

## РЕЦЕНЗІЇ / REVIEWS

UDC 340.114(4)''-004/16''  
DOI 10.24919/2519-058X.21.246906

### **Ihor BOIKO**

*PhD hab. (Law), Associate Professor, Head of Department of History of the state, law and political law teachings, Faculty of Law, Ivan Franko National University of Lviv, 1 Universytets'ka Street, Lviv, Ukraine, postal code 79000 (boyko.ist@ukr.net)*

**ORCID:** 0000-0002-6841-0271

### **Mykola KOBYLETSKYI**

*PhD hab. (Law), Associate Professor, Head of Department of Administrative and financial law, Faculty of Law, Ivan Franko National University of Lviv, 1 Universytets'ka Street, Lviv, Ukraine, postal code 79000 (afl.dep.law@lnu.edu.ua)*

**ORCID:** 0000-0003-0365-8513

### **Igor BOЙKO**

*доктор юридичних наук, професор, завідувач кафедри історії держави, права та політико-правових учень Львівського національного університету імені Івана Франка (м. Львів), вул. Університетська, 1, м. Львів, Україна, індекс 79000 (boyko.ist@ukr.net)*

### **Микола КОБИЛЕЦЬКИЙ**

*доктор юридичних наук, професор, завідувач кафедри адміністративного та фінансового права Львівського національного університету імені Івана Франка (м. Львів), вул. Університетська, 1, м. Львів, Україна, індекс 79000 (afl.dep.law@lnu.edu.ua)*

### **FORMATION OF LEGAL TRADITIONS IN UKRAINE AND EUROPEAN STATES WITH A FEDERAL SYSTEM (THE Vth CENTURY BC – THE XVIIth CENTURY):**

**A NEW VIEW (review of the monograph: Tsvietkova Yu. V.**

**Legal tradition of religious tolerance in European states with a Federal System (the Vth century BC – the XVIIth century). Kyiv: Talcom, 2020. 512 p.)**

### **СТАНОВЛЕННЯ ПРАВОВИХ ТРАДИЦІЙ В УКРАЇНІ ТА ДЕРЖАВАХ ЄВРОПИ З ФЕДЕРАТИВНИМ УСТРОЄМ (V ст. до н. е. – XVII ст.): НОВИЙ ПОГЛЯД**

**(рецензія на монографію: Цвєткова Ю. В. Правова традиція релігійної толерантності в державах Європи з федеративним устроєм (V ст. до н. е. – XVII ст.). Київ: Талком, 2020. 512 с.)**

Nowadays, the return of religion to a legal, national life, global politics and international relations is accompanied by the need to increase religious tolerance in the spiritual and moral sphere of life. Focusing on the history of religion in Ukraine, in particular the formation of

religious tolerance, awakens a national pride, forms spirituality and historical memory, the role of which in the development of the Ukrainian state is very significant.

The reviews of the monograph by Yu. V. Tsvietkova: *The Legal Tradition of Religious Tolerance in European States with a Federal System (the Vth century BC – the XVIIth century)* were written by V. M. Palchenkova in “*The Prykarpattia Legal Bulletin*” (Palchenkova, 2020, pp. 195–196), O. F. Melnychuk in “*The Legal Bulletin*” (Melnychuk, 2020, pp. 213–215), N. Korchak in the scientific and practical, economic and legal journal “*The Entrepreneurship, Economy and Law*” (Korchak, 2020, pp. 441–442).

The monographic research by Yu. V. Tsvietkova under the title: “*Legal Tradition of Religious Tolerance in European States with a Federal System (the Vth century BC – the XVIIth century)*” is topical in the issue of religious tolerance formation in Ukraine and foreign countries (Tsvietkova, 2020). The monograph deals with the origin and development peculiarities of the legal tradition of religious tolerance under the conditions of local residence in the pre-modern and early modern states of the Western law tradition of certain ethno-religious groups. In the monograph there is substantiated the connection between the legal tradition formation of religious tolerance and the presence of the representative bodies of these ethno-religious groups, representing their interests, their own legal mentality, religion, which differs from the generally accepted in the state. Much attention is focused on the historical and legal characteristics of the development of federalism in pre-modern and early modern states. In the monograph there have been considered the legal regulation mechanisms of religious relations in these multi-religious state spaces; there have been analyzed the constructive and destructive effects of the legal tradition of religious tolerance and its implementation in social and state development. Substantiating the relevance of the topic of the monograph, the author emphasizes rightly that the achievement of political stability and legality in the field of legal regulation of religious relations depends on the correct emphasis in solving the problem of religious tolerance mechanisms, taking into consideration the fact that religion in the history of law and the state has always been and remains the factor that can unite or, on the contrary, split the society.

