

LEGAL CONSCIOUSNESS IN CONTEMPORARY LEGAL DISCOURSE: NEW PHILOSOPHICAL UNDERSTANDING

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ABSTRACT

The article presents the critical analysis of legal consciousness theory that takes place in modern Russian jurisprudence. The authors consider the structure and the types of legal consciousness, singled out by the majority of domestic jurists, and note an obvious need to revise a number of important philosophical and legal provisions regarding the nature, the manifestations and the practical significance of legal consciousness in the mechanism of legal regulation and the national legal system as a whole. The main provisions of the article will be applied in various studies on the legal consciousness of an individual and society, legal mentality, legal culture, conducted by Russian and foreign experts.

Keywords: *sense of justice, legal culture, legal mentality, legal outlook, legal ideology, legal psychology, legal values, legal emotions, legal ideas, state.*

INTRODUCTION

It seems obvious that the legal science of the XXIst century has to be revised, a new rethinking of the nature and the specificity of the relationship between legal and spiritual (religious, moral, etc.) ideas, national legal customs and legal guidelines is necessary [1]. This is also important in terms of legal regulation effectiveness achievement and the protection of public relations and the interests in preserved nation-states (despite the crisis of the Westphalian system of international relations), and in the context of maintaining a stable legal order and for a number of other reasons. Moreover, in the modern world, in view of the most diverse dynamic political and economic processes, there is a real danger of mass psychological crises, which means that there is an obvious instability of group and individual consciousness in the understanding and the maintaining of social life foundations: legality, justice, the legal order of the most important public relations, humanism [3]. In this regard, it is possible and necessary to speak about a special role of legal consciousness in the national and world political and legal field, and therefore about the importance of its research, the revision of existing positions concerning its nature, species and functions.

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N.M. Korkunov in his work "The General Theory of Jurisprudence" noted that the psychological processes of individuals living in the same socium, ethnic, political and legal field are interconnected, despite the fact that their bodies are separated in space ("an extra-spatial form of psychological processes"). This determines the various political, legal, socio-economic and spiritual-moral processes in public life.

METHODOLOGY OF SCIENTIFIC RESEARCH

The studies in the field of legal consciousness theory, legal mentality and legal outlook were carried out within the framework of various humanities. It is necessary to single out the works by E.A. Anufriev, N.I. Biryukov, G. Butul, Yu.G. Volkov, A.Ya. Gurevich, G.G. Diligensky, V. Diltey, P. Dinzelbacher, E. Durkheim, J. Carbonier, D. Levinson, L.V. Lesnaya, A.N. Okara, A.S. Panarin, I.K. Pantin, V.M. Rosin, N.E. Tikhonova, M. Fucco, G. Hofsted, R. Emerson, and others.

The study of legal consciousness, legal culture and legal mentality has always been the focus of attention of such experts in legal anthropology, as I.Ya. Bahoven, A. Garapon, L. Levy-Bruhl, K. Levi-Strauss, B. Malinovsky, N. Roulan, G.J. Samner-Men and others. A great contribution to the development of the theory of national sense of justice was made by the representatives of classical Russian legal and philosophical thought. The works by N.N. Alekseev, A.D. Gradovsky, I.A. Ilyin, K.D. Kavelin, P.I. Novgorodtsev, N.P. Pavlov-Sil'vansky, I.L. Solonevich, L.A. Tikhomirov et al. are of undoubted value. The works of domestic authors presented not only the theoretical but also the methodological aspects of legal consciousness content study, its specifics in Russian and foreign state-legal and social-legal space, under the conditions of different sociocultural spaces [4].

Modern research of legal consciousness is based on the combination of general methods (dialectical, hermeneutic, etc.), general scientific methods (historical, logical, analogy, system-structural, sociological, mental measurement, genetic reconstruction, etc.) and special methods of essential and other attribute comprehension, manifestations and legal awareness functions (comparative legal, historical and legal, etc.) [5].

