

On Legal Consciousness: Based on a Critical Analysis of Legal Literature

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Abstract:

This article is devoted to the classification of legal consciousness, which is based on a critical analysis of modern legal literature. The paper provides a reasoned author's view of the specified theoretical problem.

Keywords:

legal consciousness; classification; mass legal consciousness; group legal consciousness; professional legal consciousness

I. Introduction

The relevance of legal consciousness, on various aspects of which we previously paid attention [1; 2; 3;4; 5], is determined by the fact that it, as part of the national legal system, permeates all stages of the law-making process; influences the implementation of legal norms by citizens; plays an important role in law enforcement. Legal awareness is a kind of “filter” through which various factors that affect law are passed. At one time, the Soviet and Russian scientist Elena Andreevna Lukasheva emphasized that “legal consciousness, reflecting the objective conditions of social development, directs, regulates and coordinates the social practical activities of people, being transformed in the course of this activity, filled with new content”[6].

II. Research Methods

When preparing a scientific article, the following methods were used:

1. General philosophical (dialectical-materialistic), which is used in all social sciences;
2. General scientific (analysis and synthesis, logical and historical, comparisons, abstractions, etc.), which are used not only by the theory of state and law, but also by other social sciences;
3. Special methods (philological, cybernetic, psychological, etc.), developed by special sciences and widely used for the knowledge of state and legal phenomena;
4. Private scientific (formal legal, interpretation of law, etc.), which are developed by the theory of state and law.

III. Discussion

Classification of legal consciousness. Among the various problems of legal consciousness, it seems necessary to pay attention to its types, that is, the classification carried out on the basis of appropriate criteria.

In domestic legal literature, the latter is traditionally presented taking into account such grounds as: a) by the subjects (carriers) of legal consciousness; b) according to his level.

4. Types of legal consciousness by subjects. From the point of view of the first criterion, legal consciousness is differentiated into 1) individual; 2) group and 3) public [6;7]. The Encyclopedic Legal Dictionary states that “legal consciousness is a category of the theory of state and law and criminology, meaning the sphere of public, group and individual consciousness associated with the reflection of law-significant phenomena and due to law-significant values, law understanding, representation of the proper legal order” [8]. Paying attention to another order of types of legal consciousness, we believe that the first option is more justified. Individual legal consciousness develops in an individual under the influence of various factors and relationships in which he enters, as well as his psychological characteristics. The level of culture, education, social status and a number of other factors determine the peculiarities of the legal consciousness of each person.

Group legal consciousness reflects the specifics of a particular social group. The community of interests of the members of the group is determined by the similarity of their perception of state-legal reality, including a uniform idea of what law should be. In this regard, we can talk about the legal awareness of young people, judges, lawyers, doctors, teachers, etc.

Public legal consciousness is connected with the nature of relations to law in society. It is conditioned by individual and group sense of justice, but is not limited to them. At the same time, public legal consciousness directly affects individual and group legal consciousness [9].

5. Mass legal consciousness. It is interesting to note that within the framework of this classification, such a type of legal consciousness as mass consciousness is also considered, to which scientists attach the following meaning.

There are authors who identify mass legal consciousness with group consciousness. So, Ruman Kharonovich Makuev argued that “public (mass) legal consciousness is the legal consciousness of civil society, based on the result of an assessment (at the level of theory, psychology or their symbiosis) of the historical practice of interaction with the state. This is the legal consciousness of the macro-collective (nation, population, country, continent, world community, historical era [10]. It seems that Vladimir Ivanovich Chervonyuk also adheres to this point of view, who believes that, unlike individual and group, mass legal consciousness is less situational, has its own, special forms of expression, for example, are manifested during national elections, referendums. The author believes that &. individual and group legal consciousness is subject to the action of mass legal consciousness [11]. The philosophical dictionary also emphasizes that consciousness (including legal consciousness -Vladimir Valentinovich Kozhevnikov) - the public consciousness of the masses (classes, social groups, a particular society), reflecting the conditions of their daily life, needs, interests. phenomena, illusions, social feelings of people” [12].

