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State and law theory: The concept and directions of state activity

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Abstract

Relevance. In a modern world where globalisation causes dynamic changes in the political, economic and social spheres, there is a growing need for a thorough understanding of the essence and functions of the state. The theory of state and law provides the knowledge necessary to analyse and evaluate these changes, as well as to predict the future development of statehood.

Purpose. The study aims to establish the nature and main vectors of state activity, as well as the expressed role of the theory of state and law in the modern world.

Methodology. The study employed analysis, synthesis, comparison, generalisation, deduction and abstraction methods.

Results. The concept of “state” was defined during the research and its main characteristics and attributes were outlined accordingly. In addition, the essence and significance of the elements of the modern state were revealed, and their influence on the development of society was considered. Furthermore, the main activities of the state, including both internal and external, were also identified and characterised during the study. The role and significance of law, national and international law, in understanding the dynamic social processes that change the legal culture of society have been analysed. As a result of the conducted research, the dependence between such categories as the state and law was established. In addition, the specificity and priority of proper interaction between the national and international systems of law were revealed.

Conclusions. During the study, it was established that the directions of the state can differ depending on its characteristics, in particular, approaches to public administration, political regime, as well as administrative-territorial structure. The results obtained during the study are expedient to be used for the development of teaching materials for training courses “Theory of State and Law”.

Keywords: sovereignty; legal culture; governance; international relations; legal regulation; political system.

Introduction

The state is a fundamental institution of the organisation of society, as it is the key subject of regulation of social relations, as well as the guarantor of ensuring human rights and freedoms. Furthermore, it determines the law and stability maintenance means in the country. This indicates

that the welfare of the people, the level of socio-economic development and the country's place in the international arena depend on the effectiveness of the state in various spheres. Within the framework of the general theory of state and law, considerable attention is paid to the comprehension of the phenomenon of the state itself, its

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essential features, correlation with law and other social institutions. At the same time, an extremely important aspect is a comprehensive study of a wide range of activities of the state, arising from its functional purpose and assigned tasks and responsibilities. The study of the directions of activity of the modern country necessitates the analysis of the content, forms of implementation, legal grounds, devices and guarantees in the internal and external spheres. In the conditions of dynamic changes in social relations both within the state and in the international arena, special attention should be paid to the clarification of the constitutional and legal status and the real state of performance of key functions by the state in the economic, social, humanitarian, environmental, defence and other vital sectors [1].

Furthermore, under the conditions of globalisation processes and trends of supranational integration, traditional ideas about the boundaries of state sovereignty and competence are being transformed, and the doctrine of distribution of subjects of competence between domestic and international law is being rethought. This actualises the need for theoretical analysis of new challenges and requirements to the state as a subject of activity and identification of optimal ways to improve its functioning. Modern doctrine still does not contain an exhaustive concept of the theory of state and law and its subject, which is due to the dynamic changes of the present in different legal systems. At the same time, the state has always been the focus of attention of legal theorists, philosophers and scientists of different fields. N.Sh. Kolsarieva and M.K. Akimbaev [2] studied the regularities of the emergence and development of the state and law as a subject of the theory of state and law. The researcher considered the main concepts and approaches to understanding the origin and evolution of state and legal institutions from the point of view of the theory of state and law as a scientific discipline. At the same time, different factors and reasons that led to the emergence and transformation of states and legal systems at different stages of the historical development of human societies were not analysed.

