

Social and Legal Conditionality of Deformation of Professional Legal Consciousness of Lawyers

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ABSTRACT

Structural elements of legal consciousness of lawyers can be deformed under the influence of various factors, which creates adverse consequences for the individual, the state and society. Law enforcers have the ability to reduce the impact of certain deforming factors, to prevent the risk of professional burnout, if the choice of professional legal activity (profession) will correspond to their moral ideas.

Keywords: professional legal consciousness, deformity, legal activities, professional burnout, the factor

The deformation of professional legal consciousness did not occur at once. Lawyers, like other members of society, are affected by the external environment: a huge variety of economic, political, and cultural factors influence the formation of rational ideological, social and psychological, and behavioral elements of legal consciousness or awareness.

The formation of legal values and standards of legal behavior continues throughout the whole of our lives. A person acquires skills and learns standards of normative behavior, learns the first legal regulations in the process of games, reading fairy tales, and gradually develops his or her own picture of legal life in a simplified form since childhood.

Further on, people pick up behavioral models in the process of special education — legal education: by way of targeted influence, professional legal knowledge, skills and competencies are formed¹.

Elements of legal awareness have not been fully formed in modern society, they are unstable, which contributes to reinforced trends for illegal behavior, even upon a slight aggravation of the social and economic situation. Social relationships in the human society are largely based on morality. The population that lawyers work with does not generally possess legal knowledge, and therefore, an action undertaken within the legal space is perceived as unusual and forced one for subjects of trivial daily legal awareness; realization of rights and interests by individuals is complicated.

Ongoing economic crises cause adverse effect on the formation of legal consciousness. The following regularity can be discovered: the ongoing economic crises cause an adverse effect on the formation of legal awareness (inter alia, on the professional one).

Such problems are recognized by the government and reflected in the Order of the Government of the Russian Federation No. 1662-r of November 17, 2008 (version dated February 10, 2017) “On the Concept of long-term social and economic development of the Russian Federation for the period up to 2020”: “The effectiveness of institutional changes depends on the extent to which the adopted legislative norms are supported by the effectiveness of their application in practice. A substantial gap has been created in Russia between the formal norms (laws) and informal norms (real behavior of economic subjects), which is reflected in the low level of administration of justice and in the tolerant attitude to such conduct from the side of the government, business and the wide masses of population, that is, in legal nihilism. Such situation substantially complicates the formation of new institutions, including those required for the development of the innovative economy”.²

Therewith, the “deformation of legal awareness” itself may be perceived by subjects of law (by legal profession due to the education obtained), but the subjects of law perceive their “abnormal perception of law and deviant behavior in the field of law” as a way of adapting to the complex unfavorable environment.

It is most dangerous when disrespectful attitude to the law is demonstrated not merely by subjects of trivial legal consciousness, but also by some particular officers responsible for law administration (law

¹ Bredneva V. S., Khudoykina T. V. The Limits of the Concept “Professional Legal Awareness Deformation” from the Psychological and Legal Perspectives // The Limits of the Concept “Professional Legal Awareness Deformation” from the Psychological and Legal Perspectives. // ESPACIOS. 2018. Vol. 39. No. 27. PP. 1–7. Available at: <http://www.revistaespacios.com/a18v39n27/18392701.html> (accessed 10.08.2019).

² On the Concept of the long-term social and economic development of the Russian Federation for the period to 2020 (together with “the Concept of long-term social and economic development of the Russian Federation for the period to 2020”): order of the Government of the Russian Federation dated No.1662-r November 17, 2008 (version dated February 10, 2017).

enforcement). Researchers noted a long-term trend towards deformation of professional legal awareness, which is manifested in the formation of criminal attitudes and orientations.³

For the period from 2011 to 2016 investigators verified about 200 thousand reports of corruption crimes. About 120 thousand criminal cases were opened. Nearly 50 thousand criminal cases were referred to courts for trial. 3,360 persons having a special legal status under chapter 52 of the Code of Criminal Procedure of the Russian Federation were brought to trial as accused in corruption-related crimes. Among the accused persons were 1,113 heads of municipalities of local administration authorities, 1,133 deputies of local authorities, 395 investigators and heads of investigative bodies, 286 lawyers, 82 prosecutors, 58 deputies of legislative bodies of the subjects of the Russian Federation, and 23 judges.⁴

Another problem is that in Russia, the level of compulsory execution of judgements does not exceed 52%.⁵

It becomes obvious that a society in which the rules of law are violated by public officials, state officers, state authorities, representatives of the government, cannot be convinced of the expediency and usefulness of prescriptions of law.

The deformation of professional legal awareness in various forms is manifested in increasingly pronounced manner, in particular, in the criminalization of multiple areas of society life, preventing the formation of the effective legal system in the state. A high level of legal awareness of the individual implies a negative attitude to the violation of law and order, to violation of the subjective rights and freedoms of citizens.

It should not be assumed that the deformation of professional legal awareness is specific for domestic legal profession only. Similar issues are raised in scientific papers published in English language.⁶

In many legal systems, a lawyer is traditionally seen as a client's advocate. The task of the subject of professional legal awareness is only representation and protection of the client without analyzing whether the behavior of the represented person is right or wrong, moral or immoral. It is assumed that the arguments are to be evaluated by court.

