Innovation and novation as a form of law renewal

In a broad sense, innovation is a product of intellectual activity of people, designed as a result of fundamental, applied or experimental research in any field of human activity, aimed at improving its effectiveness. Innovation in worldview and ideology, in formation of new industries and directions, in radical change in management system is attributed to revolutionary changes, when the innovations themselves require breaking stereotypes of thinking, staff changes, training of new specialists, changes in rules and regulations, programs and projects, laws and even the constitutional norms of civil society. Therefore, innovations are often revolutionary in nature and are the basis of scientific and technical and any revolution. An innovation is a novation or introduction that significantly enhances the performance of an existing system. In jurisprudence, modern scholars also distinguish between legal novation and legal innovation. In the legal sphere Yu. M. Oborotov defines the novation concept as a departure from traditional experience associated with its creative development. This author reviews novations in law in one meaningful field with the innovation concept, emphasizing the subjective and objective nature of the latter. Innovation, in his opinion, is any discovery made at the personal level, but achieves social acceptance. The main condition for novations is thus their broadcasting [7, p. 100]. The authors note the social content of this definition in the absence of its purely legal characteristics.

Initially, novation involved updating the legal matter. This is the title that was laid down in Roman law. The Edict of Milan (313) introduced such legal novations (novelties) as: freedom of Christian confession, the principle of religious freedom, restoration of property rights of the Christian Church as a subject of Roman law [8, p. 122].

Traditionally, legal innovation refers to the introduction into the legal system of a novatlty, which qualitatively improves its elements in order to harmonize existing law, and therefore legal innovation is considered as one of the means of improving the efficiency of legal regulation and improving the quality of legal system. Meanwhile, legal regulation updates can be non-progressive and even destructive. For example, rejection of the idea of holiness and privacy and absolutization of collectivist forms of legal life, carried out in process of so-called socialist transformations in Russia and some other countries, led to destruction of private legal regulation, mass violation of human rights, and a return to a lower level of development economy. As a negative novation, it is worth considering the law-making errors that cause the legal regulation to undergo destructive changes.

In our view, understanding the phenomenon of novation in law is impossible without generalizing its empirical manifestations. Such

manifestations of novations in legal sphere are the formulation of new in content or form of legal norms, emergence of new sources, institutions and branches of law, development of new approaches to individual legal regulation, in particular to resolution of legal cases, organization of new legal institutions, formation of new values in justice and emergence of new components of legal culture and legal communication. It should be noted separately the novative nature of legal science, which, at least ideally, is intended to develop new knowledge of law and legal reality.

The formulation of a new rule of law is the most common and simplest form of novation in law. This is exactly the way in professional justice, and law novation seems to be a value-normative system of social regulation. An example of groundbreaking approach in lawmaking is the formation of human rights institute during the bourgeois revolutions of the 17th and 18th centuries. The term "human rights" itself was innovative, since in the previous period of the history of law the existence of subjective rights, and in some places, of legal personality, was not recognized by every human being. The approach to defining the relationship between the subject of fixing the relevant legal norms - the state - and a person, was also novative. The state was entrusted with the duty to respect and enforce human rights. For example, Declaration of Independence of the USA stated that "for protection of human rights, governments are established whose fair power follows from the consent of governed" [5, 260], and French Declaration of Human and National Rights proclaimed that "purpose of any political alliance is to preserve natural and inalienable human rights" [5, p. 290]. Human rights, which define the sphere of its freedom and are based on formal equality, have become one of the main values of social development, that is, they have become not only legal but also social innovation. They influenced the state character, facilitated the establishment of democratic interaction between the state power and a person, freeing the latter from excessive care and suppressing his/her will and interests by the authorities.

In our view, the most striking novation in the area of legal protection of human rights has been the recognition, proclamation and consolidation in constitutional act of such human right as the right to life. For a long time, the fight for human rights has stood aside and was formulated only as a matter of criminal defense in the form of prohibition on murder. But the positive consolidation of this right first occurred only on the June 12, 1776, adoption of the Fifth Virginia Convention of Declaration of Rights, which later became part of the Constitution of Virginia [2].