Venir Kalimullovi Samigullin, from the point of view of the subject of legal consciousness, highlighting the following “sections” of legal consciousness: individual, group and mass, explains that “the bearer of individual legal consciousness is an individual, group - a group, mass - an unorganized group of people united by some idea, goal [13]. The author, concretizing his position, writes that the bearer of mass consciousness, which “feeds” on rumors, myths, distorted ideas about laws and the practice of their implementation, is the mass,

which is difficult to classify, because “it represents the legal consciousness and the “bottom” of society, and people belonging to prosperous social strata; the bearer of mass legal consciousness can be a sick person, and a healthy person, blind and sighted, an alcoholic and a teetotaler, an uneducated and educated person, an employee and an entrepreneur, a worker and an unemployed person, a free (no criminal record), a prisoner or released from prison, etc.” Venir Kalimullovich Samigullin believes that “here, common for the legal consciousness of all is non-linearity, fragmentation, inertia and instability, unevenness in the ratio of ideological and socio-psychological components, impulsiveness, a combination of truth and falsehood, errors in legal knowledge, an approximate idea of significant legal facts, significant arbitrary assumptions in reasoning and statements” [13].

In our opinion, this position should be criticized, because the scientists who support it do not proceed from the criterion of the subject (carrier) of legal consciousness, but from the degree of prevalence of legal consciousness. Another group of authors, adherents of mass legal consciousness, believe that the latter ... is typical for unstable, temporary associations of people (rallies, demonstrations, rebellious crowds [14; 15]. We believe that this point of view of the authors is debatable, including from the standpoint of etymology. Sergey Ivanovich Ozhegova interprets mass - committed by a large number of people, characteristic of a mass of people; spreading to many, many [16], the signs of which do not correspond to the actual order of things in Russian society. Nikolai Andreevich Pyanov, arguing about mass legal consciousness and noting that this type of legal consciousness has not received a uniform understanding (some identify it with ordinary legal consciousness, others with public consciousness, others consider it an independent type of legal consciousness along with individual, group and public), wrote, that mass legal consciousness is ordinary legal consciousness, since the bulk of members of society have the most general, sometimes very superficial ideas about law and other legal phenomena”[17].

It seems that the so-called mass legal consciousness is also a group legal consciousness, characteristic of dynamic social groups, which is included in the same species as group legal consciousness, which characterizes the legal consciousness of stable social groups. This classification of legal consciousness fits into the following regularity: public legal consciousness is made up of ideas about the legal validity of certain individuals, certain social groups”[18]. In fairness, we note that the pattern in a number of cases is expressed as follows: public legal consciousness has an impact on the group, which, in turn, leaves an imprint on the individual [19].

6. Types of legal consciousness by level. Raise some questions about the second classification of legal consciousness according to its level. As you know, most researchers of the theory of law from the position of this criterion distinguish the following types: 1) ordinary legal consciousness, which is characteristic of the bulk of members of society, is formed on the basis of the daily life of citizens in the field of legal regulation. legal views are closely intertwined with moral ideas; 2) professional legal awareness, which develops in the course of special training (for example, when studying at a law school), in the process of practical legal activity.

Subjects of this level have specialized, detailed knowledge of the current legal consciousness, skills and abilities of its application; 3) scientific, theoretical legal awareness, characteristic of researchers, scientists involved in the legal regulation of public relations [14]. Basically, agreeing with the proposed classification of legal consciousness, we draw your attention to the fact that the vast majority of legal scholars are supporters of the separation of professional legal consciousness, focusing on certain aspects of it. Valery Nikolaevich Protasov

and Natalya Valerievna Protasova believe that “professional legal consciousness is a group legal consciousness of people who have received a special legal education and are professionally engaged in legal activities. Professional sense of justice is officially official sense of justice” [20]. Nina Lvovna Granat argued that “professional legal consciousness is the legal consciousness of lawyers” and “depending on the subject of reflection in the legal consciousness of a lawyer, spheres are formed that correspond to different branches of legal relations (for example, economic, commercial, civil law, criminal law, criminal law). procedural, etc.)”[21]. Timofey

