LEGAL CULTURE AS A CHARACTERISTIC OF THE QUALITATIVE STATE OF THE LEGAL SYSTEM

I. IAKOVIUK
Candidate of Legal Sciences,
Docent of the Theory of State and Law Chair
(National University
«Yaroslav Mudryi Law Academy of Ukraine»)

The legal system encompasses a complex of all inter-linked legal phenomena and processes which comprise the legal sphere of society and represent it as an organic whole. A legal system is a complex structural, multi-stratified formation consisting of the aggregate of inter-linked, but relatively autonomous elements joined by common purposes in which self-organization and self-development are inherent. A legal system is not a frozen, static sphere of the life of society. Changes leading to complex combinations of its elements conditioned by the objective natural laws of the development of society are inherent in it. Therefore, theoretical studies cannot confine themselves to a traditional analysis of the structural elements of a legal system, its inner systemic links and contradictions, and therefore the identification of the systemic character of law as a fundamental element of a legal system, analysis of theoretical –methodological aspects of the origin and functioning thereof, consideration thereof as a factor of constant development of society, evaluation of the legal system from axiological positions acquire special importance. An analysis of the legal culture of society which characterizes the qualitative state of the legal system facilitates a resolution of this task.

Law is one of the major elements of general culture which is determined by the standard and character of development thereof. The interlinkage of culture and law is revealed through the category «legal culture». In modern jurisprudence the problem of raising the level thereof as a guarantee of the development of a rule-of-law State and the modernization of the legal system has been repeatedly raised by scholars.[1] Nonetheless, the investigation thereof on the basis of new methodological approaches and the revealing of the correlation of the legal system retain their significance and topicality.

[1] For example, *V. Ia. Tatsyi*, «Конституція України і правосвідомість юристів» [Constitution of Ukraine and Legal Consciousness of Jurists], Вісник Академії правових наук України [Herald of Academy of Legal Sciences of Ukraine], no. 4 (1998), pp. 44–54; *Iu. N. Todyka*, Конституционные основы формирования правовой культуры [Constitutional Foundations of the Forming of Legal Culture] (Kharkov, 2001).

A close connection exists between the legal system and legal culture. The unity of a legal norm and real behavior ensures the basis of their unity and ensures the achievement of the social effectiveness of law.[1] However, it should be acknowledged that in legal doctrine from the Soviet period a certain imprecision of concepts has been preserved. Thus, under the conditions of the undeveloped nature of the category «legal system» it was rather often identified with legal culture; with the last it was accepted also to identify the entire legal superstructure of the State.[2] This is conditioned by the fact that the category «legal system» was introduced into scientific circulation comparatively recently. Kuzmin noted that the systemic qualities in specific social objects may not be materialized, but are present only as a general indicator of the state of the system. Systemic qualities are most often inaccessible for direct observation; they may be elicited only with the assistance of an analysis encompassing the entire system.[3] Accordingly, only at a certain stage[4] did Ukrainian theoretical thought begin to «apprehend» the systemic quality of the legal life of society, which earlier could not be studied because the task of constructing a multi-dimensional picture of reality had not even been set out.[5] Thus, identifying «legal culture» with «legal system» was explained at the time by the insufficient development of the last category. This generated doubts as to the advisability of preserving the autonomous existence of these categories on condition of their mutual replaceability, and also conditioned the need for a more precise definition of the specific content of both concepts, which imparted to them an autonomous category status.

No doubt the legal culture of a society is an objectively existing phenomenon with own ontological being, which represents a system of ideal legal forms — legal models, ideals, and values.[6] It acts as a unique orientator for the development of the legal system, the state of which, however, need not necessarily meet this ideal. In legal doctrine the question relative to the definition of legal culture is acknowledged to be complex and exceedingly controversial,[7] because throughout history the approaches to the definition of culture have changed. As a consequence, an unequivocal approach

[1] *Iu. S. Shemshuchenko*, «Теоретичні засади взаємодії права і культури» [Theoretical Principles of the Interaction of Law and Culture], in Право та культура: теорія і практика [Law and Culture: Theory and Practice] (Kyiv, 1997), p. 5.

[2] Thus, V. P. Salnikov characterized legal culture as a legal phenomenon, a special social phenomenon, which encompassed the entire aggregate of the most important components of legal reality and therefore close to an understanding of the entire legal superstructure. See *V. P. Salnikov*, «Правовая культура: проблемы формирования гражданского общества и правового государства» [Legal Culture: Problems of Forming a Civil Society and Rule-of-Law State], in Демократия и законность [Democracy and Legality] (Samara, 1991), p. 17. Other authors adhered to the same position, as indicated by the inclusion in the structure of legal culture law, legal consciousness, legal relations, legality and legal order, and lawful behavior (V. P. Salnikov), and also additionally the legal institutions ensuring legal control (*V. I. Kalinskaia,* «Правосознание как элемент правовой культуры» [Legal Consciousness as an Element of Legal Culture], in A. D. Boikov (ed.), Правовая культура и вопросы правового воспитания [Legal Culture and Questions of Legal Education] (Moscow, 1974), p. 43), or the criteria of a political evaluation of law and legal behavior, and legal science (*N. M. Keizerov*, Политическая и правовая культура [Political and Legal Culture] (Moscow, 1983), p. 113).

[3] *V. P. Kuzmin*, Принцип системности в теории и методологии [Principle of Systemicity in Theory and Methodology of Karl Marx] (2d ed.; Moscow, 1980), p. 71.

[4] *A. P. Semitko* believed that such promotions began at the stage of the development of social production and growth of scientific potential, although in fact they were conditioned by democratic processes in the «perestroika» period, when legal doctrine began to make early steps towards liberation from the diktat of the dogmas of Marxist-Leninist ideology.

[5] *Очерки* по диалектическому материализму [Essays on Dialectical Materialism] (Moscow, 1985), pp. 419–423.

[6] *O. O. Hanzenko*, Формування правової культури особи в умовах розбудови правової держави України [Forming of Legal Culture of the Individual in Conditions of the Development of a Rule-of-Law State of Ukraine] (Zaporozhe, 2002), p. 13.

