LEGAL VALUE OF WOMEN IN UKRAINE DURING THE MIDDLE AGES

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Abstract. This article examines the content of the legal value of women in Ukraine during the Middle Ages. It is proved that the idea of the value of women in Ukraine in the XI – first half of the XIV century was based on theocentrism with marked anthropological and axiological elements. It was found that the content of different types of legal status of women is characterized by equality of personally free groups to which women belonged, giving her broad personal and property rights, value of her life, honour, dignity, freedom, high social and legal status of women. It is substantiated that the understanding of the value of women in Ukraine in the second half of the XIV – first half of the XV century compared to the notions of her value in the previous days evolved towards the dominance of anthropocentrism with axiological elements. It is established that the transition from the first ideas about the legal value of women in the XI – first half of the XIV century to its understanding in the second half of the XIV – first half of the XV century was influenced by both Renaissance ideas and ideology of privileged segments of the population. Understanding of the legal value of women in this period was clearly reflected in the legal status of various groups. It is proved that the understanding of the value of women in the second half of the XVII–XVIII centuries was based on anthropocentrism in combination with axiological elements. At the same time, in the second half of the XVII–XVIII centuries, the structural components of anthropocentrism changed and the notion of the “reasonableness” of the individual came to the fore. It is substantiated that the transition from understanding the legal value of women in the second half of the XIV – first half of the XVII century to understanding the concept of “legal value of women” in the second half of the XVII–XVIII century was influenced by a number of factors: ideas of the Enlightenment, humanism, some of which were reflected in historical and legal notes, legal customs of the Ukrainian people, which enshrined the love of freedom, equality, social justice, the ideology of the privileged sections of the population, which became the dominant state of society in the late XVII–XVIII centuries.

Keywords: Middle Ages, woman, legal value, legal status, rights and responsibilities

INTRODUCTION

In the conditions of reforming the modern domestic legal system, intensification of the processes of European integration of Ukraine, the study of the axiological characteristics of
women acquires special importance. The centuries-old history of human communities proves that the understanding of woman as a legal value was variable and reflected the objective realities of a particular period or era. In the modern world, woman, being a biosocial and legal being, a unique basis of historically changing state and legal, civilizational and other entities and structures, an expression of individual, collective and group, social needs and interests, needs to rethink and interpret herself as a value phenomenon.

The current state of development of Ukraine necessitates a rethinking of existing approaches to clarify the essence of law and its importance in the life of each individual and society as a whole. As an important socio-cultural phenomenon, law is inextricably linked with woman as a person, acting as an important factor in protecting her interests, rights and freedoms (Shevchenko et al., 2020a).

We believe that the basic position on the knowledge of human legal value within the existing theories of legal understanding is the theory of natural law, which has a thousand-year history and originates from the depths of ancient philosophical and legal thought, within which the search for higher values took place (Shevchenko et al., 2020b).

These processes should be facilitated by current trends in the polylogue of different understandings of law, the search for the most optimal ways to humanize the essence of law, the activation of “human-dimensional” legal research. Knowledge of the legal value of woman is not only theoretical but also practical, as it is aimed at extrapolating theoretical generalizations and abstractions to the legal sphere, the development of proposals to improve existing domestic legislation. The topic of this publication is actualized by the fact that in modern domestic theoretical and historical-legal science there are no complex and systematic developments of the problem of the content of the legal value of woman in Ukraine in the Middle Ages. Thus, there is a significant gap in the scientific knowledge of this problem, which this study is aimed at. The purpose of the article is to clarify the content of the legal value of woman in Ukraine during the Middle Ages.

The following methods were used in the research process: dialectical method, as well as a number of general scientific (analysis, synthesis, logical, systemic, structural, functional, hermeneutic, axiological) and special methods (comparative-historical, formal-dogmatic, etc.).

