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ARCHETYPICAL CONFLICT OF RULE-MAKING OF THE PUBLIC ADMINISTRATION BODIES

Abstract. The article considers the rule-making activity of the public administration bodies in Ukraine. Law-making is one of the direct activities of the authorized bodies for the development, adoption, amendment or supplementation of the normative-legal acts. By-laws are duplicated, contradictory, create a large number of documents on amendments to the existing normative-legal acts, artificially 'inflate' the legislation of Ukraine, contain incorrect, vague wording, which may allow for misreading, incorrect interpretation and application norms of the legislation and accordingly violate the legal rights, freedoms and interests of the individuals and legal entities. Objective causes of errors include: dynamism of the

legal system of Ukraine, intensive development and updating of the Ukrainian legislation; diverse and often conflicting interests of different segments of the population, and so on. Subjective reasons are: lack of legislative consolidation, ignoring or non-compliance with the rules and requirements of the legislative technique developed by science and practice; existing contradictions between the science and practice of law-making and their isolation from each other; insufficient level of professionalism of the legislator; inadequate level of examination of bills; insufficient expert support of drafting works; lack of proper coordination of actions of the law-making entities; lack of a state concept for the development of the Ukrainian legislation.

The analysis of rule-making is carried out everywhere through the prism of the collective unconscious and the conflict of archetypes with the modernity. Archetypes, according to Jung's theory, are universal innate mental structures that make up the content of the collective unconscious. The archetypes force people to perceive, experience events and react to them in a completely certain way.

Any number of archetypes is possible. Jung considered them regulators of behaviour and mental life, which organize and direct the mental processes. Without special information about the archetypes, a person does not realize that he is under the influence of collectively unconscious archetypal forces. If the influence of the collective unconscious intensifies, the ego is 'captured' by the archetypal impulses that enslave the man. The knowledge of this fact is quite useful because it helps to control the situation to some extent. Since archetypes have both positive and negative sides, control is an attempt to activate the former at the expense of the latter.

Keywords: archetypes, legal examination, rule-making, conflict, collective unconscious.

АРХЕТИПОВИЙ КОНФЛІКТ НОРМОТВОРЕННЯ ОРГАНІВ ПУБЛІЧНОГО УПРАВЛІННЯ

Анотація. Розглядається нормотворча діяльність органів публічного управління в Україні. Правотворчість є одним з видів безпосередньої діяльності уповноважених органів з розроблення, прийняття, зміни або доповнення нормативно-правових актів. Підзаконні нормативно-правові акти дублюються, суперечать один одному, створюється велика кількість документів щодо внесення змін та доповнень до чинних нормативно-правових актів, штучно "роздувають" законодавство України, містять неконкретні, розмиті формулювання, що призводить до різночитання, некоректного тлумачення та застосування норм законодавства і відповідно порушення законних прав, свобод, інтересів фізичних та юридичних осіб. До об'єктивних причин помилок належать: динамізм правової системи України, інтенсивний розвиток і оновлення законодавства України; різноманітні, і часто суперечливі інтереси різних верств населення тощо. Суб'єктивними причинами є: відсутність законодавчого закріплення, ігнорування чи недотримання розроблених наукою і практикою правил і вимог законодавчої

техніки; існуючі протиріччя між наукою і практикою законотворчості та їх відірваність одна від одної; недостатній рівень професіоналізму законотворця; неналежний рівень експертизи законопроектів; недостатнє експертне забезпечення законопроектувальних робіт; відсутність належної скоординованості дій суб'єктів законотворчості; відсутність державної концепції розвитку законодавства України.

Аналіз нормотворення проводиться скрізь призму колективного несвідомого та конфлікту архетипів із сучасністю. Архетипи відповідно до теорії Юнга — це універсальні вроджені психічні структури, що складають зміст колективного несвідомого. Архетипи змушують людей абсолютно певним чином сприймати, переживати події і реагувати на них.

Можлива будь-яка кількість архетипів. Юнг вважав їх регуляторами поведінки і психічного життя, які організують і спрямовують психічні процеси. Без спеціальної інформації про архетипи людина не усвідомлює, що перебуває під впливом колективно несвідомих архетипних сил. Якщо вплив колективного несвідомого посилюється, ego виявляється "схопленим" архетипними імпульсами, які поневолюють людину. Знання цього факту досить корисне, оскільки воно допомагає деякою мірою контролювати ситуацію. Оскільки архетипи мають як позитивну, так і негативну сторони, контроль полягає у спробі активізувати першу за рахунок другої.