This comprehension of the lawyers' role ignores the issue of to what extent the personal interests of the represented person should affect the professional behavior of lawyers. Consequences of behavior of lawyers who defend the interests of clients, contrary to their morals and will are rarely analyzed in the scientific papers. Psychologists describe multiple mechanisms of the resulting deformation of legal awareness in such case.

There is a mechanism for "attitude support" of a contradictory position — these are unintended, subconscious effects, changes in rational and ideological, emotional elements of legal awareness, occurring in the process of persuasion of other people.

If a lawyer presents arguments contradicting his personal views, nonverbal forms of communication, communicative behavior may express such doubts beyond the will of the lawyer. The lawyer's arguments become more persuasive if he or she shares the beliefs expressed in the speech delivered. A special subject who defends a position will attempt to find all the possible arguments to support his/her position and to impair the value of the other party's arguments.

A subject of professional legal awareness subconsciously seeks to achieve consistency of all his/her views and opinions. When an inconsistent thought is expressed, a person experiences an unpleasant psychoemotional state caused by the internal conflict. To avoid this discomfort, the lawyer will seek to

³ Saulyak O. P. Legal Nihilism as an Invariant of Domestic Legal Consciousness [Pravovoi nihilizm kak invariant otechestvennogo pravosoznaniya] // Russian Justitia [Rossiiskaya yustitsiya]. 2009. No. 9. P. 3; Fedorenko M. P., Stepanov K. V. To the Issue of the State of Legality and Discipline in the Light of the Requirements of the Appeal of the Minister of Internal Affairs of Russia to the Employees of Internal Affairs Bodies [K voprosu sostoyaniya zakonnosti i distsipliny v svete trebovaniy obrashcheniya Ministra vnutrennikh del Rossii k sotrudnikam organov vnutrennikh del] // Bulletin of the Yuzhno-Sakhalinsky branch of the Far Eastern Law Institute Ministry of Internal Affairs of the Russian [Vestnik Yuzhno-Sakhalinskogo filiala DVYUI MVD Rossii]. 2005. No. 2. PP. 3–7. (In rus)

⁴ Kozlova N. Alexander Bastrykin: the Investigative Committee of Russia is Extremely Tough on Bringing to Criminal Liability for Corruption Crimes [Aleksandr Bastrykin: SKR predel'no zhestko podkhodit k privilecheniyu k ugolovnoi otvetstvennosti za korruptsionnye prestupleniya] // Russian Newspaper [Rossiiskaya gazeta]. 24.07.2016. Federal issue [Federal'nyi vypusk] No. 7030 (162). (In rus) Available at: <https://rg.ru/2016/07/24/bastrykin-ochishchenie-riadov-sk-i-drugih-vedomstv-prodolzhitsia.html> (accessed 10.08.2019).

⁵ On the Federal target program "Development of the Russian judicial system" for 2007–2011 period: Order of the Government of the Russian Federation No. 583 of September 21, 2006, Moscow.

⁶ Chemerinsky E. Protecting Lawyers from their Profession: Redefining the Lawyer's Role, 5 J. Legal Prof. 31 (1980) Available at: <https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=3808&context=facpubs> (accessed 10.08.2019); Helm L. Mental Health and Legal Profession: a Preventative Strategy. Law Institute of Victoria Ltd. P. 67 Available at: <https://www.liv.asn.au/PDF/For-Lawyers/Member-Benefits-adn-Privileges/MentalHealthReportSummary.aspx> (accessed 10.08.2019); Susan S. Silbey. Legal Culture and Legal Consciousness, Editor(s): James D. Wright. International Encyclopedia of the Social & Behavioral Sciences (Second Edition), Elsevier, 2015, PP. 726–733. Available at: <https://doi.org/10.1016/B978-0-08-097086-8.86067-5> (accessed 10.08.2019).

reduce the contradiction and to find a balance. In logical terms, this situation will be presented by the following formula: I believe Y, but I represent the person who is not Y.

Psychologists determine many variables resulting in the probability of changes in attitude to the situation and to behavior. For a lawyer, these may be different incentives, variations in the interpretation of legal and moral norms, which will enable a person to change his/her behavior to make personal views and beliefs matching the professional position.

Sometimes a lawyer has to make a lot of effort to justify his/her work, especially if the subject understands that his/her actions may cause harm to public or to the environment. For example, a lawyer who adheres to the concept of environmental protection but is forced to represent the industry in a confrontation with regulatory authorities who oversee environmental protection, will have to make great efforts to justify himself/herself by choosing devious methods of persuasion.

The more effort is spent on "attitude support", the more internal conflicts and subsequent self-persuasion effort will develop.

When a lawyer accepts a professional task conflicting with his personal view, he becomes a hostage of the situation, being temporarily motivated to think through all the positive arguments and to suppress thoughts about the negative aspects. This psycho-behavioral mechanism increases the possibility for adopting a new position that was previously regarded unacceptable.