N.A. Egemberdieva [3] considered such functions of the state as economic, social, law enforcement, environmental and external. The researcher concluded that they change depending on historical conditions, but always reflect the needs of society and the tasks of its development. However, the study did not reveal other types of state functions and did not determine their impact on the overall development and establishment of the state in the international arena. A.S. Kalmamatova and Zh.S. Aitbaeva [4] investigated the specifics of the activities of public authorities in the sphere of interethnic relations. Based on the analysis of problems faced by public authorities in the implementation of their activities in the field of interethnic relations, the researchers identified such shortcomings as insufficient funding, lack of qualified personnel, and low level of legal culture of the population. At the same time, the issue of the influence of public authorities on the dynamics of international relations and the consolidation of the state in the international arena remained unexplored. G.D. Dzhunushalieva and Yu.G. Zheglola [5] formed a definition of the concept of “foreign policy positioning”, as well as revealed its main goals and objectives based on the analysis of Kyrgyzstan’s

experience. However, the researchers did not offer ideas and recommendations for improving the foreign policy positioning of Kyrgyzstan in the international community in modern globalisation conditions. Ch.I. Arabaev [6] analysed Kyrgyz customary law as a source of law. The researcher concluded that it is characterised by a close connection with religion and morality, oral, concrete, and casual. However, this study did not establish the contemporary significance of this law for the development and improvement of the state, particularly Kyrgyzstan.

Based on the above, the study aims to establish the role of the theory of state and law in the context of determining the main characteristics and directions of the modern state. For this purpose, the following tasks were formed: to define the concept of “state” and law; to describe their attributes and structural elements; to consider the relationship between them; to characterise the essence of international law; to study its types; to express the specificity of interaction between national and international law.

Materials and Methods

Different methods of scientific research, namely analysis, synthesis, comparison, generalisation and deduction were used during this study. The analysis method was used to study the concept of “state”. In addition, its components were identified and characterised accordingly. Based on this method, the attributes of the state were identified, and the essence of its functions was established. Thus, the role of the state in the process of fulfilling internal and external tasks necessary to ensure the proper development of society was established. The synthesis method was used to combine the results of the analyses for a holistic view of the state. This was necessary to identify different types of states, by form of government, political regime and other properties. It should be noted that synthesis involved a comparison of the concepts of “state” and “law”. It was used to establish the dependence between them, as well as to express the specificity of interaction. Furthermore, the synthesis was used in the process of establishing the essence of international law, its influence on law and the activities of states.

The comparison method was used to compare different theories and approaches to the definition of the theory of state and law. This method was used to study the properties of the modern state and the mechanisms of its governance. The comparison was employed to highlight the differences between private and public international law. This method was necessary to investigate the various factors influencing the transformation of the functions of the state as well as its role in the formation of the international community. The generalisation method was used to identify and highlight general regularities of the functioning of the state in modern conditions. In addition, this method was used to formulate its approaches to the analysis of the development of statehood during globalisation and the dynamic spread of international legal relations. Based on it, conclusions were formed about the role and significance of the state in the life of modern society, as well as the development of the international community. Generalisation was necessary to justify the priority of joint development and expansion of national and international law.

The deduction method was used to express specific attributes of the state through their universal understanding formed in the theory of state and law. This method was used to identify actual problems of domestic governance expressed in the process of active international interaction. This method was also used to forecast future changes in the sphere of statehood in the context of the increasing role of international communities. Since this is a legal study, a special formal-legal method was used to analyse the legal acts. On its basis, the United Nations Charter [7] was studied. The abstraction method was used to identify the attributes of the state that directly define it as a social phenomenon. It was used to reveal the significance of individual attributes in determining the vector of state activity, as well as the possibilities of their influence on the specifics of public administration.

Results

The subject of the theory of state and law is dynamic, as it changes over time and develops accordingly. In this regard, there is employment in the context of fixing an unambiguous and unified approach to the definition of the subject of the theory of state and law. Given this, it is relevant to reveal the essence of all its elements, which will allow us to correctly define the subject from any conditions. First, it is necessary to point out the division of the population based on the territorial characteristic. This affects the specificity of the distribution of state power to the inhabitants of individual administrative-territorial units, for example, districts, regions, provinces, regions, districts. This approach implies the qualitative provision of public authority organisation and effective governance in a particular region [8].

