

## PHILOSOPHICAL AND LEGAL ASPECTS OF THE DEVELOPMENT OF LEGAL CULTURES

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В статье исследуется категориальный статус правовой культуры в контексте философии права, в частности через призму аксиологического подхода как наиболее оправданного и содержательного, такого, который обеспечивает отображение сочетание общечеловеческих ценностей, приобретенных общей культурой, со сферой права. Отмечено тенденции к формированию глобальной интеграции правовых культур, а также на их диалогичности, а не конфликтности сосуществования.

Приведены четыре основных философско-правовых аспектах развития правовых культур и дано их авторское определение, в частности речь идет о важности учета приобретения исторической правовой мысли, осуществления удара на ценностных ориентирах права и культуры, учета при практическом применении правовыми культурами исторической памяти, а также положительное и толерантное отношение к имеющимся внутренним разногласиям и понимание важности диалога культур.

Ключевые слова: право, культура, глобализация, правовые культуры, аксиологический измерение, аспекты развития правовых культур.

Articolul tratează statutul categoric al culturii juridice în contextul filozofiei dreptului, în special, prin abordarea axiologică ca fiind cea mai justificată și semnificativă, care oferă o reflectare a valorii universale combinate a culturii generale cu dreptul. Sunt subliniate tendințele către formarea integrării globale a culturilor juridice, precum și dialogul acestora și non-conflictul de coexistență.

Sunt sugerate patru aspecte filosofice și juridice principale ale dezvoltării culturilor juridice, iar definiția autorului lor este dată. Autorul consideră că este important să se țină seama de următoarele: opinia juridică istorică, accentul pe valorile dreptului și culturii, considerarea memoriei istorice în timpul aplicării practice a culturilor juridice, precum și atitudinea pozitivă și tolerantă față de diferențele interne existente și înțelegerea importanței dialogului culturilor juridice.

Cuvinte cheie: drept, cultură, globalizare, cultură juridică, dimensiune axiologică, aspecte ale dezvoltării culturilor juridice.

The article deals with the categorical status of legal culture in the context of the philosophy of law, in particular, through the axiological approach as the most justified and meaningful, which provides a reflection of the universal values combination of the general culture with law. The tendencies towards the formation of the global integration of legal cultures, as well as their dialogue, and non-conflict of coexistence are emphasized.

Four main philosophical and legal aspects of the legal cultures' development are suggested, and their author's definition is given. The author believes, it is important to take into account the following: the historical legal opinion, the emphasis on the values of law and culture, the consideration of historical memory during the practical application of legal cultures, as well as positive and tolerant attitude to existing internal differences, and understanding the importance of legal cultures' dialogue.

Key words: law, culture, globalization, legal culture, axiological dimension, aspects of development of legal cultures.

**Formulation of the problem.** The issue of cultural dimension of law, despite the development and numerous developments within the science of philosophy of law, still remains one of the most relevant, and the definition of the categorical status of legal culture and directions of its development is in the category of problematic and controversial.

Last but not least, this is facilitated by the actualization of the processes of globalization, the spread of cultural pluralism and the dynamic development of social relations. As R. Yering noted, «Whether we like it or not, globalization is an objective phenomenon of the whole world... Globalization is the trend, the vector of human development that we have and will deal with in the near future» [7, p.4-5]. Globalization and multiculturalism today are becoming the subject of philosophical and legal reflection, which considers them as part of the image of the world of the new millennium and analyzes the impact on legal cultures, their interaction and development.

**The current topic of the article** is to clarify the concept of general and legal culture and their relationship. In addition, the separation of the philosophical and legal context of legal culture and awareness of the inevitability of dialogical relations of legal cultures in the context of globalization trends will allow to outline not only their aspects of development, but also to give them contextual significance.

**The state of the study.** Legal culture in philosophical and legal discourse is the subject of research of many domestic scholars, in particular the contribution of A. Ovchinnikova, who in her works emphasizes the importance of identifying law in the field of cultural measurement of values and phenomena, M. Tseluyko, who emphasizes the role of legal culture and its interaction with other spheres of social culture. Also important are the studies of legal culture in the works of such theorists of law as V. Kopeychikov, V. Zhuravsky, S. Nefedov, G. Mashukov, A. Barusov, K. Lineytseva, V. Kaminskaya, O. Ratinov and others.

The work of scholars of Western legal thought, in particular L. Friedman, from whom it is customary to count the formation of the term legal culture, R. Almond and S. Verba, who considered legal culture through the prism of politics, thus expanding its content, is relevant. In addition, important in

understanding the philosophical and legal aspects of the development of modern legal cultures is their historical analysis, carried out in the works of O. Spengler, A. Toynbee and S. Huntington. The latter presented the most convincing and well-founded concept of civilizations (cultures), made a division and made a prediction about the need for their coexistence in the future.

**The purpose and objectives of the article** – to determine the content of legal culture through the prism of the philosophy of law; identify the most relevant aspects of the development of legal cultures and describe their content.

