

Correlation of the Concepts of “Legal Culture” and “Legal Mentality”

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ABSTRACT

The article contains a theoretical and methodological analysis of the structure and typology of legal culture as a social phenomenon. The author compares the various positions of modern scholars on this issue, explores the varieties and social forms of legal culture. The article attempts to scientifically analyze the elemental composition of legal culture, with special attention paid to discussion issues, in particular, the concepts of legal mentality and legal awareness.

Keywords: legal culture, elemental composition of legal culture, typology of legal culture, legal awareness, legal mentality, legal psychology, legal affairs, legal practice

As world practice shows, much attention is currently paid to the legal culture which forms the basis of the rule of law and legality regime in the society. Being a complex multidimensional category culture is of great importance for the society, since it plays the role of a linking bridge between generations, contributes to the development of a person's capabilities and the formation of his personality. Culture is a social regulator, as it influences various spheres of practical activities.

Legal culture is a complex and global phenomenon within the legal sphere, therefore, analyzing this phenomenon, it is necessary to use a system approach. In our opinion, the study of the structure of legal culture is necessary in order to get an insight into the essence of this institution being a qualitative indicator of the state of the legal life of the society.

The structure of legal culture is actively discussed in legal literature. For example, V. P. Salnikov identifies the following structural elements of legal culture which are components of legal reality: “law, legal awareness, legal relations, legality and legal order, lawful activities of subjects”¹.

According to the author, two types of activities can be distinguished in the active side of legal culture:

- a) activities directly in the legal field;
- b) activities related to the operation of law (literature, cinema, journalism, etc., which one way or another reflect legal feelings, assessments and ideas).

The content of legal culture also includes the level of development of legal awareness, legality, and legal order. Many authors, in particular M. N. Marchenko, also include¹ legal science, criteria of political assessment of legal behavior and law, as well as legal institutions ensuring legal control, law enforcement and regulation into the structural elements of legal culture². In addition, one can also identify the level of development of the system of legal documents³ in the structure of legal culture.

Let us list the elements of legal culture identified by A. P. Semitko⁴:

- 1) development of legal affairs;
- 2) level of development of the legal awareness of the population (the level of assimilation of legal values and awareness);
- 3) degree of perfection of legal acts of various types.

In our opinion, L. A. Morozova holds quite a controversial position, according to which legal mentality and legal culture can be equated⁵. In particular, L. A. Morozova's assertion that legal culture is a way of thinking, a norm and a standard of behavior, and the legal mentality of the society which is a broader concept is generally debatable for the following reasons.

For a more precise understanding of the above thesis, let us turn to reference literature. According to the interpretation proposed by the Explanatory Dictionary of the Russian language by S. I. Ozhegov and N. Yu. Shvedova, mentality is defined as the state of mind⁶. The word “mentality” comes from Lat. “mens” which is mental disposition, mind, thinking. The word “mentality” is usually understood as

¹ Salnikov V. P. Legal Culture // Actual Problems of the Theory of Law / Ed. K. B. Tolkacheva and A. G. Khabibullina. Ufa, 1995. P. 152.

² Marchenko M. N. Theory of State and Law. M., 1996. P. 8.

³ Sociology of Law / Ed. V. M. Syrykh. M., 2001. P. 225.

⁴ Semitko A. P. The Concept and Structure of the Legal Framework, Its Role in Legal Behavior // Problems of the Implementation of Law: Interuniversity Collection of Scientific Papers. Sverdlovsk, 1990. Pp. 112–116.

⁵ Morozova L. A. Theory of State and Law. M. 2002. P. 371.

⁶ Ozhegov S. I., Shvedova N. Yu. Explanatory Dictionary of the Russian Language. M., 2003. P. 350.

a certain deep level of collective and individual consciousness which includes the unconscious. This concept reflects the attitudes and predispositions of a social group or individual to think, act, perceive the world in a certain way. Since a person lives in a specific social environment, assimilates the culture and traditions of the society, this affects the formation of the mentality of the individual. In its turn, mentality influences culture and social environment.

As noted by D. V. Menyaylo, there is an organic unity between legal mentality and legal thinking, legal awareness, legal worldview. This unity is manifested in the interaction of legal mentality and legal thinking, and legal worldview⁷.

The unity of legal awareness and legal mentality is similarly considered by V. N. Sinyukov in whose opinion "the category of mentality reflects a deeper layer of social awareness". According to the author, mentality is a kind of "spiritual and mental system of the people"⁸. V. N. Sinyukov expresses a rather controversial position equating legal mentality with legal culture. He believes that legal mentality is a variety of legal phenomena forming legal culture (legislation, legal affairs, etc.), therefore, it is broader than legal awareness.

