Legal Culture of Modern Society: General Philosophical and Anthropological Analysis of the Category. Part Two

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Abstract: This article is talking about the phenomenon of legal culture in the research of non-Russian scientists. The author is analyzing the main approaches to this notion in foreign legal science and finally comes to a conclusion that understanding and filling of the analyzed category directly depends on the general culture of particular society. Various insinuations on legal culture because of which the spiritual, cultural component is expelled from its structure, turn out to be consequence of misunderstanding of the specified statement and as a result lead to a situation when law itself loses its sociocultural spirit.

Key words: Culture • Legal culture • Values • General culture • Professional lawyers • Sense of law • Positive law.

INTRODUCTION

The second part of our analysis of the category of legal culture is devoted to understanding and filling of the term outside the scope of Russian legal science.

Foreign legal science also doesn’t have clear definition of the studied category. An Italian professor David Nelek would take legal culture as a set of more or less stable patterns of behavior and relationships in the legal field. He says that legal culture, like culture itself, is about who we are not just what we. As an illustrative example, Italian scientist compares ways of crossing the street in various European countries. The British pedestrian feels relatively safe on pedestrian crossings, but rather less secure if he is crossing elsewhere. In Italy the degree of security, according to the professor, depends entirely on the integrity of the driver, but not on the part of the road where it is going to be crossed. In Germany if you cross the road on zebra crossing, there is no danger at all. Thus, the Italian scientist says that legal culture is not only positive law but more estimated understanding in society [1].

Even G.W.F. Hegel, who is not directly mentioning legal culture as a term in his works, notionally analyzes it because of comparison between ideal and real in law. As we remember, the main subject of Hegel’s theory of law is the nature of law and its whole existence in the field of people's relationship [2]. «The laws of nature are absolute and exist and work just as they are. To know what the laws of nature are, we must search nature itself, because these laws are true, false may appear only in our understanding. Measure of these laws is beyond us and our knowledge will not add anything to them, we can only deepen our knowledge. Social laws and law as a phenomenon itself are much alike to nature laws from one hand and differ much from another. The difference is that the main idea in studying social laws is understanding that social laws are not absolute and totally depend on our consideration. Legal laws always come from people. Inner voice can either agree or disagree with them» [3]. Thus, the laws of nature are absolute, social laws and rules are relative. Consequently, a person's attitude to legal requirements is usually estimated: «Man can not blindly obey the essence, he argues that he also has a legal sense in himself. He may obey the necessity of the power of external authority, but he never obeys them he obeys the necessary laws of nature, because his essence always tells him how it should be to his own mind and he finds in himself something that also has the force of law for him» [4]. Thus, legal culture, according to the German philosopher, has both a philosophic component - ideas about real law of members of the society and quite material - positive law perpetrated by state authorities. And legal reality in his mind is a reasonable estimate of
the quintessential man of the current legislation in terms of his ideas about real law. So, G.W.F. Hegel thought that all legal laws are absolute and uniform. To our mind, criteria of reasonableness is based on an understanding of freedom and justice that is different for each society.

RESULTS AND DISCUSSION

In modern foreign jurisprudence, there are also very categorical, highly controversial approaches to the definition of legal culture. For example, Belgian lawyer, Mark Van Hook, understands legal culture as culture of only lawyers as a professional group. «When we talk about legal culture, – writes Professor Van Hook, – we usually imagine traditions, values, attitudes and habits that dominate in the professional legal environment or in the legal profession in general (internal legal culture)» [5]. Applied to society in general, he uses the term "foreign legal culture" and believes that public legal culture is secondary to internal professional one and is based on it.

For Russian jurisprudence, such approach is a very original one. Our legal science has traditionally outstanded legal culture of society and legal culture of a person (sometimes group legal culture is also marked). Moreover, much of the researches on legal culture characterize this category as a part of the general culture of the society. So, the category that Professor Van Hook calls an internal legal culture, in Russian legal science is called professional legal culture and is identified only as one of the specific groups of legal culture of the society.