Ключові слова: архетипи, правова експертиза, нормотворення, конфлікт, колективне несвідоме.

АРХЕТИПНЫЙ КОНФЛИКТ НОРМОТВОРЧЕСТВА ОРГАНОВ ПУБЛИЧНОГО УПРАВЛЕНИЯ

Аннотация. Рассматривается нормотворческая деятельность органов публичного управления в Украине. Правотворчество является одним из видов непосредственной деятельности уполномоченных органов по разработке, принятию, изменению или дополнению нормативно-правовых актов. Подзаконные нормативно-правовые акты дублируются, противоречат друг другу, создается большое количество документов о внесении изменений и дополнений в действующие нормативно-правовые акты, искусственно "раздувают" законодательство Украины, содержат неконкретные, размытые формулировки, что приводит к разночтению, некорректному толкованию, а также применению норм законодательства и, соответственно, нарушению законных прав, свобод и интересов физических и юридических лиц. К объективным причинам ошибок относятся: динамизм правовой системы Украины, интенсивное развитие и обновление законодательства Украины; разнообразные, и часто противоречивые интересы различных слоев населения и тому подобное. Субъективными причинами являются: отсутствие законодательного закрепления, игнорирование или несоблюдение разработанных наукой и практикой правил и требований законодательной техники; существующие противоречия между наукой и практикой законотворчества и их оторванность друг от друга; недостаточный уровень профессионализма

законодателя; ненадлежащий уровень экспертизы законопроектов; недостаточное экспертное обеспечение законопроектных работ; отсутствие должной скоординированности действий субъектов законотворчества; отсутствие государственной концепции развития законодательства Украины.

Анализ нормотворчества проводится сквозь призму коллективного бессознательного и конфликта архетипов с современностью. Архетипы, согласно теории Юнга, — это универсальные врожденные психические структуры, составляющие содержание коллективного бессознательного. Архетипы заставляют людей совершенно определенным образом воспринимать, переживать события и реагировать на них.

Возможно любое число архетипов. Юнг считал их регуляторами поведения и психической жизни, которые организуют и направляют психические процессы. Без специальной информации об архетипах человек не осознает, что находится под влиянием коллективно бессознательных архетипических сил. Если влияние коллективного бессознательного усиливается, ego оказывается "схваченным" архетипическими импульсами, которые порабощают человека. Знание этого факта достаточно полезно, поскольку оно помогает в какой-то степени контролировать ситуацию. Поскольку архетипы имеют как положительную, так и отрицательную стороны, контроль заключается в попытке активизировать первую за счет другой.

Ключевые слова: архетипы, правовая экспертиза, нормотворчество, конфликт, коллективное бессознательное.

Formulation of the problem. The development of the legal system of Ukraine, in the context of the implementation of European integration policy, is accompanied by enhanced rule-making. The subjects of rule-making create a large number of normative-legal acts, which are aimed at improving the efficiency of the public administration bodies. But quantity does not lead to quality.

According to the explanatory dictionary of the Ukrainian language, a normative-legal act is defined as a generally binding official decision of a specially authorized body of the state power, adopted in a certain procedural order and approved in a certain form, which establishes new legal norms, changes or cancels those that already exist [1]. As you know, a by-law is an act issued in accordance with the law, on the basis of the law, to specify the legislative requirements and their interpretation or establishment of the primary rules [2, p. *334*].

At first glance, everything is clear, but it should be noted that the number of conflicts between normative-legal acts is constantly growing, and the emergence of lack in any activity, including in law-making, it is more convenient to prevent than to correct, so there is an urgent need to develop effective means to prevent conflicts in the law-making activities of all public authorities [3, p. *125*].

The main means of preventing the shortcomings of the normative-legal framework include the legal examination of the normative document at the stage of its preparation. Therefore, the study of issues related to the examination of the normative-legal act, highlighting as a key element of the collective unconscious, which is filled with the most archaic images, behavioural reactions, which have been repeated many times in the human history, is timely and relevant.

Analysis of recent publications. One of the founders of psychoanalysis, S. Freud, proposed the concept of the individual unconscious, thus opening for scientists a large area of research using the method of free associations. C. G. Jung joined the lively study of his ideas, analyzing the collective unconscious with the greatest completeness and specificity. The structural unit of the collective unconscious is the archetype. Thus Jung proposes a new structure of the human personality. Highlighting as a key element of the collective unconscious, which is filled with the most archaic images, behavioural reactions, that have been repeated many times in the human history.

