

NININS 2020**International Scientific Forum «National Interest, National Identity and National Security»****LEGAL THINKING AS A FACTOR OF LEGITIMATE
PERSONALITY BEHAVIOR**

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Abstract

The paper studies legal thinking as a phenomenon that regulates personality behavior in the society. Theories of social ideas of Moskovici and social thinking of Abulkhanova-Slavskaya are used as a methodological basis. It was established that legal thinking manifests itself in its object, i.e., legal reality. In turn, legal thinking acts as a cognitive mechanism of legal awareness, by means of which the subject establishes his legal status. The study revealed that the distinctive feature of the legal thinking of an individual is its sociality. The system of ideological, political and institutional values introduced from outside directly influences its formation. The important social implication of legal thinking is that it forms an axiological component of legal consciousness in an individual thus ensuring the truth of legal judgements and conclusions. Consequently, legal thinking is directly dependent on the legal consciousness of an individual, in fact being the main mechanism of its axiological component. In the process of social and historical development, different paradigms and standards of legal thinking are formed. Three main types of professional legal thinking can be identified: thinking about rule (law), thinking about decision, thinking about order and form. They develop not only in the context of a legal family or a national legal system, but also in various branches of law, as well as within a scientific school of law. Thus, the style of legal thinking defines the boundaries of legal reflection, the limit of awareness of the foundations of political and legal world.

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1. Introduction

It is impossible to solve the problems of social and economic development of the Russian society without the formation of a person with highly developed legal thinking, legal awareness and legal culture. At present, this task is a priority and its solution requires all legal and psychological-pedagogical mechanisms. The study showed that the formation of socially oriented legal thinking of an individual currently lacks the system and interaction of all social institutions.

2. Problem Statement

In modern society the problem of lawful conduct of an individual is a priority task, which is connected with the request of the society to build a state governed by the rule of law. At the same time, despite the measures taken, the level of illegal behavior does not decrease. This is caused by the lack of a system to shape the legal thinking of the individual. The work done in this area is often occasional, which does not provide for the effective use of all its mechanisms. Based on the above, it can be concluded that the problem of finding and justifying the technologies for the formation of a legal thinking of an individual seems quite relevant and highly-demanded.

3. Research Questions

Based on the subject of the study – legal thinking and its influence on lawful behavior in the society – the tasks were defined as follows: to justify the essence and content of legal thinking as the basis for the formation of legal culture and legal consciousness of an individual; to identify the impact of legal thinking on the lawful conduct of the subject of legal relations; to formulate legal and psycho-pedagogical conditions for the formation of a style of legal thinking of an individual.

4. Purpose of the Study

The purpose of the study is to identify the key characteristics of legal thinking, its dependence on legal consciousness and influence on the formation of the axiological component of legitimate personality behavior.

5. Research Methods

The study utilized the methods of scientific analysis and synthesis, generalization, systemic, logical and comparative-legal methods.

6. Findings

Legal thinking performs one of the most important functions – regulation of individual behavior in the society. It determines the legality or wrongfulness of personal actions and those of the others. Thus, the question is fair: why does a person consciously violates the requirements of law, although he fully understands the meaning of such categories as lawful and unlawf, legitimate and illegal, good and evil,

good and bad? The phenomenon of legal thinking is revealed through its object, which is the legal reality, as well as through the desire of a subject to relate to it. It acts as a cognitive mechanism of legal awareness by which the individual determines his legal positions and his role in the society, and identifies himself as a subject of law while establishing his legal status. Hence, the individual can realize and actually exercise his rights and freedoms and defend his legitimate interests. Thinking reveals the essence of legal life phenomena, creates its coherent picture, determines axiological guidelines and legitimacy of good behavior. Legal thinking forms an axiological component of legal consciousness in the individual, which ensures the truth of legal judgements and conclusions. A distinctive feature of a person's legal thinking is his sociality (Gulyakhin & Shiro, 2015). It contributes to the establishment, strengthening and legitimacy of social relations. Being in a particular sociocultural environment, an individual takes a certain public position regarding legal issues, which also determines the social nature of its thinking. One of the features of legal thinking is egocentrism, which is defined by a hierarchical system of survival needs that require legal protection. Mordovtsev (2003) notes that legal thinking is a product of "I-civilization" that enters into communication with «Another-civilization», while maintaining its individual unique position in this communication.

Otherwise, "I" would cease to be "I" and would transform into "Another" in relation to itself, i.e. a subject of law – into its object devoid of subjective right. "I" is influenced by two main forces – external and internal determinations (Abulkhanova-Slavskaya, 1994). The first affects from outside and from many directions, often plunging the personality into a state of cognitive dissonance. External power finds its expression in socially significant concepts, dominating axiological principles, legal norms, legal ideals promoted by different social groups, etc.