[7] N. I. Matuzov and A. V. Malko (eds.), Теория государства и права [Theory of State and Law] (Moscow, 1997), p. 571; *O. Meniuk*, «Правова культура в умовах розбудови незалежної України: Поняття, структура» [Legal Culture in Conditions of the Development of an Independent Ukraine: Concept, Structure], Право України [Law of Ukraine], no. 4 (2001), p. 21.

relating to the understanding thereof is absent in philosophy and the other social sciences. Many diverse views have formed in legal doctrine relating to a definition of the content of the concept «law» which are combined into certain schools historically formed and which condition the legal consciousness of jurists and society of a particular country at a respective stage of its development.

The numerous approaches existing in Ukrainian doctrine relating to the definition of legal culture[1] undoubtedly reflect the essence thereof, and therefore have a right to exist. We believe, however, and many scholars[2] agree with this position, that legal culture should be considered as a characteristic of the qualitative state of the legal life of society, which is characterized by the level reached in the development of the legal system — the state and level of legal consciousness, legal doctrine, system of legislation, law-application practice, legality and legal order, legal education, and also the degree of guarantee of basic human rights and freedoms.[3] Formed on the basis of the mentality of a certain people, it acquires the indicia of ethnic and religious affiliation, being determined by the peculiarities of a legal world outlook which is manifest in the legal behavior of a person and in legal activity, legal education and doctrine, which ultimately impart to the legal system of a respective State a certain unrepeatability.

This approach is based on a philosophical view of the correlation of society and culture, which are regarded not as a whole and a part, but as a whole and the quality thereof.[4] The virtue of this approach was acknowledged even in the Soviet period, it

[1] These basic approaches may be singled out with regard to the content of the legal culture of a society: (1) attention often is focused on defining the concept of legal culture by subjective-psychological characteristics: knowledge of legislation, awareness of the content and orientation of laws and subordinate acts, forming of respect for them; feeling of legality and justness. See *S. S. Alekseev*, Механизм правового регулирования в социалистическом государстве [Mechanism of Legal Regulation in a Socialist State] (Moscow, 1966), p. 35; *Марксистко-ленинская* теория государства и права [Marxist-Leninist Theory of State and Law: Basic Institutes and Concepts] (Moscow, 1970), p. 105; (2) legal culture also often is regarded as a system of values. See V. V. Kopeichnikov (ed.), Загальна теорія держави і права [Fundamental Principles of Theory of State and Law] (Kyiv, 1997), p. 140; N. I. Matuzov and A. V. Malko (eds.), Теория государства и права [Theory of State and Law] (Moscow, 1997), p. 576; *O. F. Skakun*, Теория государства и права (энциклопедический курс) [Theory of State and Law (Encyclopedic Course)] (Kharkov, 2005), pp. 742–744; (3) sometimes the content thereof is characterized as activity for the production, distribution, and consumption of values of a legal character. See *E. A. Zorchenko*, Формирование правовой культуры трудящихся [Forming of Legal Culture of the Working People] (Minsk, 1984), p. 17; *E. A. Lukasheva*, Право, мораль, личность [Law, Morality, the Individual] (Moscow, 1986), p. 44; *V. P. Salnikov*, Социалистическая правовая культура [Socialist Legal Culture] (Saratov, 1989), p. 12; (4) sometimes a specific means of human existence in the legal sphere is seen in legal culture: means of legal regulation of social relations, forms of interaction of subjects of social relations, socio–psychological attitude towards phenomena of a legal order. See *E. V. Agranovskaia*, Правовая культура и обеспечение прав личности [Legal Culture and Ensuring the Rights of the Individual] (Moscow, 1988), p. 15; (5) often the content of legal culture is revealed by way of a list of its structural elements. See *V. I. Kaminskaia*, «Правосознание как элемент правовой культуры» [Legal Consciousness as an Element of Legal Culture], in Правовая культура и вопросы правового воспитания [Legal Culture and Questions of Legal Education] (Moscow, 1974), pp. 42–43; *R. T. Mukhaev*, Теория государства и права [Theory of State and Law] (Moscow, 2001), p. 414. Another approach may be encountered in the literature: the definition of legal culture through the category of «legal life», «legal organization», «legal progress», and so on. For example, *S. S. Alekseev*, Проблемы теории права [Problems of the Theory of Law] (Sverdlovsk, 1972), I, pp. 179–180; V. V. Lazarev (ed.), Общая теория права и государства [General Theory of Law and State] (Moscow, 1996), p. 203; *A. P. Semitko*, Правовая культура социалистического общества: сущность, противоречия, прогресс [Legal Culture of a Socialist Society: Essence, Contradictions, Progress] (Sverdlovsk, 1990), p. 203.

[2] *V. V. Lazarev*, «Правовая культура» [Legal Culture], in Lazarev (ed.), Теория государства и права [Theory of State and Law] (4th ed.; Moscow, 2007), p. 279; *V. I. Chervoniuk*, Теория государства и права [Theory of State and Law] (Moscow, 2007), p. 466; *A. P. Semitko*, «Правовая культура» [Legal Culture], in V. M. Korelskii and V. D. Perevalov (eds.), Теория государства и права [Theory of State and Law] (Moscow, 1997), pp. 330–331.

[3] *O. V. Petryshyn*, «Правова свідомість і правова культура» [Legal Consciousness and Legal Culture], in M. V. Tsvik, V. D. Tkachenko, and O. V. Petryshyn (eds.), Загальна теорія держави і права [Fundamental Principles of the Theory of State and Law] (Kharkov, 2002), pp. 246–247. The position of Sokolov is close to this approach; he regards legal culture as a measure of developing legal values accumulated by society and their use by various subjects in the legal sphere. See *N. Ia. Sokolov*, «О понятии правовой культуры» [On the Concept of Legal Culture], Lex Russica, no. 2 (2004), pp. 384–385.