This area, and its issues, are research essence in such areas as: psychology, psychology of creativity, social psychology and philosophy, political science, sociology, public administration. Significant results were achieved by E. Husserl, V. Molyako, V. Yadov, L. Sokhan, E. Afonin, O. Donchenko, A. Martynov, P. Krupkin, S. Yushyn, S. Alekseev, V. Kopeychykov, O. Kopylenko, I. Kuras, V. Nersesyants, O. Babinova, O. Bohachova and others.

Among the well-known scientists, whose sphere of scientific interest included issues of rule-making, it is necessary to highlight the works of M. Rachynska, T. Stadnychenko, S. O. Kozulina, T. V. Kurus, Ye. A. Hetman. Some aspects related to rule-making were studied by the following authors: V. B. Averyanov, O. M. Bandurka, Yu. P. Bytyak, B. I. Bordenyuk, N. R. Nyzhnyk, T. O. Ryabchenko, A. O. Rybalkin, O. D. Lazor, V. M. Kosovych, T. O. Karabin, V. D. Yurchyshyn.

Taking into account the analysis of both national and foreign scientific achievements, it can be concluded that some proposals to improve the institution of rule-making of the public administration taking into account the collective unconscious have been made before, but most of them have lost relevance in the current conditions of decentralization of the state power, some need to be clarified and refined.

The purpose of the article is to study the historical origins of legal examination, various scientific views, legal framework, draft laws on the implementation of legal examination of the normative-legal acts. In our opinion, taking into account the mental structure of archetypes in the process of rule-making, the concept of the ability to experience events and respond to them, the concept of depth of unconsciousness, the conflict of archetypal figures, will determine the influence of the collective unconscious. This vector of research will determine the issues, directions and ways to improve the rule-making activities of the public administration bodies.

Presentation of the main material. Normative-legal acts are the product of a special kind of activity — rule-making. Rule-making is the main way of influencing public relations, the main means of giving legal force to the right. The initial stage in the process of law-making — the emergence of an objectively determined need for legal regulation of the social relations.

This need is ultimately due to the economic basis, but the immediate factors that feed it are socio-political, class and other public interests. At the final stage of law-making, special purposeful activity of competent bodies on expression of public need and the corresponding interests in universally obligatory rules of conduct acquires great value. The content of rule-making consists of consistently carried out organizational actions that together form what is called the law-making process. The law-making process consists of a number of stages.

1. Stage of legislative (more broadly — rule-making) initiative. This is the initial official action of the competent entity, which consists in submitting to the law-making body or a proposal for the issuance of a normative act, or a prepared draft act.

2. Decisions of the competent authority on the need to issue an act, develop its draft, inclusion in the plan of legislative work, etc.

3. Elaboration of a draft normative act and its preliminary discussion.

4. Consideration of the draft normative act in the body that is authorized to adopt it.

5. Adoption of the normative act.

6. Bringing the content of the adopted act to its addressees [4, p. *116*].

We will note that today the practice of by-law regulation became big. By-laws duplicate, contradict each other, create a large number of documents on amendments to the existing normative-legal acts, artificially 'inflate' the legislation of Ukraine, contain incorrect, vague wording, which may allow for misreading, incorrect interpretation and application of norms of legislation and accordingly violate the legal rights, freedoms and interests of individuals and legal entities [5, p. *175–176*].

One of the forms of improving the legislation can be considered a legal examination of the normative-legal acts. The efficiency, balance of state and legal policy, the quality of reforms and transformations in the society directly depend on the state of the legal framework, which regulates both already established social relations and new institutions of the society and the state. The most important role in ensuring the quality of current legislation in Ukraine is played by the examination of both adopted normative-legal acts and their drafts, which allows to maintain the legal system in a state that meets the legal criterion of quality [6, p. *5*].

Examination should be understood, based on the application of special knowledge, research conducted by experienced persons (experts), performed on behalf of authorized persons and in accordance with the procedure established by normative-legal acts, in order to establish the circumstances relevant to correct and reasonable decisions and provide an opinion on based on such a study [7, p. *13*].