A number of authors believe that emotional attitudes determine behavior.⁷ Accordingly, the emotional and psychological elements of professional legal awareness determine behavioral ones.

Therefore, the lawyer is likely to adopt a new view on the legal system, and this will affect the professional behavior. Researchers admit the fact that it is difficult for people to choose one thing and believe in another one. In the end, either the relative action will be commensurable with the views (for example, where the lawyer refuses to handle the case, which he/she recognizes to be immoral), or the lawyer will change his/her views. In some particular instances, the amount of the fees may be a decisive factor. The role of the state and educational institutions is to convince lawyers that they should not engage in professional practice, if it is immoral, does not correspond to the views of the subject, and is in conflict with essential moral values.

Apart from the aforesaid, to overcome the deformation of professional legal awareness, the lawyer must choose those areas of activities that minimize the likelihood of obtaining clients whose retainer will force the lawyer to trigger the "attitude support" mechanism.

The commitment undertaken by a special subject to himself and to his/her personal views must prevail. The choice of basic values and ideas is formed along with the experience gained in the process of manifestation of multiple social activities and predetermines a person's behavior in the future. Such fundamental beliefs constitute the integral part of self-realization and self-determination.

The choice of the line of specialization in professional activity should not be determined by occasional factors. If the lawyer's role is considered solely in serving the interests of other subjects, then the personal beliefs and professional behavior of the lawyer will change subconsciously, intrapersonal conflict will develop, and the deformation of professional legal awareness will increase.

This approach may seem selfish, but it is targeted on protection of mental and physical health of legal profession and on overcoming the deformation of legal awareness. A legal practitioner merely preserves his/her personal views and his/her inner self. Such approach guarantees that a lawyer will not work against his/her idea of the ideal kind of society.

Refusing to give arguments, for example, for support of non-compliance with health safety standards or fire safety rules, the lawyer thereby helps the society.

The social role of lawyers is protection of socially important relationships and maintenance of law and order.

The views of lawyers should be fully formed and clear for the employer and clients, moral and legal contradictions should not arise in the process of legal work as they may create a working conflict and risks of criminal liability for the lawyer. For example, in a situation where a lawyer is admitted to a position with the employer to resolve corporate problems and is requested to register limited liability companies forming questionable financial schemes.

Legal systems of different countries and society itself are based on the idea that a person actually has the freedom to choose different alternatives among values and beliefs. These provisions are established in constitutions and international legal acts.

Even in the above example of a lawyer protecting the industry from liability, has alternative options for justifying the decisions made. We cannot say that the environmental situation is one of the unimpor-

⁷ Daryl J. Bem, H. Keith McConnell. Testing the Self Perception Explanation of Dissonance Phenomena, 74 *Journal of Personality and Social Psychology*. Vol. 14. No. 1. PP. 23–31. 1970. Available at: <http://dx.doi.org/10.1037/h0020916> (accessed 10.08.2019).

tant factors in the formation of ideas and behavior. But it is quite possible to assume a scenario where a lawyer in the system of hierarchy of his/her individual values may consider it more important to preserve the only city-forming enterprise and protection thereof from initiated bankruptcy.

Values may be formed as a result of upbringing, education, and under the influence of a relative social environment, but this does not mean that it is necessary to allow all formed values to fully control the professional activity of the subject. The main idea is to make every effort and to choose what is objectively suitable for the subject of professional legal awareness.

Where this principle is implemented in practice the following question is raised: who will represent unpopular views? And what course of conduct should be undertaken by those lawyers who, by virtue of article 49 of the Code of the Criminal Procedure of the Russian Federation⁸ are not authorized to reject the undertaken obligation to protect a suspect or the accused?

As for lawyers, it is possible to agree with the proposition to amend the Code of the Criminal Procedure of the Russian Federation and permit to reject such representation.

In conditions of high competition in the market of legal services, it appears to be unlikely that there will be problems arising with such representation. Even if no lawyer can be found who would sincerely approve the client's actions, there are likely to be lawyers who will be neutral in their evaluation of the situation, who will see their task in commensurable and fair punishment, in satisfying the client's rights during the investigation and trial, rather than in acquittal of the accused.

On the other hand, no one can be formally sure, what is good and what is bad from a legal point of view until the facts are established by the court.

Therefore, the deformation of legal awareness is predetermined by unfavorable economic factors. In general, the traditional role of a lawyer emphasizes obligations to clients, the employer, and the legal system. Therewith, the problem of the lawyer performing professional duties in conflict with his/her own beliefs is omitted in the legal doctrine and practice. Such a situation causes a deforming effect on the legal consciousness of lawyers, causes negative changes in rational and ideological, emotional, and behavioral elements.

Based on the research performed, lawyers are encouraged to choose professional activities based on their own moral views in order to overcome the deformation of professional legal awareness. Revision of the currently established approach to professional duties of a lawyer at various levels will improve the efficiency of legal activity and will make it possible to achieve a higher social result.

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⁸ Code of the Criminal Procedure of the Russian Federation of 18.12.2001 No.174-FZ (version dated August 2, 2019).