[4] *A. K. Udelov*, «К определению специфики культуры как социального явления» [On the Definition of the Specific Nature of Culture as a Social Phenomenon], Философские науки [Philosophical Sciences], no. 2 (1974), pp. 28–29.

being aimed not at a determination of the place of culture in the structure of society as a social system, but suggested that it be considered as a «scale» for the «measurement» of the degree of historical maturity and development of this system.[1] The link of culture with social progress is important when analyzing legal culture as one of the sub-systems thereof.[2] Thanks to legal culture it is becoming possible to evaluate both the legal system and each structural component thereof — legal acts, texts of a legal character,[3] legal activity, legal consciousness, and the level of legal development of subjects.[4]

The level of legal culture of society, adequacy of the reflection therein of the requirements of the social development, is an essential condition for the correct setting of purpose in law and the success of legal regulation directed towards the achievement thereof. Just as general national culture provides the integrity and integration of social life as a whole, legal culture dictates to each person the principles of legal behavior, and to society as a whole — the system of legal values, ideals, models of behavior, legal norms which ensure unity and interaction of legal institutions and organizations. Legal culture, which at a particular moment of time manifests itself at each point of multi-dimensional legal reality, does not coincide with it fully, but exists therein as an integral part which is capable of acting as a characteristic of the level of development of this reality.[5] In so doing it acts as a qualitative characteristic not of one, but of all, legal phenomena (norms of law, legal procedures, legal relations, legal consciousness, political evaluation of law, law-making and law-application activity, court proceedings, lawful behavior, legal nurturing, legal education and doctrine, and other politico-legal phenomena) which in aggregate for the concept «legal system». It should be pointed out that legal culture is not an ordinary structural element of a legal system because, being a qualitative characteristic thereof, it is inherent to all spheres of the legal life of society. In other words, legal culture is a criterion on the basis of which one may assess the degree of development of the legal system as a whole and each structural element thereof for their conformity to a state which the realization of the model of statehood dominant in a society requires.[6]

An evaluation moment is present in legal culture. It is fully manifest when a person undertakes to determine the state and level of development of a certain legal phenomenon or legal system as a whole, contrasting them with a view to the development of the State and the system of legal values dominant in society. Comparison occurs of the existing state of the object and its ideological, potentially attainable (or possible) model.[7]

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[1] *Марксистско-ленинская* теория исторического процесса [Marxist-Leninist Theory of the Historical Process] (Moscow, 1983), p. 166.

[2] *S. S. Alekseev*, Общая теория права [General Theory of Law] (Moscow, 1981), I, p. 104.

[3] V. M. Gorshenev and I. B. Shakhov suggested singling out in the nature of legal culture activity which is directly effectuated in the legal sphere and activity not of a legal character that, however, is linked with the sphere of operation of law. In the second sphere, in their view, reference is made when the content thereof is the development of artistic form of certain works which reflect legal views, ideas, evaluations, feelings, and so on. This activity is not directly included in the content of legal culture, but by its content of ideas is «wedged» into it. See M. N. Marchenko (ed.), Общая теория государства и права [General Theory of State and Law] (2d rev. ed.; Moscow, 2002), p. 366. Cited in *V. M. Gorshenev* and *I. B. Shakhov*, Контроль как правовая форма деятельности [Control as a Legal Form of Activity] (Moscow, 1987).

[4] *Semitko*, «Правовая культура социалистического общества: Сущность, определение» [Legal Culture of a Socialist Society: Essence, Definition], Правоведение [Jurisprudence], no. 4 (1987), pp. 3–4.

[5] Ibid., pp. 3–4.

[6] Understandably, depending upon the specific nature of political, economic, and social systems of a particular country, the «ideological state» of a legal system, and also the criteria for conformity thereto, will differ.

[7] An ideal model of a legal system and the elements thereof should be defined rationally, by proceeding from the requirements of social development which arise at a certain stage and from the actually existing possibilities of achieving them.

Nonetheless, Hegel said that in fact the legislator by means of legal consciousness «establishes the spirit of his epoch» and then reflects this in norms of positive law.[1] As a result, mistakes of an uneducated legislator are capable of causing material harm to individual elements and to the entire legal system as a whole.[2]

The perception of legal culture as a qualitative state of the legal life of society or as a measure of the development and use of legal values enables the use thereof for characterizing the entire legal system. On this plane, the consideration and evaluation of legal culture from the standpoint of the progress thereof allow the degree of legal progress of a specific State to be assessed.[3] Evaluating the progress of legal culture and legal system requires singling out respective criteria. However, singling them out is a complex matter. Doctrinal writings treat this issue as underdeveloped and controversial. Semitko, having analyzed this problem in detail, came to the conclusion, with which we concur, that, first, the criterion for evaluating the progressiveness of legal culture should be regarded as a separate criterion with regard to general-sociological criteria for social progress, by which are understood the degree of freedom relating to social conditions of existence achieved by mankind within the framework of natural-historical necessity, and also general-legal criteria relating to individual legal criteria that concern an evaluation of individual elements and sub-systems of the legal system; second, with regard to legal culture, the degree of guarantee by the States of the freedoms of the individual should be such a criterion at the contemporary stage of development; third, with regard to singling out individual legal indicators of progress of individual sub-systems of legal culture (legal texts, legal activity, legal consciousness, and so on), the seeking and analysis thereof is an exceedingly difficult matter and not resolved to the end in Ukrainian legal doctrine.[4]

One may assert the obvious, that in the course of such an evaluation the present level of legal culture will be compared with the future state of legal life of society (an integral state of legal culture). This evaluation will be carried out from the standpoint of determining the trajectory of the progressive movement of legal culture from the existing state to a point in the future which is an integral state representing a following and higher degree of legal progress. Next on this trajectory of movement will be plotted the «location» of the legal state. The greater the chasm between the targeted and existing states, the lower the level of the development of existing legal culture, and the smaller the chasm, the higher will be the level.