All of the above mentioned issues indicate the indisputable topicality and timeliness of the peer-reviewed monographic study of Yu. V. Tsvietkova. Relevance of the topic of the monograph by Yu. V. Tsvietkova is also characterized by the fact that in modern Ukraine it is important to take into account the historical, national, legal experience and to use the results of scientific research to improve the current legislation of Ukraine. The topic of the monographic study, chosen by Yu. V. Tsvietkova is relevant, important and useful for the national, historical and legal science, and therefore deserves approval and support.

The analysis of the peer-reviewed monograph gives grounds to claim that the author has formed the structure of her research successfully. The monograph by Yu. V. Tsvietkova consists of introduction, 4 chapters, 15 subsections, conclusions, a list of sources used, appendices. The monograph corresponds to the nature of historical and legal research, as well as the problem-chronological principle of historical and legal material presentation.

In Chapter I “*Conceptual and Terminological Apparatus and Research Methodology*” there is a thorough description of the application of methodological approaches and methods of the study, the conceptual apparatus and theoretical foundations of the nature and functions of the legal tradition of religious tolerance are defined.

The monograph by Yu. V. Tsvietkova is based on a systematic and sophisticated methodological basis. The author’s methodological concept of the peer-reviewed monographic work deserves support. The author’s work in this direction can be taken into account in the

discussion on the periodization of the history of the state and law of Ukraine, concerning which there is a lively discussion among historians of law. In general, the correct use of methodological tools, the correct attitude to the scientific achievements of predecessors and reliance on primary sources ensured the overall reliability of the results of the peer-reviewed study.

In the monograph the author's concept of the legal tradition of religious tolerance is considered and its nature is described in the historical and legal dimension. The author "based on an ideal-realistic approach to understanding the law tested the hypothesis about the nature of the legal tradition of religious tolerance as a contractual consensus principle in non-organized legal communication in the field of religious relations in the Western tradition of law, its rational teleology, evolution, connection with natural law and the subsidiarity of power, which are the main factors in the legal tradition formation of religious tolerance".

The author gives her own definition of the legal tradition as the unity of historically formed, critically meaningful collective experience of legal activity. The meaning of the concept of "legal tradition of religious tolerance" is successfully elucidated through the dialectics analysis of the basic concepts relation of "legal tradition", "religious tolerance", which are included into the concept of "legal communication".

The doctrine of the legal tradition of religious tolerance elaborated by Yu. V. Tsvietkova allowed to substantiate and suggest the conception according to which "the law-making reflection of a legal communication is focused on the concepts of the society agreement, people's sovereignty, protection of ethno-religious minorities and the influence of the society on the state's policy on the regulation of religious relations". The peer-reviewed monograph is valuable for innovative developments of scientific and legal definitions, in particular the author's concepts. Thus, in this chapter the author identifies and analyzes the connection of the legal tradition of religious tolerance with the concepts of "federalism" and "legal mechanism" successfully. There was also suggested the author's conception of the so-called "pre-modern federalism" as a paradigm of the state for the cognition of nature and the legal tradition formation of religious tolerance". The author argues that the principle of subsidiarity in federalism from balance and consensus to achieve "unity in diversity" of higher and local state bodies and ethno-religious communities of the federal states of Antiquity and the Middle Ages is extrapolated in modern European society into the paradigm of finding optimal models of relations between the state and religious organizations and the fundamental principles of their pluralism, democratic principles of the society organization, people's sovereignty and self-determination of nations".

