

*Pushkina O. V.,  
Dr. in Legal Science, Professor,  
Alfred Nobel University  
Tsyverenko G. P.,  
PhD in Legal Science, Professor,  
Alfred Nobel University*

## LEGAL CULTURE IN UKRAINE: CONCEPTS, ITS STATUS AND PROSPECTS

**Summary.** This research article based on legal culture focuses attention on the myriad ways in which law exist within society generally, the study of legal consciousness traces the ways in which law is experienced and interpreted by specific individuals as they engage, avoid or resist the law and legal meanings. This empirical attention to popular understandings of law reformulates some of the theoretical debates in the study of legal culture.

**Key words:** legal culture, legitimizing of the law, society of law, Ukrainian legal culture.

Legal culture is always considered as one of the human values' categories and refers to the rule of law inherent feature, the primary purpose of which is to maximize the security and human rights.

It should be noted that the rule of law concept provides all citizens with the inherent high law culture, including their knowledge of the vital legal laws, as well as the ability and skills to use them in the real life.

Legal culture has been intensively discussed in legal discussions over the last twenty years or so, especially in connection with the Europeanization of private law. Often, national legal culture is simply viewed as an obstacle to European private law; a European legal culture is viewed as its prerequisite. What is actually meant by legal culture often remains unclear: legal culture is considered important, but an exact definition is not. Moreover, the problems bound up in the concept of culture, which related disciplines especially anthropology and sociology – have tackled, are widely ignored. The term legal culture refers to multiple different ideas, which are not always sufficiently separated. Legal culture often describes merely an extended understanding of law and is thus synonymous with «living law» [1] or «law in action» [2]. Sometimes, the term legal culture is used interchangeably with the term – legal family or legal tradition. More specific concepts exist as well. Legal sociologists especially understand legal culture as the values, ideas and attitudes that a society has with respect to its law. Sometimes legal culture itself is seen as a value and placed in opposition to the barbarism of totalitarianism here, legal culture is used synonymously with the rule of law [3]. Others understand culture as certain modes of thinking; they speak of episteme or mentalité, legal knowledge and collective memory, law in the minds or even cosmology. In addition, an anthropologically influenced understanding exists of legal culture as the practice of law. Sometimes, borders are fluid, both among these concepts themselves and between them and other concepts such as legal ideology or legal tradition. Some definitions bring different aspects together. Mark van Hoecke and Mark Warrington, for example, name six elements: legal terminology, legal sources, legal methods, theory of argumentation, legitimising of the law and common general ideology [4]. A similar combination of disparate elements underlies the definition of the styles of legal.

An interrelationship between culture and law has long been postulated. Baron de Montesquieu postulated in his «Esprit des Lois» (1748) the necessity for positive law to be adapted to the

geographical features of the country and the cultural characteristics of its people. In the 19th century the idea of law as the cultural accomplishment of a particular people (as well as the attempt to determine the «spirit» of particular law) became popular. At the same time, the term culture was also used for a higher stage in the development of law, which overcame the sectionalism of lower stages. When Friedrich Carl von Savigny explained law as a cultural achievement, what he had in mind was likely more a European legal culture of legal elites than a national.

In the 20th century, Max Weber established a comparative cultural sociology of law and introduced with it the idea of rationality as culture, a core criterion for western law that still finds wide acceptance today, even though

Weber saw considerable cultural differences within this western law, especially between civil law and common law. Legal culture stands between law and culture, with unclear borders in both directions. According to a widespread understanding, legal culture represents that cultural background of law which creates the law and which is necessary to give meaning to law. This encompasses the role of law in society, the role of different legal sources, the actual authority of different actors and institutions, etc.

However, nearly all such elements can also be described as part of law (as long as law is not limited to legal rules). For the same reason, legal culture cannot sensibly be separated from law, and it is not entirely clear that the term legal culture provides analytical advantages over a broad and encompassing concept of law.

Equally problematic is the relationship between legal culture and general culture. Legal culture is often viewed as that part of the culture which concerns itself with law. However, law is relevant in nearly all areas of life, so it is difficult to draw a sharp division between legal culture and general culture. More useful is the division between internal and external legal culture introduced by Lawrence M. Friedman (but already visible in Savigny) [5]. Internal legal culture describes the attitude towards law of legal actors such as judges and lawyers; external legal culture describes the attitude towards law of the general population. Legal sociologists frequently consider the external legal culture as more important; doctrinal lawyers, by contrast, focus more on internal legal culture. The more autonomous law is within the society, the more important internal legal culture becomes in comparison to external legal culture. Often, these analyses presume a relatively homogenous and static concept of culture: Culture is used with a view to a community (frequently a nation – state) and provides this group with its identity, by establishing internal coherence and external difference, as well as relative consistency over time. All of these elements:

- focus on the nation;
- state, internal coherence, external isolation, lack of change;
- have in the meantime become very doubtful in anthropology and sociology. Nevertheless, in the legal debate they are often still presumed to be self-evident.

The relevance of this topic is that Ukrainian society, as well as each of its citizens needs immediate raising of the legal culture in order to develop the rule of law in Ukraine and the civil society, to develop the improved legal system and the law enforcement of all citizens, legal authorities and officials.