An evaluation of legal culture provides for an analysis of certain elements or levels thereof:

[1]. In the process of investigating legal culture and an analysis of its influence of the development of a legal system, an important place is allotted to values[5] because they exert a direct influence on the interests and purposes of a separate individual,

[1] Quoted in Chervoniuk, Теория государства и права [Theory of State and Law] (Moscow, 2007), p. 457.
[2] Among the failures were the «anti-alcohol» campaign initiated by M. S. Gorbachev and Gaidar's privatization vouchers.
[3] Because by legal progress is understood an objective, progressive process upward in the development not only of law, but of the legal system as a whole, and also the legal culture of society, the concepts «legal progress» and «progress of legal culture» may be used as equivalents.
[4] *Semitko*, «Правовая культура социалистического общества: Сущность, определение» [Legal Culture of a Socialist Society: Essence, Definition], Правоведение [Jurisprudence], no. 4 (1987), pp. 137, 140–141.
[5] By values is usually understood a positive or negative significance of objects of the environment for a person, groups thereof, or society as a whole which determine not their qualities, but involvement in the sphere of human activity of interests and requirements, and social relations, or as qualities and properties of articles, phenomena, processes capable of satisfying the requirements, interests, and wishes of people. See *Советский* энциклопедический словарь [Soviet Encyclopedic Dictionary], pp. 1472–1473.

groups thereof, and society as a whole. Interest is the real reason for social activity which underlies direct motives, ideas, and intentions of individuals, groups thereof, or society as a whole.[1] Interest is a rather dynamic phenomenon formed on the basis of values under the influence of long-term trends of social development. The purposes which are formed in accordance with certain interests and represent an ideal, mental vision of the results of activity are the most mobile element. As a direct motive, they send and regulate the activity as a separate individual and of society as a whole. The content of a purpose depends upon objective laws of reality and real possibilities of the subject and means which use them.[2] Whereas the attainment of the purposes of a State which are determined by national interests have occurred on the basis merely of economic calculations and proceeding from practical advisability for the national economy, material divergences in positions are generally unlikely among Ukrainian politicians and society as a whole. However, their conditionality by national values which are formed during an historical process and the development of material and spiritual culture of society also meets the geopolitical orientation of the State, as a consequence of which they are characterized by a special stability and make the problem of coordinating the positions of the task difficult to achieve. This emphasized the significance of values for forming and developing the legal culture of society.

Legal culture is a social organism which is constantly evolving. Sometimes it is compared with a large laboratory in which a large-scale system of values is created, the most weighty achievements of mankind in legal doctrine, philosophy and ethics, religion, and politics from ancient times to the present are assembled together. It is internally dynamic, develops and is improved according to its own logic and by its internal laws, thanks to the bearers, or subjects, thereof which, creating, developing, and preserving legal achievements, are themselves under their influence. Thus, legal culture is characterized by the creation, affirmation, preservation, and transmission of legal values. They actually constitute a system of all positive manifestations of a functioning legal reality which concentrates the achievements of legal doctrine and practice.

Mankind as a whole and each people in particular need a moral-value, legal system of coordinates. Imbuing social being and consciousness, legal values serve as a source, a «benchmark», of motivation for human behavior. Encompassing all spheres of social life, the system of values and corresponding principles are based on the historical experience of mankind. No doubt values may change, and sometimes radically. Changes of historical conditions affect the state of legal culture. At the stage of transition from one model of statehood to another, one observes, on one hand, crushing critique of the previous system of values and, on the other, the forming of new values and principles. Without denying this natural law, it should all the same be acknowledged that the transition to a new qualitative state of legal culture cannot be accompanied by a complete rejection of previous legal achievements. The positive experience of prior generations is concentrated in legal values and traditions which authorize society to choose the optimal path for further State-law development. Therefore, legal culture reflects the inextricable unity of the last (historical tradition) and the modern state of the legal system and public notions of its future, or desirable, state.[3] In the act of

[1] *Советский* энциклопедический словарь [Soviet Encyclopedic Dictionary], p. 496.
[2] Ibid., p. 1472.
[3] *V. Akimova*, «Живительная сила традиции» [Life-Giving Force of Tradition], Зеркало недели [Mirror of the Week], 16 June 2007.

mastering and taking possession of the creative labor of earlier generations the legacy in the development of culture is expressed which has been concentrated, «objectified», in cultural values, in the cultural legacy.[1] The development of legal culture and the legal system occurs in accordance with the purposes and existing legal traditions.

The direct link of legal culture with historical tradition does not mean the inevitability and immutability of the last — respecting it, acknowledging and approving it, a subject is simultaneously free to change it in accordance with the requirements of the development of the legal system. However, the researchers are correct who note that behind conversations about the need to reform and modernize the legal system may in fact lay concealed nihilistic views on law. A rejection of legal values, if they truly are values, opens the path to the destruction of the legal order,[2] whereas succession in law in combination with the constant renewal of legal material is a pledge of the normal functioning of the mechanism of legal regulation, a reflection of the link of the old with the new, that which is born in the process of the constant development of the legal system.

Legal culture preserves, selects, generates, and simultaneously retransmits acquired legal values to all spheres of the legal life of society. It incorporates not only the system of values developed and approved throughout history by a specific people, but is able to accumulate legal achievements accumulated by other peoples.[3] However, it should be acknowledged that attempts to know the surrounding legal reality, viewing it solely through the prism of traditions and values of another's legal culture, overlooking in so doing to contrast the results obtained with own legal achievements and orientations of development, will, as a rule, lead only to the transmission of another's views and stereotypes, and therefore do not have a creative character and are not capable of enriching national legal culture. More productive is the equal dialogue of various legal cultures which, on one hand, help overcome the insularity and one-sidedness of views and approaches to each of them, and, on the other, do not further the merger thereof because each preserves its organic unity, integrity, and non-repeatability.

