

# THE IDEA OF THE RULE OF LAW IN THE VIEWS OF ANDRI TCHAIKOVSKY

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**Annotation.** The purpose of this research is to study the idea of the rule of law in the views of the prominent Ukrainian lawyer, social and political activist Andri Tchaikovsky. Based on the study of his educational, scientific-journalistic and political-legal activities, the views and participation of the activist in the struggle of the Ukrainian people for their rights, which were constantly violated by the local Polish administration, are shown. It has been proven that A. Tchaikovsky, due to his legal education and legal practice, had the necessary qualifications to provide legal assistance to the Ukrainian population, thereby restoring trust and respect for the law. It is advisable to consider the lawyer's views on the system of the rule of law in two planes, where the first relates to the formation, which took place through scientific and journalistic activity, and the second – through the implementation of practical activities. The methodological basis of the research is a system of general scientific and special legal methods that provide a comprehensive consideration of the idea of the rule of law in the views of A. Tchaikovsky. With the help of historical-legal, systemic-structural, comparative-legal and formal-legal methods, the researched question was considered in the statics and dynamics of its development, the logic and sequence of the processes of formation and development of A. Tchaikovsky's views were properly reproduced. The results. The main forms of reflection of A. Tchaikovsky's views were his practical activity, which manifested itself through his advocacy, as a result of which was the provision of legal assistance to the population, often on a free basis, active social activity through collective and individual discussions, speeches at rallies and popular veche, as well as the creative heritage of the figure, a significant amount of which is written on a wide source base and reveals the conceptual issues of the researched issues. Conclusions. Investigation the idea of the rule of law in the views of A. Tchaikovsky gives reasons to state the significant role of the lawyer in the sphere of protection of the rights and freedoms of the population. His legal orientations and life position contributed to raising the Ukrainian national question to the public and provided an opportunity to develop the legal foundations of the native people's struggle for self-determination, to develop legal mechanisms in the field of protecting their rights and freedoms.

**Key words:** rule of law, Andri Tchaikovsky, lawyer, legislation, human rights.

## 1. Introduction.

At the current stage of the development of the state and law, there is an opportunity to turn to the study of persons who directed their activities to protect the rights and interests of their native people, were activists in the development of Ukrainian statehood. They saw the proper development of the state only under the condition of ensuring the rule of law, observance of human rights and freedoms. Based on the above, the study of the views of the outstanding Ukrainian lawyer, social and political figure A. Tchaikovsky seems to be extremely relevant for understanding the peculiarities of the state-building processes of the past and establishing their influence on the development of modern Ukrainian statehood.

## 2. Analysis of scientific publications.

The investigated problems became the object of scientific interest of a significant number of famous scientists, among them: T. Andrusyak, I. Andruhiv, P. Arsenych, M. Baidak, Z. Gren, E. Durnov, I. Karpova, O. Makovey, N. Mysak, M. Petriv, O. Sedlyar, I. Franko, B. Yakymovych and others. However, scientific interest in this topic is constantly growing, therefore there is a need for further comprehensive studies in this area.

## 3. The aim of the work.

The purpose of the article is to study the idea of the rule of law in the views of the outstanding Ukrainian lawyer, social and political activist Andri Tchaikovsky.

## 4. Review and discussion.

The figure of Andri Tchaikovsky is one of the key in Ukrainian political and legal opinion. Thanks to his active civic position, he made a great contribution to the national awakening of the Ukrainian people and the education of Ukrainian youth in a patriotic spirit. In addition to his significant practical activity, the lawyer was an author of a number of publications where he explored the main features of the legal situation of the Ukrainian people, studied various areas of legislation, and analyzed the peculiarities of state and legal development in past historical eras. At the same time, he managed to combine such activities with legal practice, protecting the rights and freedoms of his native people. It is quite natural that the idea of the rule of law occupied a prominent place in the consciousness and activity of A. Tchaikovsky, who in theory and in practice was convinced of the need to observe legislation and human rights as the basis for the development of a free and independent society [8, c. 479].

In 1877, A. Tchaikovsky entered the Lviv University, where he received a law degree. He was an extremely conscious and patriotic student who started working at Prosvita from the second year of his studies [5, c. 62-63]. At the same time, he pays a lot of attention to social and political life and gradually becomes one of its leaders. This leads to the fact that in the ranks of Ukrainian patriotic societies, he and his associates managed to unite the famous figures of that time and focus their attention on the issues of freedom and unity of the Ukrainian people. He was one of the founders of the "Group of Lawyers", which was created under the "Academic Brotherhood" society in Lviv. It is typical that the society united prominent and talented legal students of that time, whose main goal was to protect the rights of the Ukrainian people. It was this idea that formed the basis of the activities of young lawyers, who over time became well-known lawyers and continued their activities in the direction of protecting the rights and freedoms of the population in accordance with the requirements of current legislation [4, c. 9-10].