A similar position is taken by I. A. Ivannikov who also equates legal mentality with legal culture in terms of structure and content⁹.

We believe that at present there is a need for a separate study devoted to the content and correlation of the categories of "legal culture" and "legal mentality", since legal mentality influences the behavior of certain social groups and individuals, plays the role of a regulator in the lawmaking process. To understand the regularities of the state-legal Russian reality, it is necessary to pass it through the "prism" of legal mentality.

Thus, based on the above, it may be concluded that mentality is a concept organically related with the category of awareness, and awareness is an element of the general culture of the society and the individual. Having projected this conclusion on the problems of the elemental composition of legal culture, one can come to the following conclusion: legal mentality is both an element of legal culture and a determinant factor of the dynamics of the level of legal culture.

After analyzing all the components of legal culture that are highlighted in the scientific literature, we can present its elemental composition in the following enlarged form:

- 1) legal awareness and legal mentality;
- 2) legal affairs;
- 3) legal acts.

Thus, it is necessary to consider the principles and initial prerequisites for the formation of the concept of "mentality" in the theory of legal culture in detail.

The encyclopedia of political science defines "mentality" as a political and journalistic, generalized concept that has a figurative and metaphorical meaning. In a broad sense, this term denotes a specific make-up of mental qualities and properties, manifestations and specific features¹⁰.

The concept of "mentality" initially meant the presence of a special "psychological tooling", certain general "mental instruments" of representatives of a particular society, which was interpreted as a socio-cultural and national-ethnic community of people allowing to be specifically aware both of themselves and their social and natural environment¹¹. Later the term "mentality" was used to describe the specific features and properties of political consciousness and self-consciousness, the organization of political and social psychology of people in a generalized form.

According to D. V. Menyaylo¹², all the existing definitions of "mentality" can be conditionally divided into three groups. The first group consists of paradigms characterizing this term as a complex of archetypal, unconscious, collectively unconscious elements. The definitions making up the second group are focused on the mental sphere which is determined by the totality of ideas, attitudes, images, values: conscious elements. The third group includes definitions with the emphasis on closely interacting, conscious and unconscious structural components.

⁷ Menyaylo D. V. Legal Mentality: Abstract of Dissertation for the Degree of Candidate of Legal Sciences. Volgograd, 2003. P. 7.

⁸ Sinyukov V. N. Russian Legal System. Introduction to the General Theory. Saratov, 1994. P. 180.

⁹ Ivannikov I. A. The Concept of Legal Culture // News of Higher Educational Institutions. Scientific and Theoretical Journal, 1998. No. 3. P. 41.

¹⁰ Political science: Encyclopedic Dictionary. General editorship and compilation by Yu. I. Averyanov. M., 1993. P. 175.

¹¹ Salnikov V. P. Op. cit. P. 181.

¹² Granat N. L. Legal Awareness and Legal Education // General Theory of State and Law. Academic Course. T. 3 / Ed. M. N. Marchenko. M., 2001. P. 303.

The phenomenon of “legal mentality” has been studied by a few authors, but in general, all definitions of this concept have much in common. The authors basically define legal mentality as a set of legal attitudes of the collective, group, community and individual that form a program of activities, an internal plan in legally significant situations¹³.

According to V. N. Sinyukov’s definition, “legal mentality” is a category reflecting the complex morphology of the individual and social consciousness which denotes all the phenomena of legal culture: sign, symbolic, figurative, positive and non-positive. As understood by V. N. Sinyukov, the category of “legal mentality” expresses a multi-layered, composite phenomenon¹⁴.

As defined by A. I. Kovalenko, “legal mentality” is a stable worldview, the state of mind of a certain class, social group, people, nation and other community on the law and state, components of the legal system, a special vision of the role of political and legal reality in public life.

All of the above definitions of “legal mentality” are correct, but the most successful, in our opinion, is the definition of legal mentality proposed by D. V. Menyaylo¹⁵. The author defines legal mentality as a complex of specific historically established worldview responses, ideas, to objects of the state-legal reality. These ideas are typical, stable for a certain national-ethnic community. This definition contains the main, essential feature of the concept of “legal mentality” which includes various structural components: legal attitudes, stereotypes, ideas, value and legal orientations.

Let’s consider the content and essence of the following element of legal culture: the category of legal awareness.