As for sovereignty, it is the most important feature of every state. Its essence consists of the consolidation of the supremacy of state power in the country, as well as the establishment of the country's independence in the

international arena. The first attribute finds its manifestation directly in the authority of public authorities to independently issue binding norms, as well as rules governing social relations. Thus, the state authorities form and control the observance of uniform law and order on the entire territory of the country, including ensuring the rights and obligations of citizens and civil servants. The essence of the supremacy of state power is revealed in its special competence in the field of legal regulation. In this case, the sovereignty of the state consists of its complete independence in internal and external affairs, and therefore, no foreign forces can influence its internal affairs [9]. However, not all states have full sovereignty as in some cases it may be formal or limited. In this case, formal sovereignty is proclaimed *de jure* but is not realised due to the influence of other states. As for the limitation of sovereignty, it can be made either coercively or voluntarily. In the first case, it is applied to a state defeated in war, as the victorious state influences such a state and determines various conditions limiting its sovereignty. In addition, a State may limit its sovereignty on its own subject to agreement with other States to achieve common goals. As an example, it is useful to cite the creation of a federation, as States come together and delegate some of their powers to the federal government.

An equally important feature of the state is the existence of a system of taxation and borrowing. Historically, the functions of these instruments have expanded from the maintenance of public authorities to the financing of various social programmes, such as educational, medical, cultural and others. Tax services have special powers to collect taxes in the state, consisting in the detection of tax offences. Thus, taxes are the most important source of revenue for the state [10]. As for the functions of the state, they cover the main directions of its activities, as well as express its essence, goals and objectives. They are divided into two categories (Figure 1).

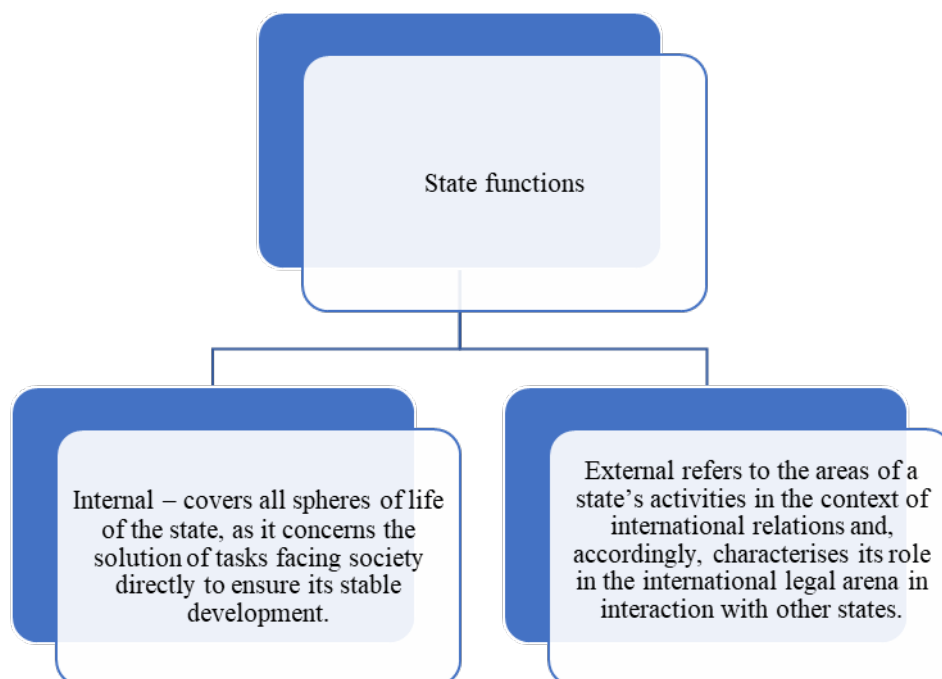


Figure 1. Classification of the functions of the state according to the spheres of its activity

Source: compiled by the author.