A. Tchaikovsky's views gained practical realization during his practice as a lawyer. It should be noted that establishing one's own law office during the Austro-Hungarian period was not easy, but quite a real thing. It required a lot of effort and material costs [3, c. 130]. In 1884, Andri Tchaikovsky began his legal practice, mainly specializing in criminal cases. Before that, he completed an internship in Lviv at a well-known criminal lawyer at the time F. Yatskovskii, and later moved to the Berezhany city, where he worked in the office of lawyer I. Majeviskyi [7, c. 34-35]. Legal services at that time were in demand by the population, and it gave the lawyers themselves the opportunity to support their families [3, c. 130]. The lawyer opened his law office in 1890 in the Berezhany city [6, c. 156]. Later, he moved it to the Rohatyn, Skolje, and Sambor cities, and since 1919 it has been noted for its fruitful activity already in Kolomyia [2, c. 67].

During his legal career, he focused on protecting the rights and freedoms of Ukrainian peasants. At court hearings, especially when the cases acquired a political content, he repeatedly provided qualified legal services, which allowed him to defend the rights of ordinary citizens in their relations

with the administrative authorities. His professional qualifications, professional activity usually led to the acquittal of the defendant.

Paying attention to the practical side of performing an important lawyer's task, A. Tchaikovsky emphasized that every lawyer takes great responsibility for the fate of his client, who is often threatened with punishment by imprisonment. With this in mind, he emphasized that a lawyer should use all his professional skills and abilities to help people as much as possible. At the same time, he called for the unification of lawyers in defense of citizens' rights in various categories of cases. The lawyer considered the solidarity of lawyers to be the primary task of the entire human rights movement on the territory of Ukrainian lands at the end of the 19th century [11, c. 618].

In addition to working in a law office, A. Tchaikovsky traveled to various settlements, where he regularly spoke at meetings, communicating with villagers, providing them with free advice and legal advice. Wide public activity contributed to the creation of a number of public organizations, of which he was a co-founder. The figure delved directly into the essence of those realities in which Ukrainian society lived. Faced with the low level of legal awareness of the population, its poverty and difficult social situation.

Actively carrying out legal educational activities, the lawyer reflected the real state of human rights and freedoms in his writings. One of the important issues raised in the author's publications is the peculiarities of the judicial system at that time and the non-compliance with the rights of the peasants and townspeople of Galicia by the official authorities. In this context, he quite deeply analyzed the functioning of the local courts of that time, in particular in the matter of ignoring the natural rights and freedoms of the common people. As a way out of such a situation, he saw in legal education of the population, which should be carried out exclusively by competent specialists in the field of law.

He called on that the provision of legal aid should help a person to solve his primary issues. However, if help was provided by unqualified people, it could often harm a person in solving his daily problems. In particular, the lawyer focused on the procedure for submitting claims to the court. He categorically called on judicial institutions to publicly announce the day when citizens can submit oral complaints or appeals to the court. All this was connected with the fact that there were clearly not enough qualified lawyers at that time, and in connection with this, there was a real need to draw up procedural documents in practice. As it was noted by researcher T. Andrusiak: "we are talking about the personal reception of citizens by judges, about the duty of judges to explain to the parties their rights and obligations in both substantive and procedural law. The absence of such a mechanism, with an insufficient number of qualified lawyers and notaries and a high level of payment for lawyer and notary services, limited or even deprived the peasants and townspeople of the ability to effectively protect their rights and interests" [1, c. 308].

A. Tchaikovsky also paid special attention to the imperfection of the legislation of the time in the field of peasant land management. The above-mentioned problems are quite deeply reflected in his work "The Causes of the Impoverishment of Our Peasants in the Court", which was published in the newspaper "Dilo" in 1888 [6, c. 171]. The fact is that the imperfection of keeping land books, where land registers were displayed, led to mass crimes in society. The interests of the peasantry, who according to the legislation could not acquire the right to own land without a corresponding entry in the land book, suffered especially. Peasants did not understand the importance of the need for such a record, and therefore often did not register ownership rights to the land plot. Sometimes this problem led to the fact that the land was used by one owner, and according to the official land registers it belonged to another. As a result, this caused misunderstandings and disputes between the peasants regarding the payment of taxes, which led to appeals to the court.

It should be noted that the procedure for re-registration of the ownership of small plots was quite complicated and financially costly for the peasants. The procedure for registration of land inheritance and the transfer of ownership of a land plot from several owners to one was also quite confusing. All this in the complex led to mass lawsuits on land issues, and cases of this type were considered by the courts sometimes for several years. A. Tchaikovsky saw the solution to this situation in the reduction of the fee for applying to the court, the creation of the institute of land surveyors in the system of county courts, the reduction of the cost of payment for the re-registration of the ownership on small



plots of land, the strict observance of all laws that would guarantee the rights and freedoms of the peasant population.

It worth to be noted that the figure was regularly published in the pages of periodical legal publications of the time, among which the "Law Journal" should be singled out. In 1897, he publishes on its pages a scientific investigation in the field of law entitled "On the ancient Greek criminal process" [10]. Justifying the interest in the problems of the Greek criminal process, the author noted that the Greek law is insufficiently studied and little-known among society. He convinced that Greeks had a high cultural and educational level and were settled on the territory of the entire modern civilized world, and in many issues of social development they were ahead of other peoples [10, c. 409]. That is why Greek legislation deserves a separate comprehensive study. At the same time, the scientist saw difficulties in the insufficient number of sources, on the basis of which it would be possible to investigate all issues of ancient Greek legislation. Individual information on this issue could be found only in the documentary evidence of contemporary authors.