Legal awareness is a form of social consciousness that predetermines and motivates human behavior, reflecting the objective needs of social development. There are several forms of consciousness as a reflection of social relations: philosophical, religious, legal, political, aesthetic consciousness.

Legal awareness has specific features that make it possible to consider it a relatively independent phenomenon. L. A. Morozova highlighted the following specific features¹⁶:

- 1) legal awareness reflects the legislation, legal practice: state-legal phenomena constituting the legal sphere of public life;
- 2) the state-legal reality is reflected in the following ways: through legal traditions and customs, legal categories and concepts, legal constructions, etc.;
- 3) legal awareness reflects the trends in the development of social relations, which evidences the ability of legal awareness to anticipate reflection of the legal reality;
- 4) legal awareness is closely related with other forms of social consciousness, especially with moral consciousness. The content of legal ideas and views are moral and ethical foundations and guidelines: concepts of humanism and justice, equality of all people, etc.;
- 5) legal awareness influences the reforms, social processes and transformations: it can slow down or, on the contrary, boost these processes. This is manifested, in particular, in the fact that if the legal awareness of the population lags behind social needs, large social groups may fail to understand and support the progressive legal reforms.

According to P. P. Baranov, legal awareness is a system of legal ideas and attitudes, emotions and feelings, assessments and ideas which are an expression of the attitude of members of the society both to the current law and legal practice, and to the desired law, to legal practice¹⁷.

A similar definition of the concept of “legal awareness” is proposed by N. L. Granat who writes that legal awareness is a special area or form of human consciousness, “an ideal phenomenon, not directly observable”¹⁸. According to the author, being an area or form of consciousness, legal awareness reflects the legal reality in various forms. N. L. Granat lists the following forms of reflection of legal reality: “legal knowledge, legal attitudes, assessment of law and legal practice, value orientations of people manifested in the activities and behavior of people in situations that are legally significant”¹⁹.

T. V. Sinyukova also writes about legal awareness as a set of feelings and ideas that express people’s attitude to law (effective or desired). The author writes that legal awareness is a very independent, integral phenomenon that needs to be studied as a special object of the theory of law, since through legal awareness the theory of law “comes out” to questions about the genesis and essence of law,

¹³ Salnikov V. P. Op. cit. P. 183.

¹⁴ Salnikov V. P. Op. cit. P. 189.

¹⁵ Menyaylo D. V. Op. cit. P. 7.

¹⁶ Morozova L. A. Op. cit. P. 373.

¹⁷ Baranov P. P. Legal Awareness and Legal Education // General Theory of Law / Ed. Babaeva V. K. N. Novgorod, 1993. P. 475.

¹⁸ Granat N. L. Op. cit. P. 309.

¹⁹ Ibid.

the cultural specifics of legal regulation which is inherent in one or another civilization, as well as to questions "about the causes of the emergence of social pathology, crime and other forms of deformation of legal behavior"²⁰.

All the approaches to the definition of the essence of legal awareness considered above evidence that this concept is very complex, specific and ambiguous.

According to A. P. Semitko, the legal culture of the society primarily depends on the level of development of the citizens' legal awareness, how well the population of the country is informed in matters of law, whether people have mastered the main phenomena of law, such as the value of human freedoms and rights, the value of legal procedures in resolving disputes, etc. The attitude of the population to the law, judicial institutions in emotional terms is very important. It should be noted that the population is diverse in terms of social, age, educational, professional and other criteria. According to A. P. Semitko, everything listed above is "the first element of legal culture"²¹.

As S. S. Alekseev emphasizes, "legal culture is, first of all, "qualitatively intense "legal awareness"²². This refers to the level of development of the sense of law and legality, understanding of law, knowledge of laws, the degree of faith in law.

Being a complex socio-psychological phenomenon, legal awareness has its own internal structure. It is generally recognized that the structure of legal awareness consists of two main elements: legal psychology and legal ideology. Some authors highlight the behavioral element of legal awareness²³.

Legal psychology as a reflection of the routine, everyday life of people related with legal practice is a set of established and developing conscious and unconscious psychological states in the form of legal feelings, emotions, experiences, habits, desires, expectations, claims, expressing the specific attitude of individuals, groups, collectives, society as a whole to law, laws, legal norms, to all phenomena of legal reality and determining the formation of the necessary motives, models, stereotypes of the forthcoming legal behavior in real life situations for each individual as a subject of law.

As written by V. I. Shepelev, legal psychology is the most accurate criterion for assessing the attitude of a person to the components of legal practice and the legal system. It is within the framework of legal psychology that each individual reveals his true attitude to legal phenomena, shows the ability to critically perceive specific laws and legal norms, to square his behavior to them²⁴.