[2]. The achievement of a qualitative state of legal protection and defense of human rights is one of the major indicators of a high level of legal culture. Not only the constitutional proclamation of a person, his life and health, honor and dignity as the highest social value should be considered an indicator of such a state, but also the real ensuring of this constitutional provision: the existence of a democratic, humanitarian, just legislation and the conformity thereof to international legal standards in the spheres of human rights; the existence of effective national legal mechanisms and procedures for the defense of constitutional rights and freedoms; the real opportunity

[1] *E. A. Baller*, Преемственность и развитие культуры [Succession and the Development of Culture] (Moscow, 1969), p. 98.
[2] *Sokolov*, «О понятии правовой культуры» [On the Concept of Legal Culture], Lex Russica, no. 2 (2004), p. 391.
[3] At the contemporary stage of the development, legal systems, interacting one with the other, are in the process of constant cultural exchange. To trace specific types of their interaction is sometimes difficult because mutual influence of legal opinion cannot always be ascertained in the texts of laws, and it is difficult to establish the true source of particular ideas and innovations. As a consequence of the reception of foreign law and simultaneous transmission of own legal product, and with regard to member States of the European Union also the implementation of norms of European law in national systems of law, an inter-penetration is occurring of components of various legal cultures. This will facilitate the objective evaluation of own legal experience and the creation of conditions for the further development and improvement of individual elements of a legal system. Under conditions of legal globalization, such fragmentary legal acculturation is a natural phenomenon able to materially further the modernization of the legal system. See *A. Zhalinskii,* Введение в немецкое право [Introduction to German Law], transl. from German (Moscow, 2001), p. 44.

to have recourse to international legal institutions, for example, the European Court for Human Rights, if a citizen believes that State agencies have violated his rights but he cannot with the assistance of all remedies provided by national legislation defend them.

Human rights are the system-forming basis of a civil society and a rule-of-law State, which explains the attention which is allotted to the theory and practice of this problem. Human rights first arose in public legal consciousness and legal culture and only then were they formulated and consolidated in the constitutions and legislation of the States and guaranteed by them. So far the legal culture of citizens is not elevated to a sufficiently high level and so long as the idea of human rights and freedoms do not become the moral precepts of society, an inalienable component of the national idea of the State capable of uniting all society and inspiring it to a qualitatively new political, economic, cultural, and rule-of-law creation, procedures and institutions for ensuring human rights and freedoms will not be realized in practice and, consequently, one will hope in vain for the development of a civil society and confirmation of the democratic, rule-of-law State.[1] High moral qualities, a developed legal culture, and an active civil position of man are those criteria which testify to the maturity of social relations, the respective form of which is the institutional structure of the rule-of-law State.

A civil society cannot originate and function without individuals who have a high level of legal consciousness and legal culture. A civil society is not the entire population of a country. The scale of this phenomenon in the structure of society is determined by the share of active citizens in whom legal culture inheres and who act as the modulators thereof. In reality, a civil society comprises a certain portion of the population of a country which can be enlarged or contracted, depending upon the dissemination of legal culture among the basic mass of the population with a tendency in the future to embrace the majority of people and even society as a whole.[2] However, the individual cannot subordinate himself in his development to a high level of legal culture if a civil culture does not exist in society, which Solovev characterized as a «phenomenon where political and legal, moral, and aesthetic, and also other values are organically fused, which create a single base for the awareness by a man of civil rights and duties of the individual and society, the individual and the State».[3]

[3]. An understanding of legal culture as a qualitative state of the legal life of society connects it with a certain level of legal consciousness of citizens and officials. The consciousness of a person is a form of cognition of the environment which is manifest in various evaluations, critical comments, and suggestions with regard to the functioning of certain phenomena and processes, which are thus included in the sphere of the vital activity of man and society. Legal consciousness is one of the major elements of the consciousness of man. Arising before or after law or together with it, legal consciousness accompanies law throughout all of legal history, the entire existence of a State-organized society.

[1] *A. N. Arinin*, «Права и свободы человека и эффективное развитие России» [Human Rights and Freedoms and the Effective Development of Russia], Общественные науки и современность [Social Sciences and Modern Times], no. 1 (2002), pp. 69–70.
[2] *M. V. Smolenskii*, «Правовая культура и формирование гражданского общества в современной России» [Legal Culture and Forming a Civil Society in Modern Russia], Юридический вестник РГЭУ [Legal Herald of the Russian State Economic University], no. 2 (2002), p. 65.
[3] *S. L. Solovev*, «Культура гражданственности. К новой парадигме» [Culture of Civic Consciousness. Towards a New Paradigm], Свободная мысль [Free Thought], no. 7 (1992).

The category «legal consciousness» serves to reflect a special measure of legal reality, attitude of people and society towards law, legal behavior of people, legal activity of the State, and its institutions. However, legal consciousness not only reflects legal reality which was formed during specific historical conditions, but also influences the functioning and development of the legal system. It is an active element of the system of legal regulation of social relations — law can only effectuate its regulatory influence through people, directly influencing their consciousness. Through the medium of legal ideas and theories, feelings, and emotions, norms of law and other legal phenomena are evaluated from the standpoint of vital requirements and interests of people and society, justness, and form the standards for legal behavior, notions relating to criteria for effective legal regulation, ways of reformation and improvement of legislation, the judiciary and legal system, legal practice, and so on.

Under conditions of forming a rule-of-law State, legal consciousness acquires additional incentives for its development. It is vital for a rule-of-law State that the legal consciousness of a citizen and society be characterized by a high degree of mastery of the values of law; unqualified respect for the rights of man and citizen and for legal procedures for the settlement of conflicts; knowledge of law, respect for it, being convinced of the need to adhere to the prescriptions of legal norms. It is essential that public legal consciousness determine the mass character of lawful behavior.