The revolutionary nature of this innovation was that, for the first time, society and state apparatus created by it recognized a person who had previously been regarded solely as relative, as such, which the state willingly sacrificed in the protection of other protected values. It should be noted that recognition of other human rights occurred much earlier.

It should be noted that another revolutionary innovation, namely the right to privacy, is linked to American legal development. One of the first attempts to formulate the essence of "privacy" concept was made in 1890 by well-known American lawyers Samuel Warren and Louis Brandeis, who defined it as "the right to be alone" - the right to be left alone or the right to be given to oneself. [14]. However, there is also an understanding of this right as a way of organizing society [12, p. 2].

Let us note the preservation of the innovative potential of human rights to this day, which is manifestation in formation of new generations of human rights. These include the idea of somatic (personal) human rights, the study of which is part of the law anthropology, which has been asserted in Ukraine over the last decade. Somatic rights are understood to mean a group of rights that relate to the ability of a person to dispose of his/her body independently, to carry out his/her "modernization", "restoration" and even "fundamental reconstruction", to change the functional capacity of the organism and to expand their technical-aggregate or medicaments the right to dispose of one's own body (euthanasia), to determine one's gender, to freely dispose of one's reproductive function, to use reproductive technologies, in particular fertilization and cloning, organ and tissue transplantation.

In the days of the French Revolution and the American War of Independence, an innovative step was made in the formation of sources (forms) of law, namely, constitution was created as special kind of legal act possessing specific properties of stability and stability, supreme legal force, special security, etc. The first modern legal definition of a constitution was given in the French Declaration of Human Rights and the Citizen of 1789, according to which only that society has a constitution guaranteeing human rights and separation of powers.

In our view, the US Constitution (1789), France and Poland (1791) were in themselves revolutionary innovations in law, since they first put the state under the control of society and imposed legal restrictions on state power. The US Constitution is an unique document in its own right. Adopted in 1787, it still defines the foundations of political and legal system of the state. In the course of more than two hundred years of its history, only 27 amendments were made to it. To date, not only the "basic constitutional forms of the state have been preserved, the spirit embodied in the coined lines of the Constitution has been preserved." Although some of its provisions are now obsolete and regarded as anachronisms, the constitutional foundations of politics are still in force today as they were two hundred years ago. No wonder this oldest constitution in the world today is called the "legal bible". For American citizens, the Constitution is not just a law: it is a national symbol, and American constitutionalists, characterizing it, operate with the words "faith in the Constitution" and "faithfulness to the Constitution" [13].

The novative nature of the US Constitution is difficult to dispute, the only question is the qualitative nature of this novation, including whether it

was truly revolutionary. Opponents of the revolutionary American novations state that although constitutions of states and federations were created during the revolution, they nevertheless embrace ideas and principles that go back to the colonial experience (English charters and the legal system of the metropolis, including the representative government, civil liberties, and the general law legacy), ancient experience and European theory of constitutionalism. However, such a continuity does not seem to preclude revolutionary "leap" in the legalization of previously known theories, translating them into the realm of real state politics.

Innovations are traced in the law structure, in particular they are the formation of new branches of law. The whole history of law is a history of branching legal regulation according to the complexity and specialization of public life spheres. At the law history dawn, it was syncretic, and in fact, it examined only three spheres of regulation: criminal-administrative activity of state apparatus, sphere of private communication, sphere of penalties for committing offenses. It is precisely these spheres of regulation that are clearly traced in the content of the most ancient legal collections and codes (Hammurabi Laws, Manu Laws, Laws of the XII Tables, Barbaric Truths, Russian Truth, etc.).

At the stage of bourgeois revolutions, constitutional law was instituted, due process of justice was of importance, dualism of private law was formed in some legal systems, and codified laws became the main form of law. In fact, it was then that the sectoral structure of law was substantiated and put into practice. Moreover, such changes have occurred in the law of countries not affected by the revolution. Thus, at the turn of the 18-th and 19-th centuries, both the Austrian and the Russian empires developed and adopted codified criminal, civil and procedural legislation.