To our mind, it seems more perspective to stay on the "broad" understanding that says legal culture is a characteristic of the society in general. With all the respect to the Belgian professor, «narrow» content of the analyzed term (only as a culture of legal professionals) seems rather useless in both cognitive and applied viewpoints, because - according to T. Sinukova, - is a natural carrier of values of the legal culture of the whole society» [6] and this allows us to admit the primacy of whole in front of unique in this case. Moreover, we should also mention that if we give the «first place» to legal culture of the lawyers, we will have to admit that law itself is a privilege for only legal professionals ... we think, such point of view is at least a little bit arrogant. What is more, such an understanding of legal culture, in our opinion, may lead to understanding law as a technical category, just as a product of the activities of public authorities. And as a result law will be reduced to some regulatory machine, a «machine» for legal professionals, «stamping» uniform legal forms for very diversified material of human behavior. Law will turn into a technical legal unit, mainly forming order, designed to basically more or less adequate (from the point of view of professional lawyers) form of solution of business problems.

In the context of the analyzed opinion it would be interesting to use a small etymological experiment, that has been held by the Hungarian scientist Csaba Varga while he was analyzing the understanding of legal culture and its components by some European and American lawyers. The Hungarian scientist ironically says that frankly the word «law» in English language is etymologically originating from the verb «to rule». The German analog of the norm of law sounds like Recht, it means «law» and is made from the verb Regel – to regulate. Thus, the author draws our attention to the difference in understanding of the law as a phenomenon even at the stage of registration the linguistic concepts.

This all takes us to the basic cultural dominant of the society, which, to our mind, forms legal culture of a particular society. Language is only a part of a culture. Words, expressions are used only to formalize what has already been firmly entrenched and has received socio-cultural confirmation. Taking this into consideration we can easily understand why professor Van Hook, as a true representative of his society, talking about legal culture, gives primacy to the the lawyers' part of it and why legal culture and law in general are understood differently in different societies. In many countries in Western Europe, law is considered to be a formalized phenomenon and at present it is often considered to be quite different from the philosophical and mental ideals. Understanding of legal culture in such situation is also very technical. There is a priority of procedural law, the phenomenon of individualization of law through the recognition of judicial precedent as a main source of law in Anglo-Saxon legal family. We tend to agree with M. Sigalov who expresses an opinion about the existing differences in legal ideology of the Roman-Germanic and Anglo-Saxon legal cultures: «Legal ideology of Romano-Germanic is based on the principle of collectivism («citizen is part of society»). So the right of a citizen must obey the public interest... The ideology of Anglo-American society is based on the principle of individualism («society is a collection of individuals») and it is believed that a citizen's right should be protected, even if this will make harm to society in general» [7]. Protecting the interests of the individual and the
self-ownership principle and forgetting that law itself is first of all a philosophically filled category leads to formalization of the law and legal culture in general.

We should say, that theory and philosophy of law are much less prestigious in the legal systems which represent Anglo-Saxon legal family. To our mind, this is because of the above-described “instrumental approach” to the law as a phenomenon. Nevertheless, many members of the scientific community in these countries are also analyzing law as a part of general culture. Thus, Naomi Mezy, professor of law of Georgetown University, says that, it is much easier to understand law as an antipode to culture, of course. Because law, at first glance, appears easier to grasp if considered in opposition to culture-as the articulated rules and rights set forth in constitutions, statutes, judicial opinions, the formality of dispute resolution and the foundation of social order. But, nevertheless, the law is thought, understood and most importantly, put into practice, only being an integral part of the general culture and interacting with its illegal content [8].

CONCLUSION

Actually, we will never make law regulation effective if we forget that in the social world there is always something that does not fit the stereotyped logical norms, can not be forcasted and does not fulfill the positive laws even if they are strongly persuading. In this case the use of the formula of understanding any social event presented by the S.L. Frank is methodologically suitable. According to this scientist, a social event is the “objective real idea” that you can not study impersonally but should empathize and share. The understanding of the fact that a law act is a social act that has been created by the socio-cultural reality first of all means that spiritual, judgemental and intuitive - archetype components, that can not and do not need to be rationally studied, should be also included in the category of legal culture. However, by including them in the category of legal culture, we will achieve our goals and accept the presence of out-of-rational-intuitive-level in legal culture that is responsible for the estimation and intuitive acception or declination of positive law.

So, the understanding and filling of studied category directly depends on the general culture of a particular society. Various insinuations on legal culture because of which the spiritual, cultural component is expelled from its structure turn out to be consequence of misunderstanding of the specified statements and as a result lead to crisis of positive law and public authority.

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