**Presenting main material.** Today, legal culture is an important value basis for social and legal communication, increasing the legal competence of the individual and society as a whole to deepen democratic processes in the rule of law. The relationship between law and culture is a debatable issue in the legal literature: yes, law can be considered as a cultural phenomenon and, says A. Carmin, culture is one of the fundamental concepts of socio-humanitarian cognition, which characterizes a complex and multifaceted factor of human existence. various phenomena of social life, which are called cultural phenomena and are its common basis [9, p.3-4].

The very concept of culture became objectively widespread in the XVIII century as a result of analysis of humanistic traditions and their historical development, however, part of philosophical science culture emerged in the late XIX – early XX centuries, when socio-political changes began to require its understanding through the prism of anthropological and axiological approaches. In this context, the legal culture has developed, taking the common heritage as a basis, as well as using other structural components – ethical, political, economic, information culture, etc. for its improvement.

Determining the philosophical and legal context in accordance with modern requirements, it seems appropriate to analyze legal culture through the prism of the axiological dimension of philosophy of law: it accumulates and actualizes the achievements of man in particular and society in general in certain areas of life, the most important of which are legal and social. In addition, legal culture contains the cultural content and features

of the legal systems of the world. Legal culture must be recognized as part of culture in general, because it, determining the nature of legislation and organizing it in accordance with historical requirements and national ideas, creates the preconditions for the progressive existence of general culture and is part of the legal existence of society.

Some scholars suggest that legal culture is considered to be one of the components of the nation state, thus often reducing its importance to the organizing internal function, while others consider legal culture at the micro level as a socio-legal phenomenon that includes the most significant results of collective legal experience (law, legal awareness, legal activities and legal relations, law and order) and reflects the qualitative level of development of legal life, and at the macro level – as everything that has been achieved by mankind over the years in the legal field, as well as the accumulated achievements of other legal cultures. [2, p. 4].

It is important to understand that legal cultures are not static elements, which, engraved by the theoretical achievements of science, remain unchanged and easily applicable concepts – as noted by O. Zvonareva, today there is no single global civilization, and there is a tendency to form global integration [6, p. 79], and «the generalization of state and legal experience in the work of thinkers of the Middle Ages, New and Modern history, becoming the achievement of all peoples, is one of the manifestations of globalization» [10, p.106]. In this context, the term civilization is understood through the definition put forward by S. Huntington – it refers to a cultural community of the highest level, which «contains values, norms, mentality and laws, which many generations in a particular culture have given primary importance» [13].

«In the future, there will be no single universal civilization, – said S. Huntington. «On the contrary, the world will be made up of many different civilizations and they will have to learn to coexist with each other,» as evidenced by the relationship between several civilizations on the African continent and the dispersion of Western culture between Europe and America. [13]. Calling the inevitable process of clash of civilizations on the basis of the main source of conflict - culture,

S. Huntington proposes three types of behavior of legal cultures during the clash of civilizations:

1) isolation from the West – as an example, S. Huntington cites North Korea, however, this option, through the prism of recent political changes, «outlived» – the DPRK and North Korea agreed to end the 70-year war not without influence of Western culture;

2) become part of Western civilization;

3) to unite economic and military efforts and direct them to the West, because, according to the scientist, the very clash of Western civilization with others will be the central theme of future world politics.

However, it is quite clear that Huntington's research is at some point outdated, in particular the researcher's prediction of the phenomenon of clash of civilizations: the boundaries between today's cultures are becoming increasingly blurred due to interstate diplomacy and multicultural relations, and it is safe to say not about conflicts, but trends in the development of legal cultures and their cooperation. Modern society, points out E. Turmejanet, requires a dynamic perception of legal culture, and the study of the works of E. Hobsbawm, J. Habermas, J.-M. Ferry, J. Popadopoulos and others proves that the main related idea of scientists is «the need to oppose a deterministic conception of culture to a more dynamic vision that cares as much about its unity as it does about resolving internal differences and overcoming tensions.» [4, p. 326].

In understanding the ways in which legal cultures move in the context of globalization and integration, it is important to remember that each national legal culture is the result of a certain historical tradition of legal culture in general. E. Hobsbawm in his work «Nations and Nationalism» speaks of the need to introduce the term «newly invented traditions», which without the introduction of unnecessary new categories will bring back to life the known concepts and paradigms that need modern understanding. [5]. In particular, there are many different legal cultures and specific cultural concepts of law, but for further development they must be considered unstable, not necessarily consistent and receptive to evolution by challenging and opening discussions. [4, p.327].

A cursory analysis of the legal cultures and traditions of any modern country can show that

under the influence of globalization they have become interpenetrating and communicative within the legal framework – this can be traced in the international nature of law, as well as features of public and private law methods of regulation. In addition, it is quite clear that in addition to external, legal cultures have also undergone internal changes, which have finally made it impossible to return to the classical, theoretically formed model.