Nikolaevich Radko, clarifying, writes that “professional legal awareness is necessary to a certain extent not only for lawyers, but also for those employees of various bodies and organizations that are associated with legal relations, legal documents (employees of personnel, social, commercial, etc. services), because their decisions must be made on the basis of and within the framework of the law (appointment of a pension, determination of a penalty, conclusion of an agreement, etc.) [22].

It raises very serious doubts that almost all scientists define this type of legal consciousness as professional. The point is that thus each subject of law enforcement is considered as a carrier of professional legal consciousness. Meanwhile, this is far from being the case, although Sergei Ivanovich Ozhegov argued the opposite: professional - related to any profession, associated with the profession [16]. Irina Mukhamedzhanovna Karelina believes that “a professional is a qualified (highlighted by us - Vladimir Valentinovich Kozhevnikov) person who sells the results of his work. Unlike a professional, an amateur is a person who does not have a standard level of professional qualifications” [23].

As you know, future law enforcement officers receive a specialized legal education based on the so-called integrated approach, which undoubtedly has a positive characteristic. The analysis of competencies in the past showed that a number of competencies caused their rejection. For example, one of the competencies was formed as follows: “realizes the social significance of his future profession, has a sufficient level of professional legal awareness (OK-1). Even students who have studied such an important, methodological science as the theory of state and law are well aware that professional (for now, we will use this term -V.K.) legal consciousness consists of the views that develop among employees who are directly involved in legal activities and have legal knowledge and work experience (judges, lawyers, investigators, prosecutors, other civil servants, legal advisers, etc.). Professional legal awareness is formed on the basis of legal education and legal practice [24]. Vladimir Ivanovich Chervonyuk clarifies that professional legal consciousness is an idea of law that is formed among employees of the state apparatus (especially among practicing lawyers) on the basis of an ideological ideology and special legal knowledge, and accumulating legal practice, experience in the application of law, a competent understanding of all aspects of its content [11]. In our opinion, graduates of law schools, even the best of them, have an ordinary sense of justice, qualitatively different from the ordinary sense of justice of citizens, but striving for a professional one, which is determined not only by subjective, but also by a number of objective factors.

7. Professional deformation. It is interesting to note that even those authors who recognize the professional level of legal consciousness, which is characterized by high stability, respect for law, readiness to follow its instructions, which implies the fullest possible legal awareness, orientation towards active, creative lawful behavior, pay attention to its deformations, ... generated primarily by legal practice, including an accusatory bias, a certain formalism, the desire to act in accordance with the “letter” and not the “spirit” of the law, etc. ”[9].

Professional deformation, the danger of which lies not so much in itself, but in relation to it. Knowledge of the phenomenon under consideration and, in connection with this, a critical attitude to the assessment of one's decisions and actions can warn practitioners of the internal affairs bodies against wrong actions.

On the contrary, the lack of criticality, arrogance and complacency, forgetting that each legal case is individual, the manifestation of a sense of omniscience and hence one's infallibility can lead to an accusatory bias and cause serious errors in the law enforcement process. Professional deformation is a negative socio-psychological phenomenon that appears in the form of various personal behavioral manifestations that have a destructive effect on the process and result of professional activity. This is a condition in which a person transfers the images of a certain group of people to everyone, for example, a doctor begins to consider all people sick, a warden - prisoners, an investigator - criminals (suspects). This is just one of the manifestations of professional deformation. Professional deformation affects the decrease in empathic (from the word empathy as an understanding of the feelings of other people and a willingness to provide emotional support; this is the ability to put oneself in the place of another person (or object), the ability to empathize, the ability to perceive the inner world of another accurately while maintaining emotional and semantic shades) personality traits – callousness appears, unwillingness to take someone else's pain on oneself, lack of mercy and humanity, unwillingness and inability to understand another person; there is a reluctance to communicate, tact is reduced, rudeness is manifested; reduction of responsibility. For example, when a murder is committed, the following question is brought to the fore by employees of the internal affairs bodies: was the act committed in conditions of obvious or non-obviousness?