RESULTS AND DISCUSSION

The first ideas about the value of woman in Ukraine in the XI – first half of the XIV century to some extent influenced the formation of ideas about her legal value. It is contained in such works as “Teachings” by Vladimir Monomakh, “Word” (or “Prayer”) by Daniil Zatochnik, “Word of Law and Grace” by Metropolitan Hilarion, “Letter to Thomas” by Kliment Smolyatych, “The Parable of the Human Soul and Body” Kirill Turovsky, “Izbornik” of 1073, “Izbornik” of 1076 and others.

The idea of the value of woman in Ukraine in the XI – first half of the XIV century included the following characteristics:

- dominated by the postulate of “inner man” (i.e., a man endowed with high moral and spiritual qualities: charity, philanthropy, mercy);
the most important human value is spirituality;
the “image of God” is manifested in man (this means that man has a mind, freedom of choice and will);
a person is valued for his creativity, diligence, independence, perseverance, diligence, self-sufficiency, responsibility, honour and dignity, courage, patriotism;
man and his life act as special values, self-values, which testifies to the humanistic nature of ancient Ukrainian philosophical and legal thought;
human development is understood as constant self-improvement (spiritual improvement);
the human personality is seen as unique, free and equal.

These characteristics give grounds to claim that in the XI – first half of the XIV century a woman, her life was imagined from anthropologically oriented (human) and axiological views. It should be borne in mind that ideas about the value of woman in the XI – first half of the XIV century were formed during the reign of religious worldview; however, theocentrism included the above views; therefore, we can say that the general idea of human value in the XI – first half of the XIV century was based on theocentrism with marked anthropological and axiological elements. This perception of a woman's value also influenced society’s perception of a woman’s legal value.

In our opinion, it was reflected in the norms of written sources of law, customary law of Kievan Rus, which enshrined one or another type of legal status of a person, which, in turn, affected the ability of woman to discover or realize themselves, make certain choices and more. And attention should be paid not only to the general legal status, but also, given the diversity of society – to the rights and responsibilities of different social groups.

According to the ancient legal custom, confirmed by the norms of Ruska Pravda, only sons had the right to inherit their father’s property (according to the principle of the minorate, when the father’s yard passed to the younger son and the rest of the property was divided between the older sons) (Article 100 of Prostorova Pravda) (Zimin, 1952).

However, this did not mean that the daughters could not claim the father’s property at all: the brothers had to give her a dowry if the sister married; if the boyar or warrior had no sons, and the inheritance went to the daughters; although after the death of the peasant, who had no sons, his property passed to the prince, but the daughters were given a share for future dowry (Articles 90, 91, 95 of the Prostorova Pravda). According to some researchers, the rule that the daughters of a boyar or warrior inherited property in the absence of sons eventually spread to white clergy, artisans, free community members (Nelin, 2013; Nelin, 2014; Dolynska, 2014).

Thus, the woman was not deprived of participation in the distribution of parental property, society and the state tried to ensure her relative independence from the care of her husband (as far as possible in the Middle Ages), and this indicates a fairly high social and legal status in the XI – first half of XIV century, reflects the essence of ideas about her legal value.

The above level of social and legal status of woman is especially noticeable in the analysis of the norms of Ruska Pravda, which enshrined her rights after marriage.

Thus, the wife had the right to her own property, and after her husband’s death she inherited part of the property for “living”, the rest of the property (which was the children’s
inheritance) she could dispose of, but only in the interests of children and until they reach adulthood. That is, the mother, in fact, became the head of the family, was the guardian of the children. She was free to dispose of the property in her personal possession ("mother’s property") and, Interestingly, to bequeath it to both her sons and daughters. If she did not leave a will, her property passed to the children with whom she lived (Articles 93, 94, 102, 103, 106 of the Prostorova Pravda) (Zimin, 1952).

