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LEGAL CULTURE AS THE BASIS FOR THE FORMATION OF CIVIL SOCIETY

The article deals with the problem of formation of civil society in Ukraine. The author also considers the features of society at the present stage of development of the statehood of Ukraine. Constitution of Ukraine states in the first article that the state is legal. This presupposes the existence of binding democratic institutions in society. This presupposes the existence of binding democratic institutions in society. Democratic institutions in real support are possible only if there is a civil society. At the present stage in Ukraine, civil society is only being formed. There is a deep crisis of state power. This situation leads to social conflicts. They are dangerous for the state, as they take place in the form of demonstrations, strikes and civil wars. The result of such conflicts is unpredictable, but the threat of the collapse of the state is always present. The main reason for such conflicts is the lack of legality in the management of society by the state.

The rule of law itself must be based on the rule of law. It is precisely such conflict situations that hinder both the development of civil society and the formation of a state governed by the rule of law. The rule of law is possible only with the real provision of the rule of law, the rule of law. Therefore, the article analyzes the essence of such categories as "legal culture", "legal consciousness", "rule of law", "legality".

The existence of the rule of law in the system of legal regulation of the state is possible only if there is a legal culture and legal consciousness in society. The author of the article substantiates that it is the legal culture that is the basis for the formation of civil society. Only the level of legal culture of society ensures the rule of law and legality. Legality itself is possible if the state ensures the mandatory legal responsibility of all members of society in case of violation of the norms of law.

The author comes to the conclusion that the existence of a real mechanism of legal regulation, which ensures legality, is possible. This can only be done if there are two systems: 1) a system of guarantees for rights and 2) a system of ensuring legal liability in the absence of a system of duties.

Key words: civil society, public administration, legal culture, legal consciousness, legality, rule of law.

Чукаєва В. О. ПРАВОВА КУЛЬТУРА ЯК ОСНОВА ФОРМУВАННЯ ГРОМАДЯНСЬКОГО СУСПІЛЬСТВА

У статті розглянуто проблему формування громадянського суспільства в Україні, особливості суспільства на сучасному етапі розвитку державності України. У Конституції України в першій статті зазначено, що держава є правовою. Це передбачає наявність обов'язкових демократичних інститутів у суспільстві. Демократичні інститути в реальному забезпеченні можливі тільки за наявності громадянського суспільства. На сучасному етапі в Україні громадянське суспільство тільки формується. Відбувається глибока криза державної влади. Така ситуація приводить до соціальних конфліктів. Вони небезпечні для держави, оскільки протікають у формі демонстрацій, страйків, громадянських війн. Результат таких конфліктів непередбачуваний, але загроза розвалу держави присутня завжди. Основною причиною таких конфліктів є відсутність в управлінні суспільством із боку держави законності.

Сама законність повинна формуватися на принципах верховенства права. Саме такі конфліктні ситуації гальмують як розвиток громадянського суспільства, так і формування правової держави. Правова держава можлива тільки за реального забезпечення верховенства права, верховенства закону, тому у статті аналізується сутність таких категорій, як «правова культура», «правосвідомість», «верховенство права», «законність».

Існування верховенства права в системі правового регулювання держави можливе тільки за наявності в суспільстві правової культури, правової свідомості. Автор статті обґрунтовує, що саме правова культура є основою формування громадянського суспільства. Тільки рівень правової культури суспільства забезпечує верховенство права і законності. Сама законність можлива за умови забезпечення державою обов'язкової юридичної відповідальності всіх членів суспільства під час порушення норм права.

Автор доходить висновку, що існування реального механізму правового регулювання, який забезпечує законність, можливе. Це може бути тільки за наявності двох систем, таких як система гарантій для прав і система забезпечення юридичної відповідальності за невиконання системи обов'язків.

Ключові слова: громадянське суспільство, державне управління, правова культура, правосвідомість, законність, верховенство права.

The effectiveness of public administration depends on the invitation (adoption) of a quality management decision that affects the activities of society. The main subject of the management decision is a civil servant who has his or her competence, qualification reflecting his role and participation in the realization of state functions in practice. Therefore, the result of the management

activity of a civil servant is the initial criterion for a specific social efficiency.

Also, the effectiveness of a civil servant depends on the legality of his decisions. Compliance with the law gives the government a certain purpose and order, which is the basis for ensuring the legitimacy of the Constitution, cannot be considered effective, because to one degree or another it leads

to a violation of the basic norms of the constitutional right of the state and leads to legal incidents.