The provisions of Chapter II of the monograph "Formation of the Legal Tradition of Religious Tolerance in Relation to Local Religions of the Federations of Ancient Rome" should be recognized as a positive point in the peer-reviewed work, in which in comparison with the existing historical and legal literature, comprehensively and objectively there have been analyzed "objective and subjective factors of the genesis and evolution of the legal tradition of religious tolerance in the system of the Western tradition of law – the Roman law. The author of the peer-reviewed monograph expresses interesting reflections that "during the republican and early imperial eras the legal tradition of religious tolerance was established in the field of private law, and this legal tradition acquired a systemic character due to the separation of jurisdiction in the regulation of religious relations between the central authorities and the local authorities". Its teleological aspect manifested itself in its role in the centripetal processes of the state building through the elimination of the religious *casus belli* in relations with the subjects".

It should be expedient to mention the author's analysis of the influence of the ancient form of government on the nature formation of the legal tradition of religious tolerance. Interesting are the definitions of the features of ancient "federalism", in particular "the asymmetric and contractual nature of the territory formation of the state as a condition for ensuring effective control over the annexed territories and optimizing the regulation of religious relations by federal authorities; asymmetry of the federation; frequent changes in the territorial composition of the state; individuality of approaches and legal mechanisms for the regulation of social relations in each of the annexed territories; combination of polis model and model of territorial organization of Asian type; the institute of revision of certain conditions or general texts of *foedus* treaties, according to which joined state or tribal entities were annexed, and the variability of legal terminology that defined legal phenomena and institutions".

The author's achievements include a thorough analysis of the peculiarities of the legal tradition transformation of religious tolerance under the conditions of the proclamation of the state religion in the Roman Empire (the IVth – the VIth centuries).

This chapter focuses on the analysis of the legislation norms on the religious relations regulation (edicts of Galerius, Constantine, Constantius II, Julian, Theodosius, Alaric, Hunerich, Theoderich, etc.), the treaties with federates and law enforcement practices. The author succeeded in finding out the facts of serious inconsistencies and contradictions in the imperial legislation on religious issues, fundamental differences in the competence of the imperial authorities depending on the status of the territories in the asymmetric federation and attempts to transfer the regulation of religious relations from the private law to the public law sphere".

The most successful are the provisions of Chapter III of the peer-reviewed monograph "Formation of the Legal Tradition of Religious Tolerance Regarding the Federal Subjects' Religions of the Grand Duchy of Lithuania and the Commonwealth", in which at the appropriate scientific and methodological level there was elucidated "the regulatory role of the legal tradition of religious tolerance in the legal mechanism taking into account the peculiarities of the legal regulation of local mass religions in the lands of the Grand Duchy of Lithuania and the Commonwealth with different legal status of the subjects of the federations". The author successfully determined the influence on the development of the legal tradition of religious tolerance the presence of these states on the border of the western and eastern traditions of law; its significant role in centripetal and centrifugal processes; the connection of its formation with the treaty and subsidiary principles of federalism and foreign policy factors.

A thorough description of the "legal consolidation of the principle of tolerance under the conditions of religious pluralism of the Grand Duchy of Lithuania" is the indisputable advantage of the monographic work of Yu. V. Tsvietkova. The author generalizes the historical experience of legal observance of religious parity and tolerance in the polyreligious space of legal communication of the Grand Duchy of Lithuania during the XIVth – the XVIth centuries, and its role as a factor in intensifying centripetal or centrifugal tendencies in the state was determined".

A positive feature of the peer-reviewed monograph is a thorough analysis of legal sources, norms that regulated religious relations: "The Krevsk Union of 1385 (The Union of Krewo), Vilnius Privilege of 1387, Privilege of 1492, The Treaty of Kraków of 1525, Pacta Subiectionis of 1561, Vilnius Privilege of 1563 and the others; chronicle narratives, etc". The author elucidated the ways used in the law-making technique of the highest authorities of the Grand Duchy of Lithuania to regulate religious relations: a permissive way, which guaranteed freedom of religion of a particular local area religion; a blanket way – when,

in an effort to avoid conflicts and aggravations, the legislator postponed the adoption of direct regulation norms or delegated them to other entities; a discriminatory way – in which legal norms restrict or prohibit a particular religion. In the latter case, the legal phenomena of natural law prevailed over the conceptions of normativism: the practical implementation of the legal tradition of religious tolerance, which enshrined in the legal consciousness of the population of federal entities, in fact, nihilized the legislative initiatives of the higher legislature, when they were in conflict with local customary law.