As some researchers rightly point out, these norms reflected the great importance of a woman’s work in the family, her property status in the family, testified to the equality of legal status of husband and wife, and the relationship between husband and wife was based on equality, spirituality, humanism and justice (Martyniuk, 2010; Poliarush, 2010; Kravets, 2011; Nestertsova-Sobakar, 2011; Pokhodzilo, 2016).

Enhanced protection was established for encroaching on the honour and dignity of woman. Thus, the church statute of Yaroslav establishes high fines for causing a girl or a married woman “shame” (rape, kidnapping, insult, etc.) (Articles 1, 2, 3, 6) (Zimin, 1952). These norms once again confirm the idea of the high social and legal status of women in the XI – first half of the XIV century, the efforts of society and the state to ensure its rights, equality with a man (Kudin, 2001).

The anthropocentric and humanistic nature of law was a reflection of the influence of legal customs, the appropriate level of legal consciousness of the population and understanding of a free person as a resident of his state, who had a wide range of rights, freedoms, their ability to use along with other residents. This was considered fair, as the ability to provide every free person with opportunities for self-realization was originally “sanctified” by ancient customs and confirmed by legislation of the XІ–XII centuries.

The spiritual self-improvement and practical realization of a free woman’s potential in various spheres of public life were the objective conditions of social, economic, cultural, state, legal, etc. development of the country. In other words, the needs of such development required a self-sufficient and developed man, which was an important element in the process of forming ideas about the legal value of woman.

In the second half of the XIV – middle of the XVII centuries, legal thought developed under the influence of the ideas of Renaissance humanism (or the Renaissance).

This epoch should be understood as a set of doctrines, the authors of which substantiated the earthly spontaneous self-affirmation of the human person and his desire to embrace and comprehend the world in its entirety.

The Renaissance period is associated primarily with the spread in culture, art, philosophy, the ideas of humanism, which affirmed the human right to earthly happiness, personal expression, free from religious restrictions, the development of science, and within which the concept of man as of the highest value, the creator of his own destiny, capable to explore the infinite knowledge of the world around him was formed.

It should be noted that the spread of the ideas of Renaissance humanism in Ukraine in the XV – first half of the XVII century contributed to a number of preconditions.

Among them are a set of factors of the socio-economic, political, religious and cultural life of that time, which influenced the formation of the early bourgeois spiritual culture; an important place among these factors was the emergence of a significant number of
economically independent cities with Magdeburg law, which became centres not only of handicrafts and trade, but also of socio-political and cultural life.

The ideological basis for the spread of anthropocentric views in Ukraine in the Renaissance-humanist version in this period were Western European and Byzantine traditions; the legal literature of the XI – first half of the XIV century had a significant influence.

In particular, from this period legal thought paid attention to the problem of man, his self-knowledge, the study of its essence and meaning of life, the problem of freedom of choice, individual and personal in man.

According to V. Lytvynov, the development of Renaissance humanism in Ukraine in the XV – first half of the XVII century went through two stages. In the first (approximately until the middle of the XVI century) humanists were more interested in socio-political, confessional and ethical issues.

During the second period (from the second half of the XVI century – to the beginning of the XVII century), there was an intensive development of early humanistic ideas intertwined with the Reformation, as well as with the ideas of the Byzantine Renaissance. At this stage, well-known cultural, educational, scientific, literary and educational associations appeared; a characteristic feature of that time was the active formation of the historical self-consciousness of the Ukrainian people, the development of the ideal of humanistic patriotism (Lytvynov, 2003).

Here are the essential characteristics of understanding the legal value of man in Ukraine in the second half of the XIV – first half of the XVII century, reflected in the works of such thinkers as Gregory Sanotsky, Yuri Drohobych, Paul Krosnensky, Lukash from New Town, Stanislav Orikhovsky-Roksolan, Joseph Vereshchinsky, Sevastyan Klenovich, Shimon Shimonovich, Simon Pekalid, Ivan Dombrovsky, Lavrentiy Zyzaniy Tustanovsky, Stefan Zyzaniy, Demyan Nalyvayko, Meletiy Smotrytsky, Kyrylo Trankvilion-Stavrovetsky, Khoma Yevlevych, Yov Boretsky, Kasiyan Sakovych, Ivan Vyshensky and others.

