the modern world.

Presenting main material. The issues of this article are extremely relevant in the philosophical and legal context in the field of development of a modern democratic and pluralistic society, because one of its most important functions is the task of teaching people to live together, helping them transform the growing interdependence of states and ethnicities into conscious solidarity. The practical implementation of such a project is possible on the basis of a democratic and egalitarian policy of the state, which advocates not only the preservation of cultural diversity through the intervention of state institutions, but also maximally expands the participation of people in the processes of intercultural, interethnic, interfaith dialogue and communication. As B. Melkevik, professor of the Faculty of Law of Laval University (Canada), rightly notes, today “tolerance remains a disturbing topic, and moreover, an extremely complex one. If tolerance is primarily a practical issue of living together, then its complex nature inevitably leads us to a philosophical reflection on this practice and its principles. Understanding law as the “prose” of the modern world makes it quite appropriate to study the requirement of tolerance from the perspective of the philosophy of law” [1, p. 16].

The problem of tolerance is considered and studied by many humanities (philosophy, law, psychology, sociology, ethics, pedagogy, political science, etc.). An appeal to scientific research on the phenomenon of tolerance shows that the authors use quite different approaches to determining the essential characteristics of tolerance, the spheres of its manifestation and varieties, as well as the criteria for its formation. Thus, the scientist S. Ilyinskaya distinguishes four approaches to understanding tolerance: 1) axiological; 2) idealistic; 3) ontological-historical; 4) conflict [2, p. 37]; the scientist N. Kuzminskaya formulated the following approaches to understanding the phenomenon of tolerance: existential-humanistic, diversification, personal, dialogical, facilitative [3]; researcher O. Hryva analyzes the phenomenon of tolerance through the prism of sub-approaches of the interdisciplinary approach: philosophical, linguistic, medical-physiological, sociological, political science, normative-legal, socio-cultural, anthropological, psychological, pedagogical and professioniographic [4].

Within the framework of socio-philosophical knowledge, the most widespread is the axiological direction in the study of tolerance. The basis for the formation of tolerance according to the axiological approach is value-semantic formations. Axiology analyzes the phenomenon of tolerance in the categories of good and evil, goals and means, positive and negative, absolute and relative values, etc. These types of values do not exclude each other, they are interconnected, and some of them embody the features of many other values.

The phenomenon of tolerance is also studied through the prism of acmeology, where the defining category is “personal maturity”. It is precisely such a quality as maturity that is a manifestation of the process of self-realization and self-actualization of the individual, which distinguishes a self-sufficient person.

Using the significant potential of the theory of cognition to clarify the very meaning of the phenomenon of tolerance involves an epistemological direction. Actually, the category of “tolerance” is included together with the categories of “freedom”, “justice”, “quality”, “non-aggressive thinking”, “non-aggressive behavior”, “non-violence” and is essential for the formation of socio-philosophical concepts of building a modern society [5, p. 88].

When clarifying the legal imperatives of tolerating social relations, special attention is paid to the political science approach, which considers tolerance primarily as one of the defining democratic values and norms, such as freedom of speech, mass media, assembly, legal guarantees of religious organizations, opposition parties, etc., without which the realization of fundamental human rights is impossible. Analyzing the position of political science regarding this phenomenon, scientists N. Nikitin and S. Tolstikova emphasize the following characteristics of tolerance: a sign of democratic culture; a principle of civil and legal behavior; a regulator of international relations; a factor of peace and harmony [6, p. 156].

Thus, in political science, the following types of tolerance are distinguished: declarative, relational and action. Analyzing the levels of existence of tolerance, the scientist M. Sokolov distinguishes the following: civilizational, international (interstate), ethnic, social and individual [7, p. 15]. The American

political scientist M. Walzer allocates another type of tolerance – tolerance. as a humble attitude to differences for the sake of preservation, he considers it the historical predecessor of all others [8, p. 44].

Legal science has accumulated knowledge of related social and humanitarian sciences regarding the phenomenon of tolerance and interprets it as a legal value. Among the significant number of ideas that represent the content of the axiological discourse on law, a significant place is occupied by the distinction between two types of values that are presented in legal reality. The first type of values includes fundamental goods, the achievement of which to some extent is included in the life plans of each individual, as well as those personal and social values that are protected by law, that is, which are given legal significance. According to the prominent American legal philosopher J. Finnis, the common good in society is represented by the integration of seven basic goods, in the achievement of which each subject of society is interested regardless of their own individual goals: life, knowledge, play, aesthetic experience, sociality (friendship, social activity in general), practical rationality and religion. He believes that these are the goods that can and should be realized by the individual in society, and in the aggregate they represent the common good. An important factor in achieving these basic goods is the preservation and development of certain social institutions that form a favorable moral environment in which practical rationality, aimed at basic goods, can be realized most optimally [9, p. 73]. Hence, the first type of values presented in law are goal values, and the legal system acts as an institutional mechanism that guarantees these benefits and provides society with operational legal instruments for their achievement.