In our opinion, as manifestation of transitivity in law, we should consider the processes of expanding of legal regulation sphere, which is reflected in formation of new institutions and branches of law. A significant increase in the number of domestic branches of law is observed at the end of 20th -21st centuries during the period of transitional statehood and changes occurring in the political-legal regime and economic system of Ukraine. Today, we are witnessing the rapid development of the law branches related to new technologies, namely, institutionalization of social law, information law, electronic law, innovation law, intellectual property law, medical law, new branches of international law (space law, nuclear law), etc. This process has been analyzed in numerous scientific papers on emergence of new law branches. Given the patterns of emergence of new spheres of legal regulation, expansion of some law branches, there is a need to improve legal forms of the mechanism of legal regulation.

In recent years, the legal regulation of relations in the innovation field has become the subject of intense research by scholars dealing with issues of commercial and civil law. Innovation law is mainly regarded as an institution

of commercial law. Innovation law as an institution of law is a set of legal rules governing innovation relations and others related to innovation relations, as well as relations concerning the state influence on innovation activity by giving broad freedom to the subjects of innovation activity and presentation of obligations, linguistic prescriptions where necessary [3, p. 127-131].

However, modern researchers state that despite the creation of legislative framework to ensure innovative development of the state, there is no real reorientation of Ukrainian economy to an innovative model, and institutes' effect introduced for this purpose has proved ineffective. The current regulations do not consider real economic and social conditions, as well as the prospects for innovative development of society, so legal regulation is not complex. An important issue in improving the existing innovation legislation is the need to consider all the essential factors of functioning of national economy that impede innovation. Innovation legislation can be characterized as non-systemic. In such circumstances, priority is to systematize existing legislation, which will allow to harmonize and unify terminology in innovation sphere, eliminate the contradictions and duplications between the provisions of legal norms of different legal acts and ensure effective legislative regulation of relations in the innovation sphere, etc. The result of systematization of innovation legislation should be a single codification act (Innovation Code of Ukraine), which would cover all aspects of legal regulation of relations that develop in the innovation sphere. An indispensable prerequisite for innovation is clarity, stability and constant tight control over compliance with the regulatory legal framework, which requires immediate systematization and, consequently, formation of single codification act [10, p. 142-146].

At the turn of the 1980 and 1990. the information law concept, conditioned by the formation of social relations of a new type - information processes, was initiated [9, p. 7]. And at the beginning of the 21st century. a new sub-sector is emerging within information law - the e-law of high technologies. Electronic law is a complex branch of law that regulates public relations in the field of computer science, creation and use of electronic computers, electronic tools and software products [9, p. 12]. In turn, the development of e-law influences the formation of new law and state institutions. Today we can speak about the emergence of e-government - a legal form of organization of public administration, in which there is an active interaction of public authorities and local authorities, with each other, with society, a person and a citizen, business through information and communication technologies. One of the main ideas of the introduction of e-government is that it acts as a tool of development of democracy, seen as a real way to develop democratic processes in society, which was reflected in the emergence of the term "e-democracy" [4, p. 28]. It is a well-known fact that the newest Constitution's text of Iceland was created through

crowdsourcing, when proposals and amendments to the draft constitution were collected by Constitutional Assembly through social networks (however, the ideas thus elaborated were not incorporated into the current Constitution of the country). The idea of total participation in the management of public affairs has been institutionalized in Estonia, where through the Tana otsustan mina online portal, every citizen can express their opinion on current processes in the country, propose amendments to bills and even vote.

E-governance in the area of administrative services is even more common. US government provides citizens with a variety of services over the Internet: licensing, tax payment, and more. In England, business registration requires only one form to be completed online. Finland and Singapore offer mobile services to their citizens. For example, the Singapore Supreme Court sends SMS to citizens to remind them of hearing date. In addition, Singapore citizens registered on the site can electronically file small claims lawsuits. Ireland's online tax service allows businesses to receive tax information, pay taxes by filling out the appropriate electronic forms, and receive tax credits. Bulgarian citizens are able to obtain a passport within 5-10 minutes thanks to the new IT system, which integrates the passport department with the Ministry of Interior, the police and the criminal justice system [1].