Such characteristics include the following:
- man is a creator of values and must actively assert himself in earthly life;
- recognizes the self-worth and self-sufficiency of a person who has freedom of self-determination;
- she is a free and god-like being, a “responsible employee of the Creator”;
- man is a microcosm (small world), which repeats the macrocosm (big world);
- “the meaning of life” is determined not so much by the salvation of the soul, as the prospect of its own actions, it is able to create itself and change the world, realize their own creative abilities, strive for “earthly” happiness;
- man’s vocation is self-knowledge and knowledge of his place in the world;
- among the most important human virtues were individualism, personal valor, creativity, diligence, virtue, activity in public life, heroism, dignity, nobility, courage, wisdom, intelligence, patriotism, education, prudence, nobility, energy, foresight, brotherhood, philanthropy;
- the importance of man was determined not by aristocratic origin, but by personal qualities.

Legal norms that were in force on the territory of Ukrainian lands in the second half of the XIV – first half of the XVII century, clearly regulated the family law status of husband, wife and
children. It should be noted that during this period the marriage acquires the characteristics of a legal contract. This is evidenced, in particular, by the existence of a kind of “marriage contract” (“intercession”), under which a woman brought a dowry into the house, and a man—vino, and the legislator primarily protected woman’s property rights: the amount of vino should be twice the dowry, however, not to be more than a third of real estate; after the death of her husband, it became the property of his wife. It was also forbidden to forcibly marry girls of noble status without their consent, it was necessary to take into account their wishes (Second Edition of the Lithuanian Statute, Chapter III, Article 31) (Kivalova et al, 2004).

As researchers rightly point out, the recognition of a woman’s property rights, the transfer of her fault, and the equality of married participants in raising children made the wife financially independent of the husband during his lifetime and provided for her in the event of her husband’s death; all this indicates a significant independence of women (Maikut, 2009; Kravets, 2011; Boiko, 2013; Boiko, 2014).

In addition, the Lithuanian Statutes of the Second and Third Editions allowed for divorce (“protest”), ensuring the interests of women; she had the right to remarry; a noblewoman could pay taxes, hold public office, enter into contracts freely, inherit a man’s estate, and so on.

At the same time, the development of marital and family relations in the second half of the XIV – first half of the XVII centuries was significantly influenced by the existence of caste principles of the right-privilege. A characteristic manifestation of this is that a noblewoman who married a non-nobleman (both free and dependent commoner) lost her nobility and the right to own property.

In addition, the legislation did not clearly regulate the property rights of a peasant woman, she could be involved in the payment of her husband’s debts; if such a woman married in another locality, the permission of the lord was required, who, moreover, received a monetary fee; the lord could force serfs to marry; freedom of marriage applied only to persons of nobility, and so on.

The next stage in the development of awareness of the legal value of women in Ukraine was the period of the second half of the XVII–XVIII centuries. The legal teachings of the Enlightenment had a significant impact on the nature of understanding the legal value of woman.

In Ukraine, the Enlightenment (Baroque era) was characterized by the efforts of this era to solve the problem of universal justification of the idea of law, based on European ideas of “natural law” and “social contract”, to spread such a direction as “philosophy of heart” (cardiocentrism), to develop a set of humanistic ideas. In general, the Enlightenment promoted the ideas of bourgeois democracy, individual freedom, equality, social progress, and the republican state system (Lytvynov, 2003; Zaremskyi, 2013).