To ensure a legitimate management decision requires the development of a legal consciousness and legal culture among the practical activities of civil servants. The problem of legal consciousness and legal culture will be relevant for a long time, as well as the necessity of its study directly from the constitutional proclamation of Ukraine. This necessitates the steady growth and achievement of a high level of legal culture, every official, every civil servant, who has the main work in lawmaking and the application of law in managerial activities. Only then is it possible to carry out qualitative reforms concerning the management of the state.

To date, legal consciousness and legal culture have gained new significance. The questions of the formation and functioning of the legal system and legal culture were studied by foreign and Ukrainian scholars – S. Alekseev, V. Babkin, O. Zaichuk, D. Chepiga, M. Kozyubra, N. Onischenko, P. Rabinovich, V. Selivanov, A. Skakun, Y. Tikhomirov, Y. Shemshuchenko, L. Yavich and others. Scientists of modern Ukraine (A. Zayats, V. Kopeichikov, P. Rabinovich, etc.) link the development of a legal state in Ukraine, or the formation of a society with a significant increase in citizens' legal awareness, their legal culture, law-abidingness, and overcoming phenomena of legal nihilism, professional deformation. They consider the development of legal culture as a condition for Ukraine's development [1].

Therefore, the formation of legal consciousness and legal culture is an important task on the way of building our country. Ukrainian society, each individual citizen, an official needs an immediate increase in the level of his legal culture in order to build a rule-of-law and civil society in Ukraine, the development of a perfect legislative system and the enforcement of laws by all citizens and state bodies and officials. The legal culture of a professional group, or a professional legal culture of public service, is one of the forms of a legal culture of a society that deals with legal activity, state leadership, and requires professional education and practical training. As a rule, it is a culture of civil servants who are the holders of the civil service legal culture.

The professional legal culture of the working group of civil servants and its members is characterized by a higher degree of knowledge and understanding of legal phenomena in the relevant fields of professional activity. The legal culture of a civil servant is seen in the critical and creative understanding of legal norms, laws, legal phenomena in terms of their humanistic, democratic and moral content. The professional culture of a civil servant implies:

- knowledge of law and legal science;
- a belief in the necessity and social utility of laws and by-laws;
- the ability to use legal instruments – laws and other legal acts in everyday activities, to resort to the use of all the achievements of legal science and practice in the adoption and execution of decisions.

Professionalism and justice triumph in public administration only when an official, as a servant of the law honestly fulfills his moral and legal duty, constantly increases his skills, masters the achievement of theoretical and practical jurisprudence, and especially when his activity exists in the field of legality [2]. It is the rule of law that ensures the social effectiveness of public administration and the realization of human rights. Actually the civil servants who are obliged to provide real needs, interests and life's purpose of people, therefore their administrative acts must reflect the needs of people, thereby increasing the welfare of society as a whole. This may be the criterion that reflects the social effectiveness of public administration.

It is appropriate to define that the legal culture is an element of the legal system, because the legal system interacts not only with the political and economic sphere of social life, but also with the cultural sphere. Between the legal system and the legal culture there is a close relationship, because the basis of their unity is the unity of the legal norm and legal behavior, which ensures the achievement of social activity rights. Therefore, the legal culture formed by the activities of civil servants, influences the formation of the legal system of the state, and defines legal traditions in the practice of state administration.

N. Onischenko points out that the legal system is an objective, historically natural legal phenomenon that includes interconnected and interacting components: the law and its implementing legislation, legal institutions, legal practice, the mechanism of legal regulation, the sublegal rights and obligations, legal activity and legal relations, legal awareness and culture, legal ideology, legality and law and order, legal liability, etc. [3, p. 20].

The modern legal system of Ukraine began its formation precisely from the adoption of the Declaration on State Sovereignty and the Declaration of Independence of Ukraine. Some researchers propose to divide the process of formation of the legal system of Ukraine in two stages: the previous one – before the adoption of the Constitution (1990–1996) and the modern one – after June 28, 1996. The preliminary stage was characterized by the definition of the basic principles of the formation of the legal system of Ukraine, the elimination of the deformations of the Soviet period, the adoption of a significant number of legislative acts, primarily related to the

reform of the economy and the democratization of society's life. The modern stage began with the adoption of the Constitution of Ukraine, which reflected the change in the social nature, structure and content of the legal system of Ukraine, provisions based on the legal concepts of the Roman-Germanic type of legal system. But, if you look at what is today, one can notice that the modern legal system of Ukraine is so special that even an experienced law scientist does not simply orient himself in the description of legal reality, where the principle of legality exists under a big question. The actual state of the domestic legislation is an indicator of the availability of the effectiveness of the civil servant and of the state administration as a whole.