It is specifically worth mentioning that internal and external functions are classified into economic, political, social, ideological and others. Different legal and non-legal methods are used for their realisation. The first ones provide for the development and adoption of normative-legal acts necessary for the effective implementation of various directions of state activity. They prevail in democratic states, while totalitarian regimes are dominated by non-legal methods, which may be illegal in nature [11; 12]. Law, as well as the state, is a multidimensional and complex social phenomenon. It is a complex system that cannot be interpreted unambiguously because it is identified with justice and goodness. At the same time, it can be revealed as a system of norms established in a particular state and aimed at the benefit of its citizens.

Along with the development of society, perceptions of law have also changed, and it is appropriate to consider it in the context of positivist and non-positivist approaches. The first emphasises the inextricable link between the state and law, in which the state is the sole source of law and, accordingly, is endowed with the exclusive right to create it. At that time, law embodies a system of generally binding, formally defined norms expressing the will of the ruling class and ensured by state coercion. The advantage of this approach is the expression of law only through binding rules of behaviour, which are respectively established and sanctioned by the state. From the point of view of the non-positivist approach, the law acts as a social institution aimed at regulating public relations for the reasonable organisation of society. Thus, regulation is carried out by determining the measure of freedom, rights and duties, which indicates that the right in this case is not reduced to laws and regulations. The advantage of this approach is that it does not make the nature and content of law directly dependent on the nature of the activity of a particular state body or official. However, its application in real life is ineffective due to the lack of definition of this approach in legal terms [13].

An essential role in the development of a state is its interaction with other countries. At the same time, there is no single unified system in the sphere of international life that can cover all its multifaceted dimensions. However, a global interstate system, which embodies the system of interstate relations, is in place to regulate international relations. It brings together sovereign states into a complex and dynamic community (e.g. the United Nations). The priority role in the development of the system of interstate relations is played by interstate international organisations operating both at the global and regional levels [14]. At the same time, the subjects of this system are sovereign states, whose integration is partial. In this case, we should mention public international law, which is a system of international (interstate) norms regulating relations between the subjects of international law. The specificity of this system is determined by the nature of the interstate system within which it operates and evolves. Given the fact that international law is a regulator of the interstate system, it is characterised by differences from domestic law, consisting in the way of formation of norms, their social essence, subjects, objects of regulation and instruments of functioning. At the same time, it is worth noting that, due to the absence of a legislative body in the inter-state system, it is States that develop norms.

Based on the aforesaid, domestic law reveals the essence of a particular state and regulates relations between individuals and legal entities, as well as between them and state bodies. International law is obligatory for all states, and its subjects are sovereign states, associations of states, and international bodies. However, despite the existence of several distinguishing features of this type of law from domestic law, it can be interpreted as a social phenomenon. The opposite of public international law is private international law, aimed at the settlement of civil, family and labour relations, in which there is a foreign or international element [2; 15]. International law norms are rules of behaviour intended, as a rule, to an indefinite circle of subjects of international law and binding on all states. One of the most common are local rules, which include non-personalised and personalised rules. As an example, it is useful to note the rules of behaviour enshrined in the provisions of an international treaty to which several States are parties since they are directed not at a particular State but at any of them. At the same time, the provisions of bilateral treaties affect each of the two parties. The main feature of legal norms is their legally binding nature, which, accordingly, allows them to be separated from other social regulators in the inter-state system. In this regard, international law classifies them into such types as dispositive and peremptory. The former includes norms from which states have the right to derogate in the presence of mutual consent, while peremptory rules do not allow derogations (for example, an international treaty contradicting peremptory norms is legally null and void). It should be noted, however, that all international legal rules are binding, and therefore the main difference between these types is the possibility for interested States to modify the dispositive rules [16].