Analyzing the ancient Greek criminal process, A. Tchaikovsky believed that it became the basis for some elements of the modern criminal process. Using the example of the legislation of the city of Athens, he claims the dependence of procedural law on the tasks and goals of the state. Since civil liberty was the main idea not only of legislation but also of social order in general, it is quite obvious that the main task of the state was to ensure the freedom of every citizen [10, c. 410]. The author established that the criminal process in Athens was based on the rights of access of citizens to justice. In this context, he paid special attention to ensuring the rule of law. Studying this issue in detail, the author established that there were two types of court proceedings in Athens: a private proceeding, when the case was initiated at the request of the injured party or its legal representative, and a public proceeding, which was initiated by state authorities or by the request of a full-fledged citizen, regardless of whether there were his rights are violated or not.

Among the scientific achievements of A. Tchaikovsky, a separate topic is dedicated to highlighting the heroic struggle of the Ukrainian Cossacks for their rights and statehood. All of them were aimed at increasing the patriotic consciousness of Ukrainian citizenship and forming a positive attitude and pride in the historical past of the Ukrainian people. In his work, he also paid great attention to the issues of observing human rights in their relations with the state legal system and judicial institutions. He emphasized that the unsatisfactory level of legal culture of wide social classes of Ukrainian society cannot ensure high-quality and equal interaction with administrative institutions, and does not contribute to the high-quality defense of the interests of ordinary people in court.

In his works, A. Tchaikovsky raises important legal, social and political problems of the life of the Ukrainian people [9, c. 127]. Special attention is paid to the legal status of women in society. He states that in some countries, low social status of women has a negative effect on their position and on society as a whole. Moreover, its rights and freedom are often ignored. He emphasized that for the democratic development of civilized countries, it is necessary to respect the rights of women because their high legal status is of great importance and influence on the development of the younger generation and the formation of civil society.

A. Tchaikovsky paid special attention to ensuring the rights and freedoms of citizens in the process of observing the election legislation. In the work "What everyone should know about the universal, equal, direct and secret right to vote" [12], which was published in 1905, it raises important questions regarding the definition of the terms constitution, elections, rights and duties of parliament, universal and equal voting. In the publication, the author, in the form of questions and concise answers, presents the important principles of electoral law, analyzes the issue of electing honest and worthy candidates, instructs the people on what to do in order to defend their interests. It is important that in this work A. Tchaikovsky managed to explain important state and legal problems in a short and accessible way for everyone.

The lawyer focused in detail on the characteristics of the electoral system at that time, which significantly ignored the rights and interests of the local population. The fact is that in the conditions of the non-democratic system of that time, it was practically impossible to observe the rights and freedoms of all sections of society. This is explained by the fact that each category of citizens,

depending on the specifics of the electoral district, elected a representative in the legislative body. Moreover, among the common population, the right to choose such representatives was limited, since only one representative was elected among them for hundreds people [12, c. 425].

At the same time, he argued that the ruling strata of the population were not interested in introducing universal, equal, direct and secret voting. A. Tchaikovsky explained this situation by the fact that lords and nobles, being within the walls of the Sejm, adopt such laws in order to limit the rights of poor citizens as much as possible. And as soon as the representatives of the common people begin to prevail within the walls of the Sejm, the dominant position of the nobles will be significantly limited [12, c. 427].

The lawyer considered the way out of such a situation to be the cancellation of the current voting system and the introduction of universal, equal, direct and secret voting. He emphasized that this is a matter for the entire Ukrainian people, since if this issue is not raised with the general public, the official authorities will not initiate any changes in this area, and the legislative system will remain without positive changes. It is especially important to convey this information to the level of ministries that have sufficient authority to resolve this issue [12, c. 428].

At the same time, A. Tchaikovsky explains the essence of the concept of “demonstration” and points out its importance for the population [12, c. 429]. It is typical that in this work the researcher easily and accessible explained complex state and legal issues for ordinary citizens and popularized legal knowledge among the common population. Illustrating the positive role of demonstrations, he emphasized that it provides a real opportunity to count the number of national conscious population, which in practice seeks the introduction of direct and free electoral expression of will, and which is able to unite among themselves for this purpose. It will also give the official authorities an opportunity to demonstrate how wide a range of citizens are in favor of reforming the electoral legislation and will contribute to the implementation of practical steps to resolve this issue [12, c. 429].

## 5. Conclusions.

A. Tchaikovsky belongs to the extraordinary lawyers of the late 19th and early 20th centuries who left a significant mark on the public and political life of Ukraine. His views on the role and significance of the rule of law in society enriched not only legal practice, but also based on the analysis of various aspects of different population strata life, contributed to the strengthening of the Ukrainian people legal consciousness, created prerequisites for the struggle for political freedoms and improvement of the economic condition of the people, legal methods within the framework of the constitutional system of the Austro-Hungarian Empire.

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