The structure of the legal system is a stable unity of elements of the legal system, their links, integrity, and the relationship of elements to the whole. According to S. Alekseyev, the structure of the legal system includes the right, legal ideology, judicial (legal) practice [4, p. 88]. P. Rabinovich determines that the legal system includes various legal acts, different types of legal consciousness, forms (means) of its discovery and the state of law [5, p. 194]. According to O. Skakun, the structure of the legal system consists of the following five subsystems of its functioning, as: 1) institutional; 2) normative (regulatory); 3) ideological; 4) functional; 5) communicative, he also notes that: "The legal culture is closely linked with the general culture of the people, is based on its principles, serves as a reflection of its level of development. The formation of legal culture is not a separate process from the development of other types of culture – political, moral, aesthetic" [4, p. 326]. As O. Skakun rightly points out, an important element of the legal system is legal awareness, which is interrelated with the legal culture, which is a reflection of society's attitude to law [6].

V. Kopeychikov defines legal culture as a system of legal values that correspond to the level of legal progress achieved by society, and reflects in a legal form the state of individual freedom, other important social values [7, p. 128]. Also, under the "legal culture" it should be understood that there is a different general culture consisting of spiritual and material values that have been laid. It is due to all social, spiritual, political and economic system. The qualitative state of the legal life of society, which is reflected in the level of development of legal activity, legal acts, legal consciousness, in the level of legal development of the subject, as well as in the degree of guarantee of the state and society of human rights and freedoms. There is also a group culture of civil service – a culture of a group, a team that includes an interest in ensuring a certain rule of law and organization. You can also

determine the individual legal culture of an official, which means legal education of a person, includes a high state of legal consciousness and subordination of his behavior to the requirements of the legal norm. The highest level of civil servant legal culture is legal activity [8].

Legal culture is deeply related to the general culture, morality, everyday life, and the habits of society. And the effectiveness of the laws and the practical work of all law enforcement agencies also depend largely on it. Social efficiency of public administration is to ensure the activity of officials of prestige of the state. If, in their activity, there is no element of legal culture as legitimacy, then this determines the effectiveness of state administration and the level of international relations of the state while securing its sovereignty.

Legal culture does not depend on the right (in this context, first of all the law should be understood as a legal right). No laws will be able to raise its level by declaring certain norms. Legal culture appears not from documents – it cannot be there; legal culture emerges from life. The process of its formation is characterized by the formation of certain cultural and legal values, formed by a certain national temporal-spatial reality, the formation of legal traditions and customs. Traditions and customs in the law form the peculiarities of the reality of law in the system of public administration. The legal succession – these are the actions that existed at different times of statehood and law. Their authority carries a mass of applications, and the result of this application – the utility for society, which provides an opportunity not to enforce society. Unfortunately, in the legal practice of public administration, it is not always possible to see the effectiveness of civil servants, which affects the level of legal culture and legal consciousness (for example: centralized control and control by the head of state only, bribes in solving public administration issues, lack of legal certainty civil servants in the absence of their duties).

The effectiveness of public administration within the legal culture, which is an element of the legal system, is formed by the truthfulness and appropriateness of managerial information issued by public authorities and officials. The interests of society require that, under any conditions, even the most unfavorable for a managerial body or official, only reliable, objective information is received in the system of public administration. The adoption of an effective management decision to depend on reliable information, it is it affects the quality of the reality of law in society. Moreover, it affects on formation of the morality of civil servants. Morality is the basis of the moral and ideological influence of management activity on people with which government and civil servants face, interact, and jointly solve the problems

of forming a sovereign statehood. If it is absent, the existence of legality in a society is practically not ensured (if the managers can act anti-morally according to the law, why an ordinary citizen cannot do so).

Turning to the point, the picture of the legal culture of Ukrainian citizens is not developed enough. We want to say: "What people we have, are such a culture, what culture we have, is such a state, which state we have, is such a life". If we ask the Ukrainians what "law" is for him, then in our opinion, it will be associated with the laws, and in turn the laws will be as a prohibition, and the prohibition going to be like something negative. So why not make such concepts as "law", "right", "legal culture", "legal obligations" – positive? But this work relies first of all on the state, the state apparatus, state bodies, civil servants and on public organizations. But today it seems that the state is not interested in raising the level of awareness of the population in the content of processes that occur in society due to the lack of such elements of the effectiveness of public administration as – truthfulness and feasibility of management activities, morality in the ideological influence of management activities on society, therefore, expect from state actions designed to promote the development of culture, consciousness, and sense of justice of citizens, perhaps, is not worth it.