An important component of domestic legal regulation is the presence of a sanction, which is an element of a legal norm. It provides for measures of state coercion applied to the subject in case of violation of the prohibition, as well as failure to fulfil the prescriptions of the legal norm. International law is also characterised by the presence of sanctions, which allow in case of violation of international norms to bring such a subject to responsibility. However, it should be noted that the specificity of the international system implies a limitation of the potential of the institution of sanctions. Traditionally, states could use various types of sanctions against violators, for example, the use of military force, but modern international law does not allow this, accordingly, the United Nations Charter [7] stipulates that states are prohibited from using force against other states, except in self-defence or sanctions authorised by the Security Council. Another tool for ensuring compliance with international law is international control, which is based on monitoring and encouraging States to fulfil their obligations in good faith. Its essence consists in the submission of reports by States on the fulfilment of international obligations and inspection (in the International Labour Organization on its conventions and recommendations, in the United Nations on the human rights covenants, the treaty on the non-proliferation of nuclear weapons). An example of an inspection conducted by an international organisation is the activities of the International Atomic Energy Agency. The next type of inspection is that carried out by States parties to a treaty

under the supervision of an international body. The third type covers mutual inspection by States parties to the treaty. Based on this, it is possible to note that this institution of control is preventive in nature and forces states to carry out quality supervision of compliance with international treaties [17].

To implement the regulatory function of the international system, states use three methods of regulation, political, power and international legal. The first is an independent method of regulating international relations, which is based on the recognised principles of international law and is implemented employing coordinating the positions of states in the light of universally recognised principles. The force method stipulates the use of force as an instrument of regulation, which generates the unleashing of wars between states. In today's conditions, this approach is ineffective and is not used by developed states. International legal regulation in the inter-state system is a method of coordinated management applied by sovereign and equal States. It is based on legal norms with high normative force, which shows the overlap with the political type of regulation. Thus, it is useful to point out that it is appropriate to solve international problems through political-legal methods, respectively combining both political expediency and legal legitimacy [18].

The foreign and domestic policy of each state must comply with the principles and provisions of international law, this implies the primacy of international law in politics. It aims to consolidate and develop the regulatory function of the interstate system for the effective solution of global problems in the world. International law should include all aspects of international life, including crises and conflicts. Increasing the role of the UN, international courts, arbitration and other supervisory bodies will improve the level of the rule of international law. At the same time, given the significant influence of national law on the development of international law, it is advisable to note the need to increase the level of compliance of the legal systems of all states with accepted international norms. This is an imperative of international law, as it reflects the principle of good faith fulfilment by the subjects of their international obligations. Thus, the supremacy of international law in politics, as well as the strengthening of the regulatory function of the interstate system are reformed in one of the key conditions for the survival of mankind.

Discussion

The issue of the theory of state and law has been studied in scientific doctrine for a long time. Representatives of the totality of legal schools and supporters of different approaches reveal the vectors of state activity and its legal elements from different contexts. M. Marelli [19] studied the genesis of the correlation and interaction of international and domestic law. This study also compared and highlighted the common and distinctive features between the mechanism of regulation of domestic relations and international relations. The study established that this problem has a long history, remaining relevant in modern doctrine. Two approaches for correlation, namely dualistic and monistic, are dominant. Accordingly, the researcher is a supporter of the former, as he considers international and

domestic law as separate systems. At the same time, within the framework of this research, the second approach, which reveals international and domestic law as a single system of law by the primacy of one system, was revealed. It is worth noting that with the help of this approach, the study examined the specifics of the modern correlation of these two types of rights. As for the genesis of the problem, the researcher established that by the end of the XIX century, there was an absolutisation of domestic law, characterised by the absence of a clear mechanism of interaction between states. The 20th century was characterised by the active formation of international law and the search for a balance between the two systems. This study focused on the second half of the twentieth century, suggesting the interpenetration and constitutionalisation of international law. What is common between the studies is that they establish that at the present stage, there is an increase in the role of international law, expanding its spheres of influence. Thus, the conclusions note the problem of the correlation between international and national law in the context of globalisation. Common between the studies are the results that prove the need to develop a universal doctrine of the coexistence of two systems of law.