In our opinion, the main aspects of understanding the value of man (as well as woman) include the following:
- emphasis is placed on the “autocracy” of the human mind;
– man is the creator of his destiny, a free and active person;
– human action is evaluated through the category of “true virtue”;
– man is an end in itself, so the basis of his social existence should be personal freedom and legal equality, which are a measure of justice, and, at the same time, a natural property of man;
– the essence of man is determined by the “heart”, which is the source of thoughts and knowledge;
– natural abilities and vocation of man correspond to “related” work (i.e. one that corresponds to the inclinations and type of human behaviour), which provides self-realization, happiness, harmony, satisfaction and joy for man and should be aimed at the benefit of society;
– a person realizes his abilities through education and self-knowledge;
– the purpose of human life – self-knowledge, moral self-improvement, self-affirmation and fulfilment of duty;
– the idea of “inner” (spiritual) man dominates;
– a person must be aware of the self-worth of his “I”, to achieve harmony of feelings and mind, worldview;
– man must have the will to power over himself, his passions, the will to knowledge and creativity, and freedom of will is considered through the prism of natural human rights;
– the value of man is determined by his qualities, such as reason, knowledge, diligence, faith, mercy, justice and is manifested in his deeds).

Thus, we can draw the following conclusion, which follows from the comparison of understanding the value of woman in Ukraine in the second half of the XVII–XVIII centuries and its understanding in the previous days. Yes, this understanding was based on the ideas of Renaissance humanism and became its natural continuation. Based on the main aspects of this understanding in the second half of the XVII–XVIII century, it can be argued that it was also based on anthropocentrism in combination with axiological elements.

However, there is a change in the structural components of anthropocentrism: the concept of “reasonableness” of the individual comes to the fore. A woman is presented as an active subject of social life through awareness of the goals of her creative activity, ability to choose and freedom of will, which was achieved through reason, use of intellectual abilities, rational understanding of their own future actions.

That is why it is necessary to agree with the opinion of S. M. Wozniak that educational anthropology can be defined as anthropoporation-centrism (Wozniak, 2011). According to Ukrainian thinkers of this period, the realization of natural and legal ideas (legal equality, freedom, the right to happiness, etc.) was supposed to promote the process of active (and reasonable) human life.

The ideas of humanism, the Enlightenment, and the understanding of woman’s values were reflected in a number of historical and legal sources of the second half of the XVII–XVIII centuries. In particular, we pay attention to the text of the Constitution of P. Orlyk (1710).

In our opinion, the following ideas were enshrined in it:
– enshrined the ideas of justice, democracy, extracurricular and equal status, respect for people, support for socially vulnerable groups, election of officers and hetman, limiting his power, republican parliamentarism, responsibility of the government to man, national identity;
- it was focused on the eternal values of the mental orientation of Ukrainians to freedom and personal uniqueness;
- he affirmed the values of natural and legal regulators of public life, protection of natural rights of man and people (property, court proceedings, etc.);
- in it “the individual becomes more valuable... already considered a specific centre of public life” (Constitution of P. Orlyk, 1710).

A significant place in the Constitution is given to the protection of “rights and freedoms” of man regardless of his social status; however, it is also a question of special protection of the rights of socially vulnerable segments of the population.

Thus, Chapter X states that “military and commonwealth people should not suffer unprofitable burdens, taxes, oppression and extortion”; therefore it is necessary “that gentlemen colonels, centurions, atamans with all military and commonwealth officials should not dare to perform serfdom and work on their private farms by Cossacks and commonwealths, especially those who do not belong to their governments or to them directly: not to force haymaking, harvesting and dams, not to take away and force to sell land, not to seize movable and immovable property for any offense, not to force artisans to do their household chores free of charge and not to involve Cossacks in private mailing”.

Special emphasis was placed on banning tax collectors and tolls from “extortion” against “poor people”; demand from “ordinary people” to keep passing officials and provide them with transport; to collect taxes from Cossack widows and Cossack orphans, as well as women whose husbands were on campaigns, and to involve them in public works (Chapters XI, XIV, XVI).