Types of legal examination include:

• examination for compliance with the Constitution of Ukraine and other applicable normative-legal acts;

• examination of compliance with the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms and the praactice law of the European Court of Human Rights;

• anti-discrimination examination;

• examination of compliance with international treaties of Ukraine, the binding nature of which was approved by the Verkhovna Rada of Ukraine, and Ukraine's obligations in the field of European integration and European Union law (EU acquis);

• anti-corruption examination;

• gender-legal examination.

Legal regulation of the procedure of legal examination of draft normative-legal acts of the public administration is carried out by a large array of legal sources, including the Laws of Ukraine (for example, anti-corruption examination is provided by the Law of Ukraine 'On Prevention of Corruption'); resolutions of the Cabinet of Ministers (for example, the resolution of the Cabinet of Ministers of 28.11.2018 'Issues of gender and legal examination'); orders of the Ministry of Justice of Ukraine (for example, the order of the Ministry of Justice of 20.08.2008 'On examination of draft laws and draft acts of the Cabinet of Ministers of Ukraine, as well as regulations subject to state registration, compliance with the Convention for the Protection of Human Rights and Fundamental Rights Freedoms and practice of the European Court of Human Rights', etc.) [8, p. *49–50*].

Any examination is a study, but not every study is an examination. Accordingly, legal examination is also a study, i.e. is a kind of cognitive activity in the process of which new knowledge is formed. It is carried out by an experienced person (expert) using special methods. By epistemological nature, examination is a kind of practical knowledge of specific facts, phenomena using the provisions of science, scientific means and methods according to scientifically developed and practically tested methods. At the heart of the examination as research are both known empirical data and scientific facts, the functions of which are to establish before the purpose of the examination, the identification of the types of connections between the empirical data, the determination of the possibility of existence of the sought (new) fact. Any research is characterized by the object and subject to which the knowledge is directed. Each examination is characterized by special methods of its carrying out. The research, conducted in the form of an examination, is carried out in stages. It begins with the definition of an expert task, the choice of research methods, then these methods are applied to a specific object, and its implementation ends with the formulation of an expert opinion. [9, p. *13*].

In his work 'On the Spirit of Laws', the French scientist C. L. Montesquieu, presented some principles of presentation of laws. He notes: 'People who are so gifted that they have the opportunity to make laws for their own and other people's people must follow certain rules when making these laws. The composition of laws should be simpler. Laws that differ in arrogant style are usually seen as the fruit of vanity' [10, p. *651*].

Note that in modern legislation, this is very important, the terminology of the normative-legal act must be specific, clear and understandable. Arbitrary or unequal interpretation of legally defined definitions is not allowed, as it leads to problems in law enforcement. In addition, the definitions provided in the new normative-legal acts, in essence, can not differ from the terminology of existing normative-legal acts of higher or identical legal force [11, p. *32–33*]. Similarly, Montesquieu believed that when the law does not require exceptions, restrictions and modifications, it is better to do without them. Such details entail new details. Laws always face the passions and prejudices of the legislator. Sometimes they pass through the latter, taking from them only some colour, sometimes they are delayed by them and merge with them [10, p. *639*].

In our opinion, this confirms the existence of ancient facts of conflict archetypes in the process of rule-making, which are genetically inherited to the present day.

Archetypes are a kind of cumulative ideas about the world and human life in it, which do not depend on the level of today's knowledge. In Jung's philosophy and psychology archetypes act as the mythological foundation of the modern psychic, as the fabulously familiar, even routine past that holds all our present and future lives on its shoulders. In this regard, archetypes are an example of unconscious social practice, which hides the abyss of surprises that arise spontaneously and suddenly, forcing a person to behave differently than he consciously planned. Jung's archetypes also act as structural elements of the unconscious that underlie all mental processes. When a person finds himself in an archetypal situation, he acts according to an internal scheme typical of each. Archetypes absorb, take in most of the mental, sociological and political of what scientists see and analyze. Here and collective ideas, and mass consciousness, and social attitudes, stereotypes — all that make up the majority of the filling of the societal and individual psyche. All this determines the possibility of mutual understanding of all people on Earth [12, p. *30–31*].