P. Wolsing [1] studied the main theoretical approaches and concepts of understanding the essence of the modern state. The researcher determined that it is appropriate to analyse the phenomenon of the state through the prism of different scientific paradigms and methodological traditions. It should be noted that this study also examined the essence of the concept of the state and its components. In particular, the essence of the state was examined through a sociological prism as a product of a social contract to ensure order. In addition, the widespread legal approach, in which the state is the legal organisation of society and political power, was noted. The researcher emphasised the statist theory, according to which the state is the highest form of manifestation of absolute idea and rationality. What is common between the studies is the expression of a set of characteristic features of the modern state. In both studies were attributed and disclosed: public political power on a certain territory; sovereignty; a system of bodies and institutions for the exercise of power; a system of taxes and a monopoly on compulsory taxation. Separately, the army and the forces of law and order, which respectively appear in the context of the means of ensuring the monopoly of legitimate violence, were noted. Thus, the general conclusions obtained in both studies are the approach to describing the modern state as a complex and multifaceted phenomenon that requires constant improvement and renewal.

G. Teubner [20] analysed methodological approaches as tools of cognition of law and legal phenomena. The researcher noted the importance of applying different methodological approaches for a comprehensive understanding of law, due to the complexity of this phenomenon. The study also revealed the essence of law and its relationship with the state. Accordingly, such approaches as systemic, structural-functional, synergetic and anthropological were analysed. Based on the first one, the law as a holistic system of interrelated parts (norms, institutions, branches) was disclosed. It is worth noting that this approach was also used within the framework of the study of the researcher. As for the structural-functional

approach, it helps to outline the holistic structure of law, as well as the functions of its parts and their impact on the general state of the legal system. Based on the synergistic approach, law is interpreted as an open, self-organising, non-linear system evolving under the influence of internal and external factors. The common results of this research and the conclusions of the researcher are the use of an anthropological approach within the framework of which the law is considered through the prism of the human dimension, covering the role of man as the creator and object of legal regulation. In the conclusions of both studies, it was noted that the use of different methodological approaches makes the cognition of law more profound and comprehensive. Thus, the synthesis of several approaches compensated for the limitations of individual theoretical constructs.

V.H. Van [21] identified the essence and correlation of the concepts of legal policy of the state with its stages, criteria of effectiveness, forms and functions. The researcher identified such stages of legal policy as formation, implementation, evaluation of effectiveness and changes. It should be noted that some of them were revealed in this study, particularly in the context of legislative activity and compliance with the needs of society. In addition, several forms of legal policy were identified, namely law-making, law enforcement, and law-explanatory. Common between the studies were the approaches to defining the functions of the legal policy of the state, which are divided into external and internal. In this study, regulatory, protective and educational functions were also additionally noted. Thus, common between the conclusions in the studies is the proof of a close relationship between the stages, criteria, forms and functions of the legal policy of the state. Their correlation and coherence an important condition for the effectiveness of legal policy.

The problems of the effectiveness of the system of modern international law were revealed by J. Dunoff et al. [13]. The researcher noted the importance of the problems of sources as the basis for the formation and development of international law. It should be noted that this study also paid special attention to analysing the specifics of the development of international law, both private and public. In this regard, the traditional sources of international law, in particular international treaties and international customs, were also analysed. Furthermore, the researchers examined subsidiary sources, which included general principles of law, judicial decisions and doctrine. This study identified problems characteristic of traditional sources that treaties do not always reflect the actual state of relations between States. The commonality between the studies is the conclusion about the uncertainty of the content of international norms. That is why both studies noted the priority of codification of norms for the progressive development of international law in modern conditions.

M. de Andrade [16] investigated the principles of law as a fundamental category of domestic and international law. In this study, the comparison of the system of national and international law, particularly their principles, was emphasised. The importance of adhering to the principles to ensure the unity, stability and development of the legal system was revealed. The researcher found that the

principles of law are shaped by political, economic, and cultural factors. Within the framework of this research, it was noted that in this regard they are characterised by several functions, regulatory system-forming, and interpretative. Common between the studies is the position that the principles of international law are of a general nature and therefore peculiar to the legal systems of different states. At the same time, the researcher carried out their detailing and singled out sectoral and inter-sectoral ones. Both studies found that principles of law play a systemic role in the legal regulation of an individual state or the international community. Therefore, they ensure coherence and unity of domestic and international law, and their observance is an important condition for the effective functioning of the legal system.