[4]. The state and prospects for the development of legal culture are also conditioned by the law-comprehension dominant in a society. The problem of law-comprehension is one of the most venerable in legal doctrine and at the same time perpetually topical. Tsvik emphasized that the existence of a law-comprehension scientifically-substantiated and verified by practice enables law to be distinguished from neighboring, or adjacent, normative categories; legal relations from factual relations, on the basis of which they rise; legal acts from non-legal; the correlation of law and the State to be correctly determined; the role of law in social development; the ways of realization with its assistance of various requirements and interests.[1]

Law, which is formed objectively, in accordance with the notion existing in society about the regulation of social relations regrettably cannot be perfect. Inevitably, certain gaps emerge, internal contradictions. An analysis or assessment of law and practice enable existing defects to be discovered. Having regard to negative assessments, suggestions are formed relating to the improvement of individual legal norms or entire segments of law. Sometimes, especially at stages of transformational changes of society, the law in force acts in contradiction with the objective need to develop new approaches towards the regulation of social relations. This situation encourages progressive social force to see a new vision of the consent and social designation of law. The developments obtained comprise the theoretical basis of legal schools, each of which claims to formulate its own theoretical paradigm and «special» orthologs of law-comprehension. To be sure, each school uses its own methodological instrumentation relating to the cognition of law, considering and evaluating it variously. Although representatives of various schools use an identical category apparatus, this does not mean an identical understanding of the content of the terms used. General legal concepts sometimes are placed in various research contexts, so that they may well be interpreted, which creates problems.

[1] *M. V. Tsvik,* «Сучасне праворозуміння — методологічна основа правової науки» [Contemporary Law-Comprehension — Methodological Basis of Legal Science], in M. I. Panov and Iu. M. Hroshevyi (eds.), Методологічні проблеми правової науки [Methodological Problems of Legal Science] (Kharkov, 2002), p. 88.

The acquisition by a legal school of a dominant character at a certain stage of the development of the State depends in significant measure on its being understood by the legal consciousness of jurists. The difference in the forms of legal consciousness of jurists and the legal consciousness of the ordinary citizen lies in the fact that the former in their cognitive and practical activity are consciously directed by ideal forms (legal doctrines, paradigms, teachings, theories, and so on) of legal thought. The use of these ideal forms, universal legal concepts, constructions, and other means of legal thought during scholarly research, professional communion, and when preparing various legal documents becomes an integral part of the law-comprehension of jurists. Through legal education and enlightenment activity this over time becomes a cultural model, a benchmark for law-comprehension of another part of society, being disseminated not only in space, but also in time.

In a situation of conflict of viewpoints concerning law of the representatives of different schools, one should proceed from the fact that, first, a certain rational grain exists in the position of each school; second, law as a social phenomenon is complex, multi-faceted, and multi-aspectual, and therefore may be investigated in different ambits; third, because each approach reflected only some aspects of law, one should adhere to an integrative approach to law-comprehension which makes provision for seeking consensus and excludes an obsession with only one aspect.[1] In this regard, Tatsyi emphasized that the broad context provides for the need to go beyond the boundaries of an understanding of law only as a unilateral State-authoritative prescription in the direction towards an understanding of the content of legal regulation as a certain variety of social technology, when each participant is regarded as an individual and acts with respect to other individuals, associations thereof, and the State. Under these conditions, law, relying on specific inherent attributes, increasingly acquires features of the principal means of deciding social conflicts, achieving well-being, peace, and amity in society. This approach enables the attitude to be changed towards the scientific legacy of various scientific schools and trends. A departure has occurred from the division into «correct» and «incorrect», reactionary and progressive. However, today an objective process of scientific criticism and evaluation of different schools and orientations of jurisprudence is observed on the basis of a pluralist approach and on the methodological foundation of integration of legal knowledge,[2] which is testimony to the growth of legal culture among legal scholars.

[5]. Legislation, which is characterized by scientific substantiation, a democratic and humanist orientation, justness, lack of gaps and internal contradictions, imprecise or ambiguously interpreted legal prescriptions, use of optimal methods, means of regulation of legal relations, and so on should be consistent with a high level of legal culture. Legislation will satisfy its purpose and justify the public expectations therein if it is characterized by a high quality of laws, scientific substantiation thereof, systemicity, and coordination with international legal standards. On the contrary, the existence of laws which have no legal character, contain obsolete norms or norms violating or limiting the rights and freedoms of citizens, consolidate the arbitrariness of the State and testify to a low level of legal culture.

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[1] *A. Matiukhin*, Государство в сфере права: институциональный подход [The State in the Sphere of Law: Intellectual Approach] (Almaty, 2000), p. 36.

[2] *V. Ia. Tatsyi*, «Методологічні проблеми правової науки на етапі формування правової, демократичної, соціальної держави» [Methodological Problems of Legal Science at the Stage of Forming a Rule-of-Law, Democratic, Social State], in Методологічні проблеми правової науки [Methodological Problems of Legal Science] (Kharkov, 2002), p. 6.

Many unresolved issues exist in the legislative domain. Whereas the question of repealing obsolete normative legal acts is gradually being resolved, problems of the lack of coordination between various legislative acts, their ineffectiveness, the instability of legislation in force, as earlier, remains unresolved.

One would like to believe that the quality of legislation depends to a great degree on the completeness of information and adequacy of the understanding by the legislator of the state of affairs which has formed in society.[1] Kerimov in turn added that the deeper and more comprehensive is knowledge of the surrounding reality, the more rational is the obtained knowledge used, the more the requirements of this milieu are reflected, the more effective is the operation of legal norms, and the more optimally will the purposes and tasks of legal regulation be achieved.[2] However, the fact is that to realize this requirement under conditions of a high social dynamic and unstable trends of the transition period through which Ukraine is living is rather complex. As a result, one should acknowledge that to avoid gaps in law is virtually impossible in this situation. Involvement of the broad masses in the process of law-making may help resolve this problem. This would further, first, the democratization of the law-making process; second, positively affect the legal consciousness of people because a normative legal act adopted by this means is transformed from an order of the authorities into the personal conviction of a citizen, who as a result of this procedure is conscious of his personal responsibility for the further realization of the act in practice; third, this enables the requirements of society to be more fully identified with regard to legal regulation in a certain sphere, and also the vision dominant in society of ways of ordering social relations; and fourth, enables mistakes to be discovered and rectified in a timely manner in the content of a draft normative legal act.