In our opinion, the legal culture should begin with the development of a society's culture in general, that is, the process of educating people so people should understand that by themselves, and were motivated to do according to the law. At present, the level of legal culture of our country cannot be called high. If you stop a person on the street and ask her what is law and how it works, or how it should work – then, most likely, the answer will be very short and will not be competent enough. The point is that we cannot speak about raising the level of legal culture without developing a level of culture in a whole. Every day the rights of citizens are violated, but it's interesting that people do not even notice it because they do not have any legal knowledge, but if they understand something, then they have to be able to use it, which people cannot really do. After all, knowledge and understanding of law is one of the first and most important elements of the legal culture of a person. Also, the elements are: respect for a person's rights, which is formed through the efficiency of a civil servant, is based on personal conviction in its effectiveness as a means of regulating social relations; the habit of making their actions in accordance with the requirements of legal norms; the ability of a person to use legal knowledge in practice, to realize and protect his subjective rights and legitimate interests, to perform legal duties; high legal activity

of the person in facilitating the implementation of legal requirements, understanding of her need to counteract the offense.

When society is aware of their rights, it is harder to manipulate people, less violations on the part of the state, and on the part of the society itself, because when the legal culture in society is developed, then people understand that it is impossible to violate the law. And what values does our state offer to people now, what values does it support? Healthy lifestyle is a prohibition of the purchase and restriction of alcoholic beverages at the legislative level. This is very good! At the same time, unrestricted advertising is unhealthy foods (chips, fast food, sweet sparkling drinks, sweet breakfast for children, etc.). The state declares such values as honesty, decency, principles, adopts a whole range of legal acts to fight corruption. And in all mass media, entertaining materials (TV series, films, humorous performances, articles) are broadcast and published, in which the process of obtaining bribes by public servants is shown (often by traffic police). And it is believed as a normal, people laugh, nobody is surprised and indignant, because everyone is so accustomed, it has become a commonplace. The law for legal consciousness and legal culture should be primary. The perception of the content of the law should be only from the text of the regulatory legal act.

So what to do to improve the legal culture of modern society in Ukraine? In our view – it is necessary to determine the values and create an ideology, and then bring the legislation in line with the latter and begin a long process of educating people. The very concept of «justice» should not be in the minds of a few, but in the minds of the majority, and especially in the minds of civil servants. They are the agents of the state and the executors of the functions of the state.

So, for the effectiveness of public administration it is necessary: to define goals that are implemented in management processes, and these goals must meet the needs of society; real achievements of public administration in stabilizing the standard of living of society; Public expenditures that went into public administration provided positive results in ensuring the stable development of society. Incidentally, the ancient Roman philosopher Seneca said: "The written laws, like the web, hold only the weak person" [9]. And the Chinese philosopher Lao Tzu said on this occasion: "When laws and decrees are multiplied, the number of robberies increases" [10]. But at the same time, an important tool for analyzing and evaluating the effectiveness of public administration is not only the implementation of normative prescriptions by civil servants and citizens of the country, which analyzes the practical presence of legality in society, and the existence

of an objective assessment of the performance of the civil service from the side of society. Management results should meet the needs of society.

Mass media can also make multi-faceted analytical work on public administration. At the same time, it is very important when this information has objective and practical reality, if on television or other media are given some facts assessment of public administration, and in reality, society sees another is formed in the minds of citizens of the country the nihilism of law that is a great prion formation of legal culture and legal consciousness.

To eliminate this problem it is necessary: to use more actively when making a managerial decision to appeal citizens to identify shortcomings, omissions in public administration; respond in a timely manner to citizens' requests and take effective measures to prevent the growth of negative manifestations and processes; civil servants constantly enter into a direct dialogue with citizens.

References

1. Чукаєва В., Чешига Д. Правова культура и формування ефективної моделі державного управління в сучасній Україні. *Проблеми державотворення України*. 2018. Вип. 4–5. С. 29–38.
2. Головченко С. Правовая культура и демократизация. Киев : Аттика, 2000. 236 с.
3. Онщенко Н. Теоретико-методологічні засади формування та розвитку правової системи : автореф. дис. ... докт. юрид. наук : спец. 12.00.01. Київ, 2002. 32 с.
4. Алексеев С. Общая теория права : в 2 т. Москва : Юридическая литература, 1982. 360 с.
5. Рабинович П. Основы общей теории права и государства. Харьков : Consum, 2005. 320 с.
6. Скакун О. Теорія права і держави. Київ : Алерта, 2012. 524 с.
7. Загальна теорія держави і права / за заг. ред. В. Копейчикова. Київ, 1997. 397 с.
8. Головченко С. Правовая культура і демократизація суспільства. Київ, 2000. 352 с.
9. Знаменитые философские цитаты Сенеки. URL: <https://socratify.net/quotes/lutsii-annei-seneka>
10. Famous philosophical citations by Lao Tzu. URL: <https://socratify.net/quotes/lao-tszy/37238>