MAIN PART

It is indisputable that the main role in the perception of law belongs to the individual and collective consciousness, aimed at the search of an optimal existence mode. It is a man endowed with the will, capable of conscious activity in the sphere of law, through his legal self-determination, who plays the role of a participant and the root cause of legal relation emergence. A person's need for order, for the observation of the rules that ensure and guarantee his life, reproduction determines the law, the law in society, in history and in spirit. In this regard, it is difficult to doubt that the theme of human consciousness as an important factor not only in the understanding of law (doctrinal aspect), but in law-making and the implementation of law (a practical or an applied aspect) in modern jurisprudence requires fundamental research.

It is difficult to argue that legal consciousness is one of the central categories of the modern theory of law and state, understood by us as a basic legal science, and as a compulsory one for the training of a lawyer of an academic discipline. If we look attentively at the place and the meaning of "legal conscience" concept in the modern theory of law, and even within the framework of branch jurisprudence, we can see a number of points:

- 1) Russian jurisprudence in the matters related to the "human element" of the national legal system, first of all uses the category of "legal conscience", which, by and large, has become a kind of starting point for the development of more complex (first of all, because of their poor study) concepts at first sight: legal culture, legal mentality, legal archetype, legal outlook, etc.
- 2) the problem of legal consciousness structure (all the same as in the Soviet period of national jurisprudence development) is solved ridiculously simply, namely through the allocation of such its components as legal psychology and legal ideology, the detailed consideration of which makes clear

that this is nothing more than two levels or kinds of the sense of justice: the ordinary one (called for some reason the legal "psychology") and the doctrinal professional one (called "legal ideology"), therefore, they can't be its "structural elements" simultaneously.

3) Moreover, proceeding from the nature, the essence of human consciousness, and consequently, the sense of justice, as its special ("tied" to the legal sphere) kind, it is unlikely that both legal psychology and legal ideology can be considered as the "elements" of the legal consciousness. Most likely, this is a kind of "scientific metaphor" that was formed in the Soviet and later the post-Soviet theory of the state and law, most often completely uncritically perceived by the modern scientific community.

Such a kind of uncriticality in relation to the structure, and thus to the essence of legal consciousness, can be associated first of all with some "oblivion" of the very theme "consciousness" in the legal community. And, of course, there are reasons for this: in Soviet (Marxist-Leninist) philosophy, the problem of "consciousness" (apparently the first and the most complex in this field of human cognition) was solved very simply, which in no way stimulated the scientific search by the lawyers themselves, who used, as rule, ready-made philosophical schemes, the postulates that they have developed, the criticism (in I. Kant's opinion - criticism is "the search for grounds") had no sense, and no possibility (philosophy in socialist humanitarian thought had "directional", and, of course, ideological, i.e., predominating origin).

However, even relying on this "philosophical official narrative" in this issue, an obvious impossibility of "legal ideology" and "legal psychology" recognition as the structural components of legal consciousness is striking.

For example, A.G. Spirkin wrote: "How can you define consciousness? Consciousness is the highest function of brain that is unique to people and connected with speech, consisting in a generalized and a purposeful reflection of reality, in the preliminary mental construction of actions and the foreseeing of their results, in rational regulation and self-control of human behavior through reflection ... Under consciousness we mean the ability of an ideal reflection of reality, the transformation of an objective content of a subject into the subjective content of the psychic life of a man ... " [6. p.78].

Of course, this definition is not any new view on the nature of consciousness; it repeats the conceptual developments in general, already available in Soviet philosophical discourse, but its heuristic significance for legal consciousness problem solution is, first of all, that the categories of "human behavior self-control" and "reflection" come first. And one and the other are important, of course, for the legal "sector" study in the field of human spirituality, and consequently, the legal consciousness. Actually, legal consciousness is the product of reflexion process concerning a legal reality subject surrounding a man.

If we consider legal consciousness more scrupulously, then it is necessary to plunge into the process of this term, and this concept evolution.

"This concept received a rather positivistic interpretation in the domestic (Soviet) legal science, in the traditions of which it is seen as a set of feelings, moods, theories, ideas, views, etc., in which people's attitude to the law and to the newly created by legal norms is expressed". [7. p. 178]

However, understanding legal consciousness in this way, we mean only the mental projections of the reflected objects - legal norms, institutions, different legal processes - more or less adequate, or distorted. All this reduces the sense of justice to a usual psychological process and, ultimately, to the problem of actually existing normative-legal (material or procedural one) reality reflexion.