N. L. Granat calls legal awareness "a focal point accumulating in itself all mental states, properties and processes that manifest themselves in a specific legal behavior precisely as a result of value orientations and legal attitudes"²⁵. The main role here is assigned to legal psychology.

An important property of legal psychology was noted by T. V. Sinyukova: "... Legal psychology is the most profound sphere of legal reflection "hidden" from direct perception and understanding"²⁶, being the source of the emergence of the response of the public and the individual to legislation, law. This is what often determines whether the implementation of certain legislative programs will be successful or unsuccessful. Problems may arise in the implementation of a new legislation if the population does not psychologically perceive certain permissions as socially justified, and certain prohibitions as really necessary. T. V. Sinyukova emphasizes that the legal psychology of the population must not be ignored, since this can lead to the failure of certain state measures that are socially useful "from the point of view of the social goal (combating moonshining, certain illegitimate traditions and customs, etc.)"²⁷.

In our opinion, all of the above leads to the following conclusion. There is a current need to conduct social and legal studies of the state of the legal culture and awareness of the population: to study the level of prestige of the law, legal knowledge of the population and other components of the complex of legal attitudes, beliefs and feelings characterizing the attitude of social groups, individual citizens to the existing laws and legal phenomena.

Many legal reforms currently being carried out in Russia, management decisions are ineffective precisely because they were adopted without correlation with the legal awareness of the people, social group, and individual. According to V. M. Syrykh, the importance of the scientific research is in the fact that the rich empirical material obtained allows carrying out a theoretical analysis of the most important

²⁰ Barulin V. S. Social Philosophy. Part 1. M., 1993. Pp. 233–237.

²¹ Semitko A. P. Op. cit. P. 117.

²² Alekseev S. S. Law. Complex Research Experience. M., 1999. P. 270.

²³ Theory of State and Law / Ed. V. M. Korelsky and V. D. Perevalova, M., 2000. P. 341.

²⁴ Shepelev V. I. Legal Awareness and Legal Culture / Theory of State and Law. M., 2003. P. 495.

²⁵ Granat N. L. Op. cit. P. 304.

²⁶ Sinyukova T. V. Legal Awareness and Legal Education // Theory of State and Law / Ed. N. I. Matuzova, A. V. Malko. M., 2001. P. 613.

²⁷ Ibid.

problems related with the mechanism of legal regulation²⁸. The author notes that only by understanding the legal feelings and emotions of the population, the legal psychology of the individual and social groups, one can take account of the role of legal psychology in the development of legal norms and increasing the efficiency of legal regulation of legal institutions, individual branches of law²⁹.

Let us list the factors that most accurately convey the content of legal psychology which need to be given special attention:

- the nature of the assessment (negative or positive) of the laws in force;
- the degree of solidarity with the principle based on the recognition of the high social value of laws and the law;
- orientation and degree of legal activity of the individual in the legal sphere;
- the presence of an attitude towards lawful behavior;
- motives of the desire to act in accordance with the law and the laws in force

Legal ideology is the cognitive side of legal awareness. Let us present the definition of legal ideology given by L. N. Granat: "Legal ideology is a systematized scientific expression of legal requirements, principles, views of the society, various strata and groups of the population"³⁰.

A similar position is held by V. I. Shepelev. In particular, he writes: "Legal ideology is a system of legal views, opinions, ideas, principles, judgments, concepts, teachings, theories that form and manifest themselves at the level of strata, groups of the population, society as a whole and characterize the legal system, legal reality and practice and their individual components"³¹. As a phenomenon of a higher cognitive and informational level, legal ideology fills legal psychology with the necessary content, gives it a more conscious and purposeful character, which enables an individual to more accurately orient oneself in real life circumstances mediated by legal regulations.

The intellect-based legal ideology introduces worldview-theorized principles into the sensory-emotional sphere of legal awareness giving the latter a state of an integral, socially significant legal phenomenon. At the same time, legal ideology can carry both positive and negative potential. This does not mean that under the active influence of legal ideology, legal emotions and feelings lose any meaning and are of a derivative nature. Being components of legal psychology, a relatively independent part of legal awareness, emotions, feelings, experiences are the factors, criteria that clearly confirm the actual attitude of the subjects of law to certain sides, elements of the legal system, and are a kind of guideline as to what adjustments should be made to the theory and practice of legal spheres of public life. The foregoing means that legal psychology also has a fairly noticeable effect on the content of legal ideology and on legal awareness in general.