It should be emphasized, however, that in this event the level of legal culture of society will depend directly not on the formal proclamation of the principles of democracy and glasnost in the law-making process, but on developing real mechanisms and procedures for involving people in the implementation of the said principles. Laws which have been developed by taking into account the positions of a broad spectrum of political forces, institutions of a civil society, and citizens will differ significantly in their greater efficacy than those adopted behind the scenes. One should recall that laws which do not find understanding and support in the consciousness of people, are not embodied in their behavior, and cannot be perceived by them as a social value, consequently will be ignored or violated in everyday life.

The constant review of norms and institutes of law which reflects the trend of the social dynamic[3] has yet another important consequence. The fact is that not all socially conditioned changes of norms of law are perceived and consolidated by legal consciousness. Under conditions of constant and rapid social changes, only part of the prescriptions can be interpreted within the framework of the development of a high legal culture, and the other norms which, although «not prescribed» in a high legal culture, nevertheless determine mass legal behavior. As a result of this, legal

[1] *V. M. Rozin*, Генезис права [The Genesis of Law] (Moscow, 2001), p. 20.
[2] *D. A. Kerimov*, Законодательная техника [Legislative Technique] (Moscow, 2000), p. 9.
[3] We refer to the immanent dynamic of cultural norms (change in legal traditions, customs, doctrines, ideologies) and social mechanisms of artificial change of norms as a result of the reflection of the problems of social life (lawmaking and the creation of precedents).

culture «stratifies», forming a hierarchical structure that simultaneously includes strata of «high» and «mass» legal culture.[1]

One of the material problems of legislative activity is that laws far from always prove to be scientifically substantiated sufficiently, and in those instances when this requirement was fulfilled, the results of the studies conducted are not always fully taken into account and used in the process of adopting laws for the purpose of improving their quality. Because of this, the need often arises to involve scholars in order to rectify mistakes permitted and minimize the negative consequences by means of making changes in and additions to laws,[2] which no doubt is not to the benefit of the effectiveness of legal regulation because this impedes achieving systemicity and coordination of legislation. During the first years of independence, this situation was written off to the rapid rate of law-making and the effectuation at individual stages of the origin of Ukrainian statehood of legislative activity by the parliament, the government, and the President, which objectively prevented achieving the necessary quality of legislative acts and their coordination. Understandably, under these conditions scientifically-substantiated foundations of the legislative process did not exist. However, the preservation of the said shortcomings today is more difficult to justify. Jurists have repeatedly raised the question of developing programs for scientific-legal provision for the legislative process in Ukraine. Kopylenko and Murashyn emphasize that such a program should be developed for the purpose of raising the standard of scientific-legal foundations in law-making to the existing needs of modern times; achievement of the high effectiveness thereof; foreknowledge of the dynamic of development and determination of the priorities thereof; ensuring the supremacy of constitutional principles and norms; proper correlation of branches, sub-branches, and institutes of legislation; development of problems of the structuring thereof; establishment of an official classification of laws and their correlation; development of procedures for the prevention and overcoming of legal conflicts, and so on.[3] It is evident that this program would further the resolution of many existing problems in law-making activity, and also would enable the culture of the law-making process to be raised.

[6]. The state of development of legal doctrine and education, the degree of the involvement of legal scholars in developing draft normative legal acts and improvement of their content, and programs for combatting criminality traditionally comprise one of the important standards of the legal culture of society. This is conditioned by the fact that legal doctrine is capable of materially influencing the perception of progressive legal experience which includes the achievements of the development of the national legal system and the legal systems of other States. In addition, the importance of developing legal doctrine for raising legal culture is conditioned by the link thereof with legal education. Whereas new legal knowledge is obtained as a result of scholarly legal activity, natural laws of State-law development are established that were previously unknown, proposals are formulated relating to the improvement of individual segments of the legal system, and assistance is rendered to the practice of

[1] *Matiukhin*, Государство в сфере права: институциональный подход [The State in the Sphere of Law: Intellectual Approach] (Almaty, 2000), p. 516.
[2] The history of modern law-making knows instances when making changes in and additions to a law commenced even before the entry of a certain legislative act into operation.
[3] *O. L. Kopylenko* and *G. O. Murashyn*, «Деякі методологічні аспекти наукового забезпечення законодавчого процесу» [Some Methodological Aspects of Scientific Provision for the Legislative Process], in Методологічні проблеми правової науки [Methodological Problems of Legal Science] (Kharkov, 2002), p. 87.

law, a cognition of the specific nature of the legal foundation occurs in the process of legal education which has a reproductive nature — the study of legislation in force. The legal culture of all representatives of the legal profession depends upon the standard of legal education, the degree of having a command of knowledge obtained by legal doctrine, especially students in law schools.

Given the transition to new social ideals, the official strategy of the authorities with regard to the development of a democratic, social, rule-of-law State and social market economy raises a number of problems, the effective resolution of which depends directly upon the methodological state of Ukrainian legal doctrine. The social significance and authority of doctrine and theoretical substantiation are an essential condition of the effectiveness of State decisions, and therefore doctrine is increasingly acquiring the features of a social institute, the acknowledgement of which is become the ensuring the stable development of society, social amity, well-being, and progress.[1] An obvious achievement in developing methodological problems in legal doctrine is the confirmation of basic universal humanitarian values as world-outlook orientators — principles of democratic, social, and rule-of-law statehood, respect for human dignity, and the rights and freedoms of man and citizen.[2] Consequently, the need exists to complete the transition of scholarly legal research to modern methodological orientators, which have found their embodiment in the 1996 Constitution of Ukraine.

However, a certain complexity exists in the realization of this question. So far the majority of scholarly works and textbooks are written in the philosophical and methodological tradition of Soviet jurisprudence. Often the setting for shutting down this methodology is combined with an appeal for the need for changes, but within the framework of the old style of thought. As a consequence, examples of the new thinking are emerging such as the rule-of-law State which is characterized by the supremacy of lex instead of the supremacy of jus.[3]

An important peculiarity of jurisprudence is its unconditional link with the ideals and values dominant in society. Thanks to its practical orientation, legal doctrine takes part directly in the positive formalization of social ideals and values, relegating to institutions of society as to the subject-matter of his own research. Accordingly, the transformation of these institutions leads to changes of the object of research in legal doctrine and to adjustments of the subject-matter and methods thereof. When considering and analyzing the politico-legal and socio-economic processes, legal doctrine is forced simultaneously to relate to itself as to the object of research,[4] including the subject-matter of investigating the question of own methodology.