The second type of values directly affects the functioning of the legal system, that is, they are means values that are formed and used as instruments for achieving goal values. They are usually referred to as legal values, which include: legal norms, subjective rights, legal obligations, legality, constitution, legal order, etc. The characteristic feature of legal values is that they determine the semantic scope of legal reality, construct the linguistic environment of law, are means of legal thinking and act as elements of legal ideology.

Legal values are a determining element of legal influence on society, which have a significant impact on the mechanism of legal regulation. Values are the result of the generalization of social experience and a standard of what is proper, as they embody social ideals. Legal values are a phenomenon that is dynamically developing [10]. One of the values that is already habitually correlated with the European style of legal thinking is tolerance. In Ukrainian legal science, attempts were made by scientists O. Tarasishyna and I. Halytsky to substantiate the idea according to which tolerance is not just a value that is given legal meaning (i. e., a value-goal), but a value that is legal in its content (i.e., a value-means) [11; 12]. Despite the fact that such a statement has caused certain scientific and legal discussions, it should be noted that a loyal, polite attitude towards another, unconventional, alien is, undoubtedly, a logical embodiment of the idea of equality (if it does not interfere with personal autonomy and state sovereignty). In this aspect, the idea of tolerance has a really pronounced legal coloring, because it is the law that can and should ensure equality.

The need to observe tolerance is emphasized, in particular, in the Universal Declaration of Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Declaration of Principles of Tolerance, etc. According to Art. 1 of the Declaration of Principles of Tolerance, the principle of tolerance is defined as everyone being free to adhere to their beliefs and recognizing the same right for others [13]. At the same time, tolerance in the domestic law of Ukraine remains a proclaimed or declared rather than an implemented legal value.

In this aspect, the Ukrainian researcher K. Horobets identifies two problems of the value dimension of tolerance in law: the first concerns how tolerance can acquire legal significance in general, that is, if it is understood within the framework of legal discourse, it must contain a certain legal feature that will allow it to be assessed from the position of jurisprudence. Therefore, it is necessary to outline the properties of tolerance that can determine its legal character. The second problem is to prove the legal character of tolerance and to what extent it can be guaranteed and provided for by law. As the scientist rightly notes, the first problem is of a substantive nature, since it actualizes the issue of trying law and tolerance in the same conceptual space, clarifying their homogeneity (at least partial). The other problem is related to formal issues

of law, because it requires interpretations (arguments) to what extent tolerance can be modeled or required by legal norms [14, p. 102].

Appealing to the Declaration of Principles of Tolerance mentioned by us, namely: “1.1. <...> Tolerance is a virtue that makes it possible to achieve peace and contributes to replacing the culture of war with a culture of peace. <...> 1.3. <...> Tolerance is a concept that means the rejection of dogmatism, the absolutization of truth and affirms the norms established in international legal acts in the field of human rights <...> 1.4. The manifestation of tolerance, which is consonant with respect for human rights, does not mean a patient attitude towards social injustice, the rejection of one’s own or concessions to other people’s beliefs. This means that every person is free to adhere to their own beliefs and recognizes the same right for others” [12].

Hence, tolerance does not mean passive conformity, indifference, tolerance of social injustice, violation of the law, discrimination, violence, etc. Tolerance is one of the legal values, which implies respect and recognition of equality, attitude towards another person as an equal person, respect for his rights and freedoms through understanding and dialogue, refusal to reduce diversity to uniformity or the predominance of any one position, as well as from domination, violence and violent actions against others. Tolerance is one of the necessary and important guarantees for the development of civil society, which has its limit – restriction of freedom by harm caused to other members of society, which provokes such antipodes as intolerance on the one hand, and hypertolerance on the other. Intolerance implies taking into account the interests of only one’s own group (i. e. one’s own interests), intolerance of other opinions (views, positions) and combating them, primarily by violent methods. The essence of intolerance is revealed to the greatest extent by its following components: agreement with everything that is produced in a society of mass consumption; silence (apathy) regarding the violation of the rights and freedoms of citizens by society and the state; conflict, in which the circumstance of tolerance is a situation of creating certain foundations for social dialogue; in the context of radical transformations, the phenomenon of unmotivated anger against the background of a general crisis of identity, the leveling of the value of the individual and lack of spirituality acquires a significant area of spread, when the “struggle of all against all” prevails in society, and not the phenomenon of respect for a person.

The antipode of tolerance, on the other hand, is hypertolerance, the defining principle of which is “the mass perceives everything”. Hypertolerance is, in fact, a phenomenon of an unstructured mass that spreads in the conditions of information civilization and the denial of individuality, because the individual has certain beliefs and therefore is unable to fully perceive everything that the mass perceives. Therefore, this in the flow of public consciousness generates tolerance for everything in general.