Concerning the views on the behavioral element of legal awareness, O. F. Skakun writes: "Legal behavior is the volitional side of legal awareness which is a process of translating legal norms into real legal behavior"³². Legal behavior consists of the elements that determine its nature (direction): these are legal attitudes, motives of legal behavior.

In our opinion, however, V. I. Shepelev³³ is right writing that identification of the behavioral element of legal awareness is not entirely convincing, since legal psychology and legal ideology presuppose that through comprehension of attitudes and assessment of the legal reality the person will simulate the direction and nature of the forthcoming legal behavior to a certain extent. The entire content of legal awareness is practically permeated with the behavioral element. It follows from this that legal behavior is an independent activity element of legal culture.

Let's move on to considering the concept of legal practice. There are several views on this topic in Russian jurisprudence. Let us analyze three of the currently existing opinions on the essence of the concept of "legal practice". Some authors, including I. Ya. Dyuryagin, V. Knapp and A. Gerloch, believe that the concepts of "legal practice" and "legal activities" are identical. Other authors, in particular S. I. Vilnyansky and S. S. Alekseev, believe that legal practice should be limited from legal activities, since the latter is a relatively independent phenomenon to which the objectified experience of legal activities refers.

In our opinion, it is advisable to consider the types of legal practice in complete unity of legal activities and social and legal experience formed on their basis. This position makes it possible to correctly reflect the dialectics of legal activities, to accurately determine the elements of the structure of legal practice, to determine the significance of social- legal experience in the legal system of the society.

²⁸ Syrykh V. M. *Sociology of Law [Sotsiologiya prava]*. M., 2011. Pp. 401–404.

²⁹ Ibid.

³⁰ Granat N. L. *Op. cit.* P. 307.

³¹ Shepelev V. I. *Op. cit.* P. 497.

³² *Theory of State and Law / Ed. V. M. Korelsky and V. D. Perevalova*, M., 2000. P. 348.

³³ Shepelev V. I. *Op. cit.* P. 497.

Thus, we can give the following definition of legal practice. Legal practice is usually applied to the activities of people, in the course of which they influence social relations, transform these relations, as well as the accumulated social and legal experience.

The legal culture of the society is significantly influenced by law enforcement. This concept is usually meant to denote the power activities of competent officers and special bodies for the implementation of the rule of law, regulated by regulatory acts, laws, and other regulatory legal documents³⁴. Law enforcement activities of officers and state bodies should be carried out in strict compliance with the principles that are generally recognized in all countries of the world. The scientific literature on law lists the following principles:

- the principle of social justice;
- the principle of expediency and validity of decisions made³⁵.

V. M. Syrykh identified the following indicators of effective law enforcement:

- 1) social and legal goals are achieved simultaneously;
- 2) material costs are minimized;
- 3) achievements were made within a short time³⁶.

The same opinion is held by V. V. Lazarev who notes that law enforcement can be recognized as effective only if all goals are achieved "with the least damage to various social values, with the lowest economic costs, within the shortest possible time"³⁷.

Achievement of the goals of law enforcement is understood as the process of cognition and the formation of the will expressed as the state power decision in any particular case. V. V. Lazarev notes that "in itself, the linkage of general norms to a specific case is an organizing and creative matter, since it is related with an assessment of the law and the fact with account of the specific features of all elements of the factual composition (event, causation, guilt, etc.). with the need to determine specific persons responsible for the implementation of the law in this particular case, to determine the means of ensuring the right on the same basis, etc."³⁸.

An important element of the legal culture of the society is the level of perfection of the entire complex of normative legal acts being the result of the law enforcement and lawmaking activities.

If the society has a high level of legal culture, this means that a perfect system of legislation has been created in the country free of any contradictions and gaps, vagueness and ambiguity of norms and legal regulations, which excludes the arbitrariness of officials, bodies and the state.

Thus, having considered the problems of the elemental composition of the category of legal culture, the following generalizing conclusion can be drawn.

Despite the abundance of approaches to the problem of determining the content of legal culture, this category, according to the author, should be considered in the dialectical unity of its constituent elements: legal mentality, legal awareness, legal activities, the entire system of legal acts. Each of the elements has its own essential and substantial characteristics and properties. In addition, the activity components should be implemented in accordance with the fundamental principles considered by the author in this paper. The level of legal culture of the society is naturally dependent on the implementation of these principles in the practical activities of legal entities.

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³⁴ *Granat N. L.* Op. cit. P. 308.

³⁵ Problems of the Theory of State and Law. Ed. M. N. Marchenko. M., 2017. P. 116.

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