Analyzing the legal sources, the author revealed “the regularity which consists in the fact that formation of the legal tradition of religious tolerance occurs in close connection with the federal state and legal mechanisms, according to which ensuring the practice of a non-state religion of the local majority population was guaranteed by local representative or appointed bodies”.

In the monograph by Yu. V. Tsvietkova “characteristic features of the principles transformation of the legal tradition of religious tolerance under the conditions of the domination of the state religion in the Commonwealth have been analyzed comprehensively. There have been determined the features of political and legal regulation of interfaith relations in the Commonwealth in the context of the influences of Western and Eastern traditions of law. The normative acts regulating religious relations have been analyzed: the blanket norms of the Lublin Act of 1569, the Act of the Warsaw Confederation of 1573, numerous religious acts of the kings of the Commonwealth and the others. In the regulation of religious relations there is the implementation of the experience and law-making techniques of the Grand Duchy of Lithuania, the success of which appeared at the territories of the federation of the Commonwealth with a developed system of local representative bodies supported by the population and had a strong influence on the national decision-making”.

Chapter 4 “Evolution of the Legal Tradition of Religious Tolerance of the Subjects of the Holy Roman Empire of the German Nation)” is a significant scientific result of the study of Yu. V. Tsvietkova, in which owing to the use of a wide source base there have been elucidated the conditions for the legal tradition of religious tolerance transformation from the local legal case of the Czech Kingdom through the reception of Roman law on the *conditio sine qua non* existence of the legal system and the state of the Holy Roman Empire of the German nation.

The author described thoroughly the influence of the Holy Roman Empire on the legal ensuring of religious tolerance. Yu. V. Tsvietkova substantiated that the structure of the Empire corresponded to the conceptual features of the pre-modern federation.

At the appropriate scientific and methodological level the author highlighted “the features of consolidating the legal tradition of religious tolerance as a phenomenon of legal communication during the period of Confessionalization. Yu. V. Tsvietkova analyzed successfully the imperial legislation of 1555 – 1648, which finally legitimized Protestantism, focusing further legal activities on clarifying the rights of the rulers of individual entities to establish a certain denomination at their territory”.

In the monograph “the models institutionalization of state-religious relations in the context of modern European legal doctrine of religious tolerance have been analyzed. The emphasis has been focused on the interrelation of the legal tradition of religious tolerance with the conception formation of the human rights through the emphasis transfer from community rights to the guarantee and protection of individual rights”.

The monographic study of Yu. V. Tsvietkova ends in logical and thoughtful conclusions that determine its relevance and a proper scientific level.

In general, the above mentioned items single out such positive features of the monograph by Yu. V. Tsvietkova as topicality, scientific novelty, practical significance, methodological validity

and accessibility for reception. At the same time, the monograph, like any really important creative work, provokes a number of reflections, opens a wide space for scientific discussion. In this review it is necessary to dwell on some specific controversial provisions, statements that require additional argumentation, comments and suggestions to the author, in particular:

1. The author characterizes the Roman Empire as a federation. This thesis is controversial, because in the works of many researchers, the Roman state is characterized as the empire, not federation. It is common knowledge, federation (in Latin *foederatio* – association, union) – it is a form of state system in which the territorial units of the state have a certain legally defined political independence, which differs from the administrative, territorial units of a unitary state. The constituent parts of the federation are a kind of state-like formations, which are called the subjects of the federation, and the territory of the federation consists of the territories of its subjects. Further explanation is needed: how does the author give arguments concerning federativeness of the Roman state at different stages of its development?

2. In the monograph modern legal terms are used too often: “legal regulation”, “state and political development”, “legal principles”, etc. Such imposition of modern terminology on legal relations and legal institutions of the period under study does not seem entirely appropriate. In our opinion, it would be appropriate to dwell on the use of terminology of that time, explaining the meaning of terms not in the text, but in a separate terminological glossary (forming it as a separate appendix to the monograph).

3. Some remarks concern the presentation of individual monographic provisions. Thus, the author supports the idea of a two-vector influence of the legal phenomenon of religious tolerance on the processes of state building, considering it both as a centripetal and centrifugal factor of development. This approach provokes some discussions about the dogma recognized in European jurisprudence about the unconditionally positive (for the state and society) guarantee of the maximum amount of human and civil rights and freedoms. In this context, the issue of the current difficult situation in Ukraine cannot but arise. It was necessary to explain the possible solutions to complex religious problems in modern Ukraine additionally.