The norms of family law in the second half of the XVII–XVIII centuries were aimed at ensuring the rights of persons entering into marriage, as well as the relative equality in the marriage of husband and wife (Shevchenko, 2020). Yes, the marriage was preceded by the agreement of the bride’s parents, but if the latter did not give their consent to the marriage, the agreement expired. Although personal relations between spouses were based on the dominance of the husband’s family, and “the wife did not have full legal independence” (Ostapenko, 2009), but in property relations there was equality.

In particular, each of the spouses could have their own property, each of them in equal shares brought a share of property (vino and dowry); after the husband’s death, it was his wife, not his relatives, who managed the vino and the dowry; if the husband negligently lost his wife’s dowry, the vino passed to her; if the husband did not bring vino into the common house, then after his death the wife received a dowry, as well as all the jointly acquired property; all property passed to the childless widow.

All the above testifies to the understanding of the high role traditionally played by woman in the life of Ukrainian society, respect for her rights, and the articles of Chapter X “Rights of the Little Russian People” established a respectful attitude towards her.

Therefore, we must agree with I. M. Petrenko that the social status of woman in Ukraine has always been high and respected. During centuries of history, there are almost unknown periods when a woman would not be free in her actions. Attempts by Greek monks to introduce the Byzantine view of woman as an unclean creature in Ukraine were unsuccessful. Attempts by the Mongol-Tatars to establish the Asian order, under which
the woman was under the rule of her husband, were also unsuccessful. The Ukrainian 
woman knew neither the “prison gate”, nor the monastic solitude of her husband, nor 
the contempt, according to “Domostroy”, suffered by women in the neighbouring Moscow 
state (Petrenko, 2008).

CONCLUSIONS

The idea of the value of woman in Ukraine in the XI – first half of the XIV century was 
based on theocentrism with pronounced anthropological and axiological elements, and in 
some way influenced the idea of its legal value. This idea was reflected in the norms of law 
enshrined in the Ruska Pravda, in the civil, family and criminal legal status of woman, as well 
as in historical literary notes.

The content of different types of legal status of woman is characterized by equality of 
personally free groups to which woman belonged, giving her broad personal and property 
rights, value of her life, honour, dignity, freedom, high level of social and legal status of 
woman. This gave woman the opportunity for spiritual self-improvement and practical 
realization of her potential in various spheres of life.

The understanding of the value of woman in Ukraine in the second half of the XIV – first 
half of the XVII century compared to ideas about her value in the previous days has evolved 
towards the dominance of anthropocentrism with axiological elements.

The transition from the first ideas about the legal value of woman in the XI – first half 
of the XIV century to its understanding in the second half of the XIV – first half of the 
XV century was influenced by Renaissance ideas, partly reflected in the regulations of the 
XV–XVI centuries and more to a large extent, the ideology of the privileged sections of 
the population (magnates and gentry), which became the dominant state of society in the 
second half of the XV – mid XVII century. Understanding of the legal value of woman in this 
period was clearly reflected in the legal status of various groups.

Understanding the value of women in the second half of the XVII–XVIII centuries, as in 
the previous period, was based on anthropocentrism combined with axiological elements 
(influenced by the views of Ukrainian philosophers of the XV – first half of the XVII century, 
educational and humanistic ideas). At the same time, in the second half of the XVII and 
XVIII centuries, the structural components of anthropocentrism changed and the notion of 
the “reasonableness” of the individual came to the fore.

The transition from understanding the legal value of woman in the second half of the XIV – 
first half of the XVII century to understanding the concept of “legal value of woman” in the 
second half of the XVII–XVIII century was influenced by a number of factors: Enlightenment, 
humanism notes, legal customs of the Ukrainian people, which enshrined freedom, equality, 
social justice, the ideology of the privileged sections of the population (Cossack officers and 
gentry), which became the dominant state of society in the late XVII–XVIII century.

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