We think, that those legal culture definition cannot be entirely accurate, as there are many different approaches to determining this concept content.

In particular, Professor A.B. Vengerov said that the legal culture is the higher and with the bigger volume form of the sense of justice [6]. We think, that such an interpretation of the legal culture is the most successful, as it concerns only the scope of the ideal and ignores the business activity and performance of the subjects, that have the sense of justice. In other words, the sense of justice – is just one of the legal culture elements, one of its characteristics.

It seems, that Ukrainian scientists, who believe that the legal culture is not limited by the legal awareness of the citizens, are right. It must be defined as a set of achievements of the society, its social groups and individuals in the field of the social relations, that ensures the rule of law in the society, namely the dominance of the legal principles of justice and humanity, security of the rights and freedoms and human dignity in the public life, providing a real man's place as the highest social value.

Every citizen needs to know the rights, that he has, in order to protect these rights, places in which to address and most importantly, to require protection of these rights. People are not required to know perfectly the laws and regulations, it is enough to know their constitutional rights and methods of its implementation.

We consider, that the lawyers' high legal culture may to ensure the implementation of the legal rights and legal responsibilities in the society. It should be noted that the development of the law information, coordination of the public legal education and the formation of the citizens' legal culture is one of the main tasks of the Department of Justice, which is the territorial body of the Ministry of Justice of Ukraine.

The lawyers' legal culture has its own characteristics and differ from the legal culture of others more with its content than with the structure elements. It is characterized by a complete legal knowledge and the ability to apply this knowledge in practice.

So the high standards and demands should be made on the legal culture of judges, law enforcement officers, legal advisers of the local authorities, enterprises, institutions and organizations and all experts in the field of law.

Judicial protection of the citizens rights has its advantages over the other forms. At the same time, in order to all these factors contribute to the human rights realization the high quality of justice is required, which is derived from the judges general and legal culture.

Generally known, that the legal culture of judges cannot be implement without his high sense of justice and morality. In addition, the elements of the concept "judges' legal culture" should be the judge's qualification and competence, the desire to constantly update his legal knowledge «background», as well as the «legal activity» that provide the persistent position at work and in daily life, to act as a guide of the existing legal values in the society, to be an example of the law-abiding citizen. Consequently, the level of the legal culture shown by judges depends on their legal knowledge, experience, legal settings and values.

The legal culture of judge as the officer of justice is the part of the professional legal culture, which also affects on the formation of the legal culture of the whole society. Thus the each person idea about the judges' legal culture is based on the public evaluating of the justice administration effectiveness according to the criteria of the fairness and legality.

The mechanism of the legal culture formation in our country should also include the improvement of the legislation of Ukraine by equaling it with the European human rights' standards.

Organizational means of improving the legal culture of the society and individuals are: development of the legal education; information about current legislation and practice; fight against the legal nihilism; publication of the legal encyclopedic dictionaries and literature, commentaries of the applicable law; expansion of the jurisprudential research etc.

#### References:

1. Patterson, Ehrlich, 5 ENcyc. Soc. Sci. 445 (1937).
2. Lasser, Mitchel. 2002. «Comparative Readings of Roscoe Pound's Jurisprudence». American Journal of Comparative Law 50 (fall) Lawrence M. Friedman, The Legal System : A Social Science Perspective (1975).
3. Gregory A. Caldeira, The Legal Cultures of Europe, Law & Society Review 30 (1996) 55 ff.
4. Mark van Hoecke, Mark Warrington, Legal Cultures, Legal Paradigms and Legal Doctrine : Towards a New Model for Comparative Law, ICLQ 47 (1998) 495 ff.
5. Roger Cotterell, Law, Culture and Society – Legal Ideas in the Mirror of Social Theory, 2007.
6. Reinhard Zimmermann, Roman Law and European Culture. – New Zealand : Law Review, 2007.– 341 ff.

#### Пушкина О. В., Циверенко А. П. Правовая культура в Украине: концепция, положение и перспективы

**Анотация.** Эта статья, посвященная правовой культуре, акцентирует внимание на многочисленных способах, в которых закон существует в обществе в целом, а также изучает правовое сознание. Исследование определяет, каким образом закон интерпретируются конкретными лицами, как он применяется, и каким образом его пытаются избежать или противостоять ему. Особое внимание уделяется популярному пониманию закона и некоторым теоретическим дискуссиям в изучении вопросов правовой культуры Украины.

**Ключевые слова:** правовая культура, легитимизация, законное общество, украинская правовая культура.

#### Пушкина О. В., Циверенко Г. П. Правова культура в Україні: концепція, положення і перспективи

**Аноація.** Ця стаття, присвячена правовій культурі, акцентує увагу на численних способах, в яких закон існує в суспільстві в цілому, а також вивчає правову свідомість. Дослідження окреслює, яким чином закон інтерпретується конкретними особами, як він застосовується, і яким чином його намагаються уникнути або протистояти йому. Особлива увага приділяється популярним розумінням закону та деяким теоретичним дискусіям у вивченні питань правової культури України.

**Ключові слова:** правова культура, легітимізація, законне суспільство, українська правова культура.