We completely agree that tolerance should be the basis of modern society, as defined in the “Declaration of Principles of Tolerance”, approved by the Resolution of the UNESCO General Conference on November 16, 1995. However, the real state of affairs regarding the observance of tolerance is manifested in the brutal aggression, the full-scale war of Russia against Ukraine. All this implies a voluntary obligation of all countries to concretize in the public space – the only healthy democratic perspective.

Conclusions. In conclusion, we note that the tolerance of social relations is inextricably linked with the application of law, forms of its implementation, the implementation of legal activities, as well as ensuring the rights and legitimate interests of the individual. From a theoretical perspective, the importance of the problem of tolerance in legal life lies in the fact that it belongs to the universal categories of legal science, is a special tool of scientific analysis in the legal sphere, ensures the implementation of law, observance of human rights, etc. Tolerance acquires exceptional importance in the practical life of a legal state and civil society. Ideally, the entire legal system should be built on tolerance, serve as a means of its expression, consolidation, protection and defense. Being introduced into the practice of implementing current law, tolerance acquires legal features that determine its official level. Ukraine’s aspiration to join international organizations should be based on the recognition of the main international legal documents enshrining the principle of tolerance. The principle of tolerance dictates the need for rapprochement, mutual understanding,

mutual enrichment, and ultimately, convergence and integration of people's worldviews and behavioral priorities. Ukraine's current distancing from totalitarianism makes it possible to consider tolerance as an expression of the spiritual growth of society, people's aspiration for democracy, and the mitigation of social controversies.

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Тарас ГАРАСИМІВ

Національний університет “Львівська політехніка”,
професор кафедри міжнародного та кримінального права
Навчально-наукового Інституту права,
психології та інноваційної освіти,
доктор юридичних наук, професор
taras.z.harasymiv@lpnu.ua
ORCID: 0000-0002-4627-4774

Володимир КАНЦІР

Національний університет “Львівська політехніка”,
професор кафедри міжнародного та кримінального права
Навчально-наукового інституту права,
психології та інноваційної освіти,
доктор юридичних наук, професор
volodymyr.s.kantsir@lpnu.ua
ORCID: 0000-0002-3689-4697

ТОЛЕРАНТНІСТЬ ЯК ПРАВОВА ОСНОВА РОЗВИТКУ ГРОМАДЯНСЬКОГО СУСПІЛЬСТВА

У статті відзначено, що правові цінності є визначальним елементом правового впливу на соціум, які здійснюють істотний вплив на механізм правового регулювання. Цінності – це результат узагальнення соціального досвіду й еталон належного, позаяк утілюють в собі суспільні ідеали. Правові цінності є феноменом, який динамічно розвивається. Однією з цінностей, що вже узвичаєно співвідноситься з європейським стилем правового мислення, є толерантність. Толерантність є не просто цінністю, якій надано правове значення (тобто цінністю-ціллю), а цінністю, яка є правовою за своїм змістом (тобто цінністю-засобом). Зауважується, що лояльне, ввічливе ставлення до іншого, нетрадиційного, чужого є, безсумнівно, логічним втіленням ідеї рівності (якщо воно не заважає особистій автономності та суверенітету держави). У цьому аспекті ідея толерантності має реально виражене правове забарвлення, адже саме право може і має забезпечувати рівність.

З'ясовано, що толерантність не має на увазі пасивного конформізму, байдужості, терпимості до соціальної несправедливості, порушення закону, дискримінації, насильства тощо. Толерантність – це одна із правових цінностей, що передбачає пошану і визнання рівності, ставлення до іншої особи як рівнозначної особистості, поваги її прав і свобод шляхом порозуміння та діалогу, відмови зведення різноманіття до одноманітності або переважання будь-якої однієї позиції, а також від домінування, насильства і насильницьких дій проти інших. Толерантність є однією із найважливіших заporук розвитку громадського суспільства, що має свою межу – обмеження свободи шкодою, що завдається іншим членам суспільства, яка провокує такі антиподи, як інтолерантність, з одного боку, та гіпертолерантність – з другого.

Підсумовуючи, відзначимо, що толерантизація суспільних відносин нерозривно пов'язана із застосуванням права, формами його реалізації, здійсненням юридичної діяльності, а також забезпеченням прав і законних інтересів особи. З теоретичної позиції, важливість проблеми толерантності у правовому житті полягає в тому, що вона належить до універсальних категорій юридичної науки, є особливим інструментом наукового аналізу у правовій сфері, забезпечує реалізацію права, дотримання прав людини тощо. Виняткової вагомості толерантність набуває у практичному житті правової держави та громадянського суспільства. В ідеалі вся правова система мала би вибудовуватися на толерантності, слугувати засобом її вираження, закріплення, охорони та захисту.

Ключові слова: толерантність, право, правові імперативи, правова цінність, суспільство, суспільні відносини, демократична культура, толерантизація суспільних відносин.