The self-concept, i.e. the system of perceptions of an individual about himself formed by the awareness (reflection) of the subject of himself and his relation to legal reality plays a significant role in legal thinking. Self-concept can be adequate when a person creates an image of himself corresponding to reality, or inadequate when he gives him fantastic and invented qualities (Artyomov, 2014). In the latter case, this leads to mistakes in thinking, which prevent the subject from objectively assessing its actions, drawing the right conclusions and making generalizations. If the subject does not make the Self-concept adequate by correcting his perceptions of himself and his place in the world, he inevitably enters into conflicts with others. Due to his own irrationality and "entanglement" of consciousness, he experiences negative emotions and feelings. The system of ideological, political and institutional meanings introduced from the outside constitutes a topical area of consciousness of a modern personality (Kuklin, 2018). If it is the bearer of conservative political ideology, its legal thinking will primarily focus on the legal problems of preserving the existing socio-political and legal relations (for example, the adoption of appropriate legislation to consolidate the existing social status quo). If the subject acts as the bearer of a different ideology, his legal thinking will have an appropriate matrix. A similar position is held by Elizarova (2013) and Ovchinnikov (2003).

As noted earlier, the process of legal thinking is formed in a certain sociocultural context. The French psychologist Moscovici supports the conceptual idea, the essence of which is an apology for the rise of thinking from simple to complex, from children to adults, from "primitive" to "civilized", i.e. to the extent that our knowledge, skills and our speech will be extra-contextual. And Vice versa, when the

decline of our thinking consists in the opposite movement, i.e. when our acquired knowledge and speech are contextual and rotate in society (Moscovici, 1995).

In other words, the level of social thinking will higher if its dependence on the external pressures of the sociocultural environment is lower. It is necessary to agree with this position of the author, but only taking into account the recognition of the impossibility of completely separating the process of thinking from the cultural context. After all, it is the context that makes it relevant to solve a legal problem. The subject's thinking and actions must be adequate to the external challenges that are part of that context. Nevertheless, ingenious and breakthrough social and legal technologies usually go beyond the context of ordinary life, creating a strong resonance in it and changing it.

In the process of studying the psychology of the crowd Moskovici even more sharply formulates the idea of dependence of the type of thinking on its contextuality. He concludes that “there are two and only two types of thinking designed to explain the reality: the first is aimed at idea-concept, while the second – at idea-image. The first acts according to the laws of reason and evidence, the second appeals to the laws of memory and implication. The first is inherent to the individual, the second – to the mass” (Moscovici, 2011). A person, being an element of the crowd, dives into the mass, losing not only his individuality, but also his ability for the first type of thinking. He goes into the world of illusions; he becomes easy enough to manipulate. Accordingly, legal thinking is also divided into two main types. If the first type is rational, its intellectual operations do not violate logical rules, the content of key legal terms is characterized by clarity, the second – by the illusory of legal representations, the alogism of intellectual actions and the confusion of the concepts used. The second type of legal thinking contributes to the deformation of the legal consciousness, the strengthening of the role of the legal unconscious, the dissolution of “I” in the unconscious, the dominance of emotions and feelings. Ideas-images are filled with irrational fantastic content and open the way to idealism, infantilism and nihilism. A large part of human-learned social normative attitudes go into the sphere of unconscious and are updated in difficult and problematic situations. When the subject does not have time for reflection, the legal unconscious sets him an algorithm for actions to overcome a difficult situation (Zhalinsky, 2016).

The social and legal stereotypes of thinking learned by a person from childhood initially define the matrix of his social behavior and form the basis of his legal mentality, which is an important part of the internal determination affecting “I”. Their carriers are cultural archetypes of the legal unconscious, which are the origins of an individual's personal identity as a subject of law. The archetypes of the collective unconscious are existential “making” the individual feel, represent and defend his natural rights and freedoms. These ideas can be specific and clear or uncertain and vague. They are included into the cognitive system of legal awareness, reflect legal reality, enable the subject to determine the meaning and significance of a legal phenomenon. Conviction of the correctness and truth of their ideas gives the subject determination and confidence in his actions (Tymoshenko, 2019).