[7]. The legal culture of a society includes the state of legality in a society. The degree of legal consolidation of the requirements of legality in a system of legislation

[1] *Tatsyi*, «Методологічні проблеми правової науки на етапі формування правової, демократичної, соціальної держави» [Methodological Problems of Legal Science at the Stage of Forming a Rule-of-Law, Democratic, Social State], in Методологічні проблеми правової науки [Methodological Problems of Legal Science] (Kharkov, 2002), p. 3.
[2] Ibid., p. 4.
[3] *A. I. Demidov*, «Методологический анархизм и методологический плюрализм в правоведении» [Methodological Anarchy and Methodological Pluralism in Jurisprudence], Правовая политика и правовая жизнь [Legal Policy and Legal Life], no. 1 (2001), p. 182. For a critique of such approaches to legal research, see *Tatsyi*, «Методологічні проблеми правової науки на етапі формування правової, демократичної, соціальної держави» [Methodological Problems of Legal Science at the Stage of Forming a Rule-of-Law, Democratic, Social State], in Методологічні проблеми правової науки [Methodological Problems of Legal Science] (Kharkov, 2002), p. 7.
[4] *H. J. Berman*, Западная традиция права: эпоха формирования [Law and Revolution: The Formation of the Western Tradition], transl. from English (2d ed.; Moscow, 1998), p. 25.

and the reality of their effectuation are important criteria thereof. During application, an ideal legal model of behavior set out by the legislator in norms of law may be correctly perceived, distorted, or reduced to nil. Law-application activity may be assessed as that which meets the requirements of legal culture if it is effectuated in precise conformity with the prescriptions of norms of law, is realized within the framework of legislatively determined competence, and has the purpose to protect human rights. However, compliance with the said requirements merely ensures legality, and consequently — a high level of legal culture in society is impossible. No less important is ensuring the independence and effectiveness of the judiciary; augmenting State control with control by the institutions of a civil society; structuring effectively the functioning system of legal education and nurturing of the population, especially State employees.

Ensuring legality directly is conditioned by the high level of professional legal culture which is based on legal knowledge acquired by receiving a specialized legal education, practical skills, and personal mastery linked with the specific nature of the legal profession. The respective skills category or rank shows the level of professional legal culture. However, one should distinguish a formally determined qualification which is reflected documentarily in diplomas, attestations, certificates, and a real legal qualification which, in addition to acquired theoretical knowledge provides for the existence of proper personal professional experience formed during legal practice. A high level of professional legal culture foresees the harmonious coordination of these principles.

The system of norms of behavior is closely linked with the values which regulates those norms. An understanding of this link activizes the real effectuation of value orientations of all who share them.[1] This understanding of values links them functionally with law and morality. A value standard operates as a normative standard which is orientated towards support of the legal order and integration of the legal system. Legal culture occurs when the systematic and constant reproduction of legal knowledge, convictions, values, and practical activity occurs with regard to their realization in a norm of behavior that has become a legal rule. In fact, in daily human activity one rarely thinks about what is law. This happens when a person is aware that someone has violated his right or that he has violated someone's right. This effect of «not noticing» norms of law arises when certain norms, assimilated in the process of the nurturing and socialization of the individual, become an integral element of his inner legal culture, and then the realization thereof becomes automatic.

A qualitative and quantitative evaluation of the behavior of the individual and social groups enables the level thereof to be evaluated whether they meet or do not meet the requirements of legality. One must concur that relegating unlawful behavior to elements of legal culture is groundless.[2] The notion that «the most diverse types of human activity are institutionalized and, accordingly, transformed into norms, becoming part of culture irrespective of the positive or negative role they play in society»,[3] or singling out a «negative legal culture» deserve criticism. One should recall that a high level of legal culture of society or an individual acts as a restraint which is directed towards the localization, limitation, and displacement of unlawful

[1] *Американская* социология. Перспективы, проблемы, методы [American Sociology. Prospects, Problems, Methods] (Moscow, 1972), pp. 368–369.
[2] *Sokolov,* «О понятии правовой культуры» [On the Concept of Legal Culture], Lex Russica, no. 2 (2004), p. 389.
[3] *L. I. Spiridonov*, Теория государства и права [Theory of State and Law] (Moscow, 1996), p. 121.

behavior. Therefore, legal culture acts as a form of the harmonious development of society, thanks to which general social progress is ensured, and therefore efforts to replenish the concept of legal culture with elements which are linked with the deformation of legal consciousness of the bearers thereof should be deemed unfounded and harmful. Legal culture occurs when the systematic reproduction of the unity of legal knowledge, convictions, values, and practical occurs with regard to their realization in a norm of behavior which has become a general rule. Therefore, a deviation in behavior from the requirements of norms of law cannot be deemed to be the content of legal culture.[1]

Iakoviuk I. Legal Culture as a Characteristic of the Qualitative State of the Legal System

Abstract. The article examines the legal culture of society that characterizes the qualitative state of the legal system.

Key words: legal system, law, legal culture, legal values.

Яковюк І. В. Правова культура як характеристика якісного стану правової системи

Анотація. У статті аналізується правова культура суспільства, яка характеризує якісний стан правової системи.

Ключові слова: правова система, право, правова культура, правові цінності.

Яковюк И. В. Правовая культура как характеристика качественного состояния правовой системы

Аннотация. В статье анализируется правовая культура общества, которая характеризует качественное состояние правовой системы.

Ключевые слова: правовая система, право, правовая культура, правовые ценности.

[1] *Sokolov*, «О понятии правовой культуры» [On the Concept of Legal Culture], Lex Russica, no. 2 (2004), p. 389.