Accordingly, it is possible to identify the following aspects of the development of legal cultures:

1. Return to the traditions of legal thought and their development in the modern context.

Although the very concept of development indicates that there is a process of ascent from lower or less developed to higher and improved, the dynamics of legal cultures need to be supported in the form of classical philosophical and legal achievements. The latter can become if not an important part of the new, then a kind of impetus to analyze and improve the interaction of legal cultures, enriching legal and cultural paradigms.

Thus, an example is the internationalist theory of F. Despanier, who in 1905 proposed a nationalist concept of legal culture in France. In his address to the authorities, the politician stated that society needs a separate, French school of national law: «The spirit of reason and justice that characterizes our nation is a direct indication that the protection of our legitimate interests consumes us more than others, because we have a clear understanding of the concept of law, as well as a strong will to respect and serve it» [4, c.327].

Although the philosophical interpretation of the concept of legal multiculturalism and its introduction into public policy today have practically leveled nationalist concepts of legal culture, modern legal realities are a vivid reflection of the nationalist orientation even within the pluralism of cultures.

2. Priority of values in law and culture.

Globalization and intercultural dialogue to achieve the goals began to require strengthening the role of value and anthropological aspects. Accordingly, «in the conditions of the globalized world, law, culture and human values have acquired special significance, because law and values play the role of social indicators of the quality of life and constitute the inner support of culture.

Culture must be understood as a crucial aspect of globalization» [12, p. 93]. Recognition of a person, his rights and needs as something greater than a national, state value contributes to the simultaneous development of legal culture: «globalization calls for legal culture to go beyond the narrow national shell through the universalization of human legal values» [8, p. 275]. It is interesting to note that under the influence of global processes there is a paradigm shift: instead of the usual line of relations «man – state» we see an improvement to «man - civil society – state». Yes, there is a change of direction, the state - especially in the context of multicultural policy – takes a step towards interaction and understanding of the interests of both the individual and the needs of society as a whole.

3. Practical application of historical memory in the context of the development of legal cultures.

Historical memory should be understood as a purely specialized part of culture, which includes both historical knowledge and a system of value judgments for orientation in the modern world [11, p. 50], not forgetting that the concept also includes and legal culture as one of the greatest national values.

Taking into account the concepts of legal culture, the process of formation and development, leads to the inevitability of revising their impact on modern philosophical and legal views. If we talk about Ukraine, whose legal formation as a nation and a separate, independent state has gone through many painful stages, historical memory in legal culture in particular is a necessary natural principle that helped preserve its identity and develop a special legal culture.

The French philosopher Jean-Marc Ferry, calling Europe a «laboratory» in which the integration and intersection of national cultures takes place, argues that the confrontation between the legal cultures of the West and the East remains tense with possible escalation into a dramatic conflict. The scientist proposes to find a practical application of the concepts of «common legal culture» and «common historical memory». The first can be understood as the assertion of the existence of a legal culture, which is an amalgam of several developed legal cultures of different countries, which are in a dynamic and complex

relationship with each other. [4, p. 332], and the idea of «shared historical memory» as fundamental at the international level. It is necessary to self-critically study one's own past through «analysis of the historical experience of nations and recognition of various forms of violence they have committed against each other» [1] – such a «study of memory» can become indispensable for researchers of today's law in the context of globalization. encourages the clash of national cultures [3, p. 25].

4. Approval of internal differences and understanding of the importance of dialogue of legal cultures.

There is no single legal culture or single legal tradition for any society - it can only be about the existence of a dominant culture, which is most relevant due to similarities in norms or individual traditions, and the existence of auxiliary domestic legal cultures. Given this statement, cultural conflicts that arise in one way or another during the pluralism of cultures should be interpreted as existential, says J. Habermas: they revolve around values, not conflicts of interest. Accordingly, ignoring the clash of legal cultures or resolving them through foreign policy or economic relations will increase differences and complicate understanding. The most effective option will be a deep and critical assessment of the value of traditions and cultures and their «reflexive appropriation» [3, p. 218, p. 235].

Recognition of the value of each legal culture, the existence of differences with others and consideration of each of them separately allows everyone to open the boundaries for the existence of several fundamental models that have features worthy of imitation.

**Conclusions.** Awareness of the value content of legal culture, as well as the inevitability of clash in the globalized context of legal cultures and their experience in this context of external and internal changes contributes to a better understanding of their content as dynamic concepts that are constantly interconnected and communicating. Accordingly, the question arises not about resolving contrived conflicts within the pluralism of legal cultures, but the actualization of philosophical and legal aspects of their development. In the modern world, legal cultures, recognizing the paramount role of the value of human rights and interests, ac-

tively turn to the achievements of philosophical and legal thought, do not avoid the actualization and practical implementation of historical memory, and, realizing the differences between cultural and legal paradigms, try to become the path of understanding and communication.

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