At first glance, it seems quite natural to assume that a person's actions are a direct result of his logical reasoning or sentiment. But that is not quite true. Quite often there are strong “gaps” in the causal relationship between correct thinking and behavior, which are filled with various kinds of archetypal installations that have no distinct rational justification. These gaps are often caused by the fact that a person does not always manage to make a correct forecast of the sequence of events and, accordingly, he

does not have the opportunity to use pre-prepared and thought-out versions of solutions prepared by him to overcome the problem situation. He has to abandon the earlier version of activities under pressure of circumstances, quickly change and make new decisions, which may not always be adequate to the situation. Mistakes arise from the lack of time to analyze the problem and are often determined by established social stereotypes, prejudices and symbolic perceptions.

Abul Khanova-Slavskaya concluded that ideas are social-psychological and personality-related phenomena of consciousness, which reflect external objective ties. At the same time, she notes that the degree of their personal conditioning is different, they can be more specific, or more abstract. (Abul Khanova-Slavskaya, 1994; Dewey, 1999). The indistinctness of concepts and the uncertainty of perceptions should prompt the individual to a heuristic search, otherwise it will perform irrational actions or will be in a state of hesitation and inaction. The archetypes of legal unconscious, which may well “pull” the subject from the problematic situation, serve the basis of irrational actions. Especially here there is a high probability of a successful outcome when he has to solve the legal problem that is common for the given historical period and sociocultural space.

In the process of legal socialization, people learn the attitudes, norms and values of the society, which can be both “written” and formalized, as well as unwritten, sometimes characterized by relatively vague content (Loshakova, 2014). The latter usually do not come from the system of public or private education, they are absorbed in the course of direct communication with the nearest environment (parents, peers, informal public associations, etc.). Here the judgements, conclusions and generalizations that the subject independently makes are important. After all, he has to constantly experience cognitive dissonance receiving rather contradictory messages from others. The existing incompatibility between accepted social values and daily reality is also present in the modern Russian society, when teachers, books and university inspire one thing, and in social, political and legal reality young people face completely different, opposite to the one that is inspired.

Legal thinking is directly dependent on the legal consciousness of an individual, in fact, being the main mechanism of its axiological component. Different paradigms and standards of legal thinking are formed in the process of social and historical development. Thus, Gubayeva defines the following two types of such «logical and methodological standards» the first was formed in the system of Romano-German law, in which legal judgments are based on the application of legal norms to actual, real events; the second was formed in Anglo-Saxon law, in which the logic of a lawyer's judgments, in most cases, is based on a certain precedent (Gubaeva, 2004). If in the logical and methodological standard of the Romano-Germanic law the dominating role is performed by deduction, i.e. transition from general (law) to private (private judicial practice), then in the Anglo-Saxon law the analogy dominates (between a precedent and a private situation). From our point of view, there are more than two of such paradigms of legal thinking identified by Gubaeva. So, Schmitt (2013), identifies three main types of legal thinking: thinking about the rule (law), thinking about the decision, thinking about an order and a form. They are formed not only in the context of some legal family or a national legal system, but also in various branches of the law and within some scientific law school. In this case, we refer to the style of legal thinking, which is the nature of the organization of political activity. In fact, it is the style of legal

thinking defines the boundaries of legal reflection, the limit of awareness of the foundations of political and legal world (Kuklin, 2018).

Differences in standards and styles of legal thinking among the representatives of different branches of domestic legal science are particularly noticeable in discussions at the meetings of dissertation councils. Their speeches rarely violate the paradigm attitudes developed in a certain branch of science. Thus, if the legal thinking of civilists is sufficiently specific and prone to analogy, the criminal law experts are very careful about analogy and seek for formal strict conclusions using mainly derivation or full induction. In turn, law theorists try to come to broad generalizations, sometimes build very abstract schemes of legal life. Key concepts and terms of legal thinking are filled with content that reflects not only the world view of the lawyer, but also the system of values of the modern social-historical period. Its thinking process is in the context of spiritual and moral ideals and ethical principles that underpin the actual legal system. If the principles of modern humanism prevail in the public legal consciousness, the activities of lawyers will also be based on them. Otherwise, when the legal system rejects them, it becomes punitive and repressive (Burnham, 2011).

7. Conclusion

Thus, legal thinking forms an axiological component of legal consciousness, is characterized by egocentrism, is divided into two main types, is subject to strong influence of dominant sociocultural values in the society, is often enclosed in an archetypal matrix of legal unconscious, is prone to formalization and standardization, performs both direct and indirect function of legitimate behavior of an individual. Because of egocentrism, the subject's understanding of the content of such categories as "good and evil", "legitimate", may differ significantly from their generally accepted interpretation in the society. Legal thinking and legal actions of an individual must be adequate to external challenges that are part of this context.

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