As Marat Iskhakovich Enikeev writes, “the authority of an investigator can cause and consolidate such negative personal qualities as arrogance, swagger, rudeness, and spiritual callousness. The constant subordination of the activities of the investigator to procedural regulation can contribute to rigidity (i.e., the difficulty or impossibility of changing the program of activities in situations requiring its restructuring - Vladimir Valentinovich Kozhevnikov), inflexibility, adherence to template solutions, formalism; constant contact with asocial manifestations - to form a stable suspicion, bias, a tendency to an accusatory bias in their activities. The frequent lack of time can lead to haste, superficiality, neglect of certain procedural requirements. These possible manifestations of personal and professional deformation should be removed by the investigator's developed, stable self-control [25]. At the same time, we emphasize that the professional deformation of the law enforcement subjects of the internal affairs bodies in various forms of its manifestation objectively determines not only negative legal, but also non-legal consequences, in particular, a low assessment by the population of the activities of the relevant law enforcement agencies. Venir Kalimullovich Samigullin, defining professional legal awareness as “an element of professional culture; feelings, beliefs, traditions that develop in the process of special training and are constantly “fueled” by legal practice, taken in all its complexity”, emphasizes the attention to professional deformation, which “can be expressed in the reassessment by professionals (investigators, prosecutors, lawyers, judges), their knowledge, reducing self-criticism in relation to decisions made, neglecting the formal requirements of the law, if they disagree with their opinions...”[13].

In his monographic study, Nikolai Yakovlevich Sokolov notes that “having its own exceptional aspects due to specialization, the legal consciousness of lawyers for the same reason suffers from shortcomings ... The one-sided influence of the professional experience of lawyers can lead to bone stereotypes, stereotyped assessments, a decrease in emotional attitude to what is happening, disregard for unprofessional opinion. There are also lawyers who are prone to

formalism, bureaucracy, and sometimes they themselves take the path of violating the requirements of the law [26].

The result of sociological research by Nikolai Yakovlevich Sokolov was a typology of lawyers, which is based on the legal consensus of lawyers in terms of the spirit and letter of the law, as well as their social activity in the field of law: - or changes in law and practice; 2) pragmatist - understands the spirit and letter of the law, but is primarily interested in the passage of the case and, in this regard, is guided by the opinion of persons on whom the final decision of the issue depends; 3) an enthusiast - skillfully combines the spirit and the letter of the law, strives in the public interest to improve legislation and legal practice; 4) weather vane - allows deviations from the requirements of the law under pressure from higher or local leaders; 5) a pedant - extremely strictly guided by the letter of the law, but sometimes sacrifices its spirit for the sake of compliance with the form; 6) antipedant - guided by the spirit of the law, but sometimes allows deviation from its letter; 7) careerist - inclined to give up the law for the sake of promotion; 8) the bureaucrat is obscured by the law or allegedly does not notice the letter of the law, emasculates his spirit for the sake of his convenience and peace of mind; 9) a false lawyer - violates the law for personal purposes, using his official position [26]. The observations and conclusions of Nikolai Yakovlevich Sokolov date back to the second half of the 1980 s., but they have not lost their significance in relation to our time.