The collective unconscious is identified with the vast and continuous world that exists regardless of whether it falls into someone's field of vision, it is a universal, superpersonal layer of the mental, ancestral memory of mankind, a matrix that contains the mental experience of different peoples and determines the content of all other levels of individual and collective psyche [13, p. *292*]. A striking example is the facts set forth by one of the creators of the historical and anthropological direction in science A. Ya. Hurevych, so in 1260 Inquisitor Bourbon came across the following belief: the peasants brought sick children to the tomb of St. Ginephorus, hoping for salvation. Bourbon found out that this saint was a greyhound dog, once mistakenly killed by his owner, the owner of the castle. However, six centuries later, in 1879 (the Middle Ages, the Reformation, the Enlightenment, the revolution, dechristianization! passed), the Lyon scientist saw the same rite - peasants from the same area worship St. Ginephorus, knowing that it is a dog [14, p. *292*].

The collective unconscious consists of inherited instincts and forms of perception and understanding, that were

never realized by the individual and were not demanded by him during his life, but that are a characteristic feature of the whole group — be it family, nation, race or humanity [13, p. *292*]. Those or other structures of the collective unconscious are able to activate instantly in the presence of the corresponding situation. The psychological mechanism of activation of these structures is unique, but the forms of manifestation depend on many factors — the situation, kind and type of group, level of trust or consciousness of the layers of the collective psyche, i.e. the level of conscious to unconscious in the psyche of the individual or group. The psychological mechanism of activation of the collective layers of the mental is based, on the one hand, on its instinctive nature (archetypes is a social instinct), and on the other — on the level of adequate conscious cognition and acceptance of a person or group of their mental and social capabilities. The lower the level of self-identity and psychosocial maturity, the more powerful the person (or community) instinct, the faster and deeper they are immersed in the finished forms of plots, which has a collective psyche [15, p. *170*].

Thus, this is exactly what is happening in modern rule-making, which plays a negative role in performing the tasks of legal examination. According to the document, namely 'Guidelines for legal examination of draft normative-legal acts', approved by the Board of the Ministry of Justice of Ukraine from 21.11.2000, № 41, the tasks of legal examination of the draft normative-legal acts are:

• objective and complete study of the project submitted for consideration by experts in accordance with the subject of examinations and based on public and national interests, the principles of building a legal system;

• development, if necessary, of proposals for making the necessary changes and additions to the project or other related normative-legal acts;

• preparation of a reasoned expert opinion with a comprehensive assessment of the draft normative-legal act [16].

Based on this, it is necessary to understand the qualities inherent in the persons involved in the legal examination. As noted by Robert K. Bergeron, they should include: ability to see hidden goals; know the international obligations of the state to which it has signed; in constitutional law to know not only the constitution, but also the laws on the organization and functioning of the state bodies, the powers that the law gives to statesmen and institutions, and on the rules of responsibility applied to them; take special care of the quality of written language, because the state must set an example of language use; to be aware of the economic, social, cultural and political problems of their country — not to try to replace the people entrusted with solving them, but to be able to make recommendations to developers to make bills after adoption become an effective management tool [17, p. *71*].

At first glance, everything is clear, a person (group of persons) who takes responsibility for conducting legal examination, must have certain qualities, be knowledgeable, impartial, a professional in their field. But unfortunately what do we have? The practice of application of laws and any other norma-

tive acts shows that the vast majority of anomalies in law enforcement activities due to inconsistency and conflict of legal norms, their theoretical unfoundedness, gaps in legislation, legal incompetence of the subjects, occurs due to misunderstanding by the legislators or their intentional disregard for objective laws and trends in the existence and development of relations, which should be governed by the established legal norms. Finally, unfortunately, there are cases of blatant detachment of legal norms adopted from the system of legislation, the generation of serious (sometimes - intentionally) conflict, semantic illiteracy of wording, lexicophilological arbitrariness. Incidentally, the shortcomings of the last category sometimes so distort the meaning of the normative act that make it impossible to unambiguously interpret it and, thus, create a stalemate law enforcement situation [18, p. *32*].

In our opinion, the above is indisputable evidence of the conflict of archetypes with modernity, which plays a systemic, currently inviolable, negative for our legislation and the country's authority, established fact.

Conclusions and prospects for further research. The analysis of rule-making of the public authorities carried out in the article obliges further systematic study of the existing problem. If we detail the directions of research, it should be a clash of opposing interests and views, contradictions, accompanied by complex conflicts; find out why the state of the object is seen differently; different views, ideas and opinions on solving the problem; conflict that arises in the mind due to misperception and understanding of the situation. To find out the roots of the conflict of archetypes, to understand the deep interests of the subjects, to choose the optimal model of the rule-making mechanism taking into account the influence of archetypal sources and on this basis to develop a clear algorithm of the legal examination.

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