4. In the conclusions to the monograph it would be interesting to suggest useful ideas for improving and enhancing the effectiveness of current legislation of Ukraine on freedom of conscience and religious organizations; to determine the main priorities of modern religious policy of Ukraine, etc. The monograph seems to represent an old-fashioned view, and there is no way to the present period of time, and there are no recommendations, suggestions.

5. In our opinion, insufficient attention is paid to the judicial practice of the Grand Duchy of Lithuania and the Commonwealth. The cases of ecclesiastical and secular courts contain rich material for historical and legal research of religious relations in these states. The use of this rich material could additionally illustrate the author’s thesis about different approaches to religious diversity on the territories of the Grand Duchy of Lithuania and the Commonwealth. The author of the monograph should have used archival materials of the Central State Historical Archive of Ukraine and other archives, which would have allowed to highlight certain aspects of the legal tradition formation of religious tolerance in the federal states of Europe (the Vth century BC – the XVIIth century) at the appropriate scientific level. However, taking into account the fact that the monograph is of a complex historical and legal nature, we should note that the study of archival materials, in our opinion, would increase the scientific and practical significance of the peer-reviewed study.

The remarks made are caused by the complexity of the study of the issue, and do not affect the overall positive assessment of the monographic study of Yu. V. Tsvietkova significantly, as

they are mainly debatable. This allows us to conclude that the peer-reviewed monograph by Yu. V. Tsvietkova is an interesting, relevant, independent, complete creative scientific research. The publication of this monograph is an extraordinary positive phenomenon in Ukrainian, and possibly in European – historical and theoretical jurisprudence. Therefore, it would be worth dreaming about the possibility of translating the monograph by Yu. V. Tsvietkova into English.

#### BIBLIOGRAPHY

**Korchak, N.** (2020). Retsenziia na monohrafiu Tsvietkovoï Yulianny Volodymyrivny “Pravova tradytsiia relihiinoï tolerantnosti v derzhavakh Yevropy z federatyvnym ustroiem (V st. do n.e. – XVII st.)” [Review of the Monograph by Tsvietkova Yulianna Volodymyrivna “Legal Tradition of Religious Tolerance in European Countries with a Federal System (the Vth century BC – the XVIIth century)”]. *Entrepreneurship, Economy and Law*, 7, 441–442. doi: 10.32849/2663-5313/2020.7.74 [in Ukrainian]

**Melnychuk, O. F.** (2020). Retsenziia na monohrafiu Tsvietkovoï Yulianny Volodymyrivny “Pravova tradytsiia relihiinoï tolerantnosti v derzhavakh Yevropy z federatyvnym ustroiem (V st. do n.e. – XVII st.)” [Review of the Monograph by Tsvietkova Yulianna Volodymyrivna “Legal Tradition of Religious Tolerance in European Countries with a Federal System (the Vth century BC – the XVIIth century)”]. *Law Bulletin*, 12, 213–215. doi: 10.32850/LB2414-4207.2020.12.28 [in Ukrainian]

**Palchenkova, V. M.** (2020). Retsenziia na monohrafiu Y. V. Tsvietkovoï “Pravova tradytsiia relihiinoï tolerantnosti v derzhavakh Yevropy z federatyvnym ustroiem (V st. do n.e. – XVII st.)” [Review of the Monograph by Yu. V. Tsvietkova “Legal Tradition of Religious Tolerance in European Countries with a Federal System (the Vth century BC – the XVIIth century)”]. *Subcarpathian Law Herald*, 2(31), 195–196. doi: 10.32837/pyuv.v0i2(31).592 [in Ukrainian]

**Tsvietkova, Yu.** (2020). *Pravova tradytsiia relihiinoï tolerantnosti v derzhavakh Yevropy z federatyvnym ustroiem (V st. do n. e. – XVII st.)* [Legal Tradition of Religious Tolerance in European Countries with a Federal System (the Vth century BC – the XVIIth century)]. Kyiv: Talcom, 512 p. [in Ukrainian]

*The article was received April 05, 2021.*

*Article recommended for publishing 24/11/2021.*