In the context of this study, the arguments of Nina Lvovna Granat are very relevant, according to which the formation of a specialist, in particular an investigator, goes through two stages:

- 1) during the first 5-7 years of work in the same service, in the same position or in the same specialty, the employee, under normal conditions, masters the profession, acquires a qualification;
- 2) after 7-10 years or more and for a longer time, with no change in the profile and nature of work, lack of immunity and effective prevention, undesirable changes in the consciousness and personality of the employee occur, which are commonly called professional deformation. The author argued that the latter is an objective regularity, in any case, when solving mental problems in legally significant situations. Its action intensifies or weakens depending on the situation, the atmosphere in which professional activity and personality are realized. Nina Lvovna Granat paid special attention to the fact that professional deformation necessarily causes undesirable changes in the presentation and evaluation of the principles of law and morality, their value and functions. At the general social, ideological level, such a deformation was called legal nihilism [27]. Moreover, the latter, according to the author, as a result of the socio-psychological deformation of professional and legal consciousness, is expressed in the non-recognition of: 1) the priority of the rights and freedoms of the individual; 2) rights and legality as the highest moral and political values; 3) belittling their role and values in the hierarchy of other preferences and priorities [28]. Speaking about crime in law enforcement agencies, Igor Ivanovich Karpets noted that "... no less a tragedy for employees ... is that they are subject to the reverse influence of the criminal world itself. They see the evil of violent crime and become accustomed to the use of violence.[29]

Most of all sentences for corruption in Russian law enforcement agencies (672 out of 898) from January to September 2021 were issued against police officers, Prosecutor General of the Russian Federation Igor Krasnov told RIA Novosti.

According to him, for 9 months of this year, 8946 criminal cases of corruption in relation to 9948 persons were considered in courts with the participation of prosecutors. Guilty verdicts were handed down in 7328 criminal cases against 8088 persons, including 467 officials of state authorities and local self-government (executive power - 171, executive power in the subjects - 61, heads of municipalities and local administrations - 130). "In addition, deputies of the subjects of the federation - 7, deputies of local governments - 43, officials of law enforcement agencies - 898 (including internal affairs bodies - 672, bailiffs -47, customs - 30, investigation and inquiry - 62 (SK - 19 , Ministry of Internal Affairs - 38), prosecutors - 16, judges - 9), Krasnov said in an interview with RIA Novosti [31].

9. Practical level of legal consciousness. The foregoing, as it seems, does not allow us to call the analyzed level of legal consciousness as a professional one. According to Nikolai Yakovlevich Sokolov, we should talk about the practical level of legal awareness, which ...is associated with the experience of direct impact on real social life. "... has great clarity and organization, relies on the experience of legal construction" [7]. The author writes that "... it is expedient in the structure of the legal consciousness of society, along with the scientific and ordinary, to single out one more, intermediate level - practical" [26]. In other works, Nikolai Yakovlevich Sokolov also focuses on the practical level of legal consciousness, the selection of which ... is ultimately determined by the very nature of law, reflecting reality more directly than other subjective factors, and more directly focused on the very implementation in it. The author, arguing, writes that therefore, legal consciousness belongs to one of the most active varieties of social consciousness, because in it the social and practical side, as it were, prevails over the cognitive and evaluative functions [31]. It seems that scientists assessing this level of legal consciousness are faced with a dilemma from the point of view of its name - professional legal consciousness or practical legal consciousness. Thus, it is argued that "the isolation of the practical level is especially justified in relation to the professional level of lawyers, since it is most closely connected with the practice of legal construction, ensuring the regulatory impact of law on public relations" [31].

One should agree with the reasonable point of view of Dzhangir Abbasovich Kerimov, who saw one of the specifics of legal consciousness in the dialectical combination of three different types (levels) of consciousness in it: ordinary, direct (emotional), reflecting the legal relations of people in their daily life; practical, experience-based legal construction; scientific, related to the study of the range of phenomena, the knowledge of which is necessary to solve legal problems [32].

IV. Conclusion

In conclusion, the following conclusions should be drawn: 1) mass legal consciousness does not exist as a type of legal consciousness, but is a group legal consciousness of dynamic social groups of the population; 2) from the point of view of the level of legal consciousness, one should consider not professional legal consciousness, but practical, taking into account the presence of deformations in various forms of the former.

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