This interpretation can not lead to the discovery of one's own cultural meaning of sense of justice, since this meaning is much deeper than the usual reflective process, it is complex (often, it is of a non psychological nature in general) and therefore should be considered in several aspects (historical, national, civilizational), and also can not be reduced to the usual subject-object relations of a reflex nature.

In general, some doubts about the content and the structural specifics of legal consciousness are also traced among a number of Soviet experts, which generates the situation of "agreement absence" on this issue.

"Law as an objective factor is reflected in the mind of a person, becomes a sense of justice and in such a state determines his actions" [8. p. 389]. In some cases, the sense of justice includes "the views

of classes, other social communities, as well as individuals on the law, their relationship to it, in others - legal relations are also considered as the subject of legal consciousness reflection. The approach according to which the basis of all types of social consciousness reflection is social being as a whole, the whole variety of social life is more fruitful" [9. p.34]. Hence, the goal of the sense of justice, which "consists in the fact that a certain system of political organization of society corresponds to a certain order of social relations" [10. p. 90].

Against this theoretical and methodological background, it does not seem casual that a number of Soviet researchers does not consider it is necessary to distinguish legal awareness from other forms of social consciousness, interpreting it, for example, as "a part of moral ideas" [11], while others treat it as "moral and political in its social nature" [12. p. 123]. Often, legal consciousness was not distinguished at all as a special form in the Soviet legal discourse, but it was viewed as a very specific "kind of political views" [13. p.310].

Such interpretations of the sense of justice are not accidental at all, they are completely consistent with the basic principles (in particular, with the principle of reflection expressing a materialistic approach to the problem), and with the whole arsenal of methodological tools that the Marxist-Leninist jurisprudence possesses, meet the set ideological attitudes of its time and therefore should in no way be diminished or categorically rejected.

However, it is also obvious that modern research on various problems of legal consciousness must undergo significant changes related to the necessary renewal of legal consciousness theory, and therefore, first of all, the categorical apparatus by which lawyers usually describe this most important phenomenon in any legal family [14].

In this context, it is necessary to realize clearly that consciousness in general and legal consciousness in particular is always an internal dialogue. It follows from this that any communications in the legal field, for example, legal relations are mediated by this internal dialogue. Moreover, the internal dialogue arising in the course of legal reflection is the basis of personal (subjective) interpretations of national law norms, the content and direction of articles of laws that take place in practice (judicial, notarial, investigative one, etc.). It should be borne in mind here that such "conscientious" interpretations never occur in a mental "vacuum", but are always nationally (or ethnically) defined, and therefore value-weighted.

Among the representatives of one legal field, legal values, legal outlook, legal feelings (also an important element of legal consciousness) if not the same, if not coincide are very close at least (this is often seen, for example, in the selection of a legal conflict resolution way - judicial, mediation. This can be judged by the attitude of most members of society to such legal institutions as elections, jurymen, local government, censorship, etc.). Most often people from different legal worlds have the differences in the assessment and the understanding of many basic components of the legal system as a whole (for example, in the interpretation of private life values, the institution of right and freedom restriction, etc.).

Nevertheless, in the first and the second case, the legal relationship as the most common form of legal communication is the clash of different interpretations of legal norms, legal facts, legal institutions, the acts of implementation (application) of law, etc. Only in the second case of the identified above ones we deal with a clash of different legal cultures, which, of course, greatly aggravates the process of different legal interpretation collision, causes their conflict (it is necessary to evaluate the methodological value of the well-known work by P. Riker "The Conflict of Interpretations"). This kind of approach to the nature and the significance of legal consciousness in the national or supra-national legal (or value-legal) space stimulates the task of its research update at the beginning of the 21st century, overcoming the theoretical basis in this field of jurisprudence that prevailed in the Soviet period.

CONCLUSIONS

First, legal consciousness should be understood only through the reflection of legal reality (which is often lost in modern legal discourse); Secondly, the structure of legal consciousness is by no means exhausted via the usual concepts (legal ideology and legal psychology, as was mentioned above), but it should include legal emotions, legal values, legal images (positive or negative ones), legal ideas that can become the basis of different legal concepts, the logical element of which is closely associated with legal thinking, its content and style. In this respect, it is understandable that, for example, R. Descartes did not use the term "consciousness" at all and identified it with thinking.

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