Based on the above, it is possible to establish that the theory of state and law has a branched system of elements, allowing us to study them both in a broad and narrow sense. Due to this, there is a development of doctrine and the formation of new positions and approaches to the study of theoretical concepts and tools.

Conclusions

As a result of the conducted research the concepts of "state" and "law" were disclosed, as well as their structure and elements were analysed. The study determined some of the most important attributes and functions of the modern state. Accordingly, it is worth noting that the organisation of state power and administration is carried out territorially due to the division of the state into administrative-territorial units. The study of the essence of the supremacy of state power, as well as its influence on the role of the state in the international arena was emphasised. It was determined that one of the tasks of the state is the development and implementation of binding for all members of citizens norms and rules of relationships. Employing this, a uniform law and order in society is established and ensured. In addition, as a result of the implementation of the legislative function by the state, the rights and duties of citizens, as well as officials of the state and society are enshrined. The study revealed not only the essence and significance of internal but also external functions of the state. As a result, it was found that their systemic qualitative performance ensures the gradual and effective development of society and the state in modern conditions of globalisation.

Furthermore, the essence of law was considered based on the positivist and non-positivist approaches. Advantages and disadvantages were determined and, accordingly, the latter is more effective in the current conditions of development of states and the world. The definition of law and international law received particular emphasis in the course of the study, in particular, the specificity of the global interstate system was considered. The study established that the existence of the international community is a prerequisite for the normal development of states, and their qualitative and safe interaction. The specificity of the division of international law into private and public, which is conditioned by their subjects, was also revealed.

The study separated the systems of national and international law but prioritised their constant interaction and dependence. In addition, it is established that they have

a continuous influence on each other in the context of globalisation, which indicates the need for continuous improvement of both systems. In subsequent scientific research, it is advisable to reveal and describe the transformation of functions and powers of the state under the influence of the processes of globalisation and regional integration.

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Conflict of Interest

None.

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Теорія держави і права: Поняття та напрями діяльності держави

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Анотація

Актуальність. У сучасному світі, де глобалізація спричиняє динамічні зміни в політичній, економічній та соціальній сферах, зростає потреба в глибокому розумінні сутності та функцій держави. Теорія держави і права надає знання, необхідні для аналізу та оцінки цих змін, а також для прогнозування майбутнього розвитку державності.

Мета. Метою дослідження є встановлення сутності та основних векторів діяльності держави, а також вираженої ролі теорії держави і права в сучасному світі.

Методологія. У дослідженні використано методи аналізу, синтезу, порівняння, узагальнення, дедукції та абстрагування.

Результати. У ході дослідження було визначено поняття «держава» та окреслено його основні характеристики та ознаки. Крім того, розкрито сутність та значення елементів сучасної держави, а також розглянуто їх вплив на розвиток суспільства. Крім того, в ході дослідження були визначені та охарактеризовані основні напрями діяльності держави, як внутрішньої, так і зовнішньої. Проаналізовано роль і значення права, національного та міжнародного права, в розумінні динамічних соціальних процесів, які змінюють правову культуру суспільства. В результаті проведеного дослідження було встановлено залежність між такими категоріями, як держава і право. Крім того, виявлено специфіку та пріоритетність належної взаємодії між національною та міжнародною системами права.

Висновки. Під час дослідження було встановлено, що напрями розвитку держави можуть відрізнятися залежно від її характеристик, зокрема, підходів до державного управління, політичного режиму, а також адміністративно-територіального устрою. Отримані в ході дослідження результати доцільно використовувати для розробки навчально-методичних матеріалів для навчальних курсів «Теорія держави і права».

Ключові слова: суверенітет; правова культура; державне управління; міжнародні відносини; правове регулювання; політична система.