Moreover, today we can talk about novative changes in the field of legal relations, which are taking a fundamentally new form. Socially, with the emergence of electronic networks, such as the Internet, communications sector has undergone a process of globalization, which has led to the emergence of virtual mass communication - this type of communication, when every participant in communication with a large number of people has the same opportunities to influence the mass, it can quickly change their roles: to be a communicator, to be a communicator; when the whole world becomes the only so-called "global village" on "common ground", it can simultaneously exist in a state of communication that loses discretion (tornness, dispersion) in space and time (the whole world here, on screen, and now). The legalization of electronic social relationships, and even more broadly, cyberspace or virtual legal behavior, is inevitable. This is already evident in the emergence of such legal phenomena as: electronic document circulation, electronic signature, electronic transactions (including electronic bidding), institutionalization of cybercrime and legal response to it, etc.

Thus, with the advent of the Internet, it has become possible to carry out legal activities online, as evidenced by the emergence of e-governance and e-democracy systems in modern states. Technological advances have given a significant impetus to public, and in particular to the legal one, as a result of which new branches of law are being formed, legal thinking and justice are changing, new skills and stereotypes of behavior are being cultivated.

An illustrative example of new ideas in the subject-matter innovation direction is the implementation of restorative justice, as well as the development and justification of Mediation Institute as a way of resolving

legal disputes and legal conflicts out of court. The effectiveness of mediation is recognized by the European Community, which led to the adoption of the Directive of the European Parliament "On certain aspects of mediation in civil and commercial disputes" of 21.05.2008 [11, pp. 3-8], which obliges EU Member States to implement the relevant regulatory acts. Mediation and other alternative dispute resolution is a widely used tool in all developed countries.

Another example of novation in the legal field is the creation and operation of reference legal computer systems. The development of legal system in the field of innovative-legal direction will allow to achieve the following results: to enhance legal culture of society; most fully to provide legal practice with legal and non-legal information; move to a system-based, logical modeling process of rulemaking; to obtain the possibility of intellectual analysis of legal information by creating expert systems, neural networks and genetic algorithms. Innovation in law contributes to positive changes in legal regulation and entails improving the quality of the legal system. For today's society, legal innovation is an indicator of social development and progress.

Finally, it cannot be overlooked such an novative aspect of legal development as legal science. It was initiated by textbooks used in ancient Rome to train future lawyers. Outlining the established stereotypes of legal activity, their authors, at the same time, systematized legal knowledge, based on which legal regulation was improved. Thus, in ancient Rome, the Gay institutions of the famous lawyer of the 2nd century are one of the best examples of the scientific-popular presentation of Roman law. The Guy Institutions served for the Roman Law Schools as an exemplary tool in the law study: consistency, brevity, clarity and statement accuracy, accompanied in difficult places by numerous explanations in case law examples, purity of the Latin language, and a great deal of historical information. The system of Roman law outlined in this famous textbook was later taken as the basis for the codifications of the emperors Theodosius II and Justinin I. The Code of Theodosius (438) united more than 3000 imperial constitutions. The 1st Book was dedicated to the law sources, the 2nd – 5th books were of private law, the 6th-15th books were of public law, the 16th one was of church law. The creation of the Theodosius Code pursued a certain purpose, one of which was to meet the informational needs of legal practice within the framework of implementing of the program of law certainty [6, p. 231].

The most notable achievements of legal science, along with elaboration of the systematization rules, are constitutionalism, justification for the separation of powers and the rule of law. Modern legal science should aim at identifying the conditions, opportunities and limits of mutual influence of legal systems, finding legal mechanisms for overcoming conflicts.

Thus, generalization of empirical historical and relevant material of innovative nature leads to the conclusion that novation in law is an update of

legal matter, that is, the value-normative content and form of law, its system or structure, or the way of its creation, realization, protection and provision. Innovation in law is a legal novelty, introduced in the course of law innovation itself as a certain system, which is accompanied by a positive change in state of legal regulation and entails improving the quality of the legal system. Innovation in law should become a tool that will solve complex theoretical and practical issues that arise when creating a fundamentally new legal regulation.

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