

Sartaev S.A.¹, Smanova A.B.², Kalshabayeva M.Zh.³

¹Associate Professor, e-mail: s.sartai@mail.ru

²Candidate of Legal Sciences, Acting Associate Professor, Law Faculty, e-mail: akmaralbahtyar@gmail.com
Al-Farabi Kazakh National University, Kazakhstan, Almaty

³Senior Lecturer, Department of Law of Kazakh National Agrarian University,
Kazakhstan, Almaty, e-mail: manshuk.1981@mail.ru

**FACTORS AFFECTING THE FORMATION AND DEVELOPMENT
OF LEGAL CONSCIOUSNESS IN THE REPUBLIC OF KAZAKHSTAN**

In the article we examined some issues of the influence of historical and political factors on the formation and development of legal consciousness in the Republic of Kazakhstan, and also to identify the place of law in the system of value orientations of citizens of the Republic of Kazakhstan, we carried out practical research.

Legal awareness is not a phenomenon acquired from birth, it develops for a long time and gradually. Legal consciousness is formed as a result of the interaction of the individual in society and the understanding of the received information. Legal consciousness is formed under the influence of various circumstances, current events, specific living conditions and various processes that influence the life of a society. In legal science, it is customary to consider the factors influencing the legal consciousness in the following two groups: 1. External (the activities of subjects – creators of legal consciousness). 2. Internal (individual personality characteristics).

It should be noted that the process of forming legal consciousness is impossible without the socialization of the individual, since legal consciousness can only be formed if there is an individual in the social environment and the formation of relations between him and society. A.V. Mudryak justifies the need to consider the factors of socialization as special circumstances or conditions that influence this process. He identifies three groups of such factors: Macrofactors (world, country, state, society) that influence very large groups of people in certain countries, the influence is mediated by two other groups of factors. Mesofactors, conditions of socialization of large groups of people allocated: on a national basis; according to the place and type of settlement in which they live; by belonging to the audience of various mass communication networks. Mesofactors influence a person's legal consciousness both directly and indirectly through the factors of the third group. Microfactors. These include circumstances directly affecting specific people – the family, peer groups, the microsociety, organizations in which social education is carried out – educational, professional, social, religious organizations. (Mudryak, 2000)

Key words: rule of law, law, personality, sense of justice, legal culture, socialization.

Сартаев С.А.¹, Сманова А.Б.², Қалшабаева М.Ж.³

¹заң ғылымдарының кандидаты, доцент, e-mail: s.sartai@mail.ru

²заң ғылымдарының кандидаты, доцент, e-mail: akmaralbahtyar@gmail.com
әл-Фараби атындағы Қазақ ұлттық университеті, Қазақстан, Алматы қ.

³аға оқытушы, Қазақ ұлттық аграрлық университеті, e-mail: manshuk.1981@mail.ru

**Қазақстан Республикасындағы құқықтық сананың
қалыптасуы мен дамуына әсер ететін факторлар**

Мақалада Қазақстан Республикасындағы құқықтық сананың қалыптасуы мен дамуына тарихи-саяси факторлардың әсерінің кейбір сұрақтары қарастырылды, сондай-ақ Қазақстан Республикасының азаматтарының құндылықтар бағдарының жүйесінде құқықтың орнын анықтауда тәжірибелік зерттеулер жасалынды.

Құқықтық хабардарлық туғаннан алынған құбылыс емес, ол ұзақ уақыт бойы дамып келеді. Құқықтық хабардарлық қоғамда адамның өзара әрекеттесуі және алынған ақпаратты түсіну

нәтижесінде қалыптасады. Құқықтық санасы әртүрлі жағдайлар, қазіргі оқиғалар, нақты өмір жағдайлары және қоғам өміріне әсер ететін әртүрлі процестердің ықпалында қалыптасады. Заң ғылымында келесі екі топтағы құқықтық сана-сезімге әсер ететін факторларды қарастырған жөн: 1. Сыртқы (субъектілер қызметі – құқықтық сананың құрушылары). Ішкі (жеке тұлғалық сипаттамалары).

Айта кету керек, заңды сана қалыптастыру процесі адамның әлеуметтенуінсіз мүмкін емес, өйткені заңды сана тек әлеуметтік ортада адам және оның арасындағы қарым-қатынастарды қалыптастыру кезінде қалыптасуы мүмкін. А.В. Мудрык әлеуметтенудің факторларын осы үдерісте әсер ететін ерекше жағдайлар немесе жағдайлар ретінде қарастыру қажеттілігін сипаттайды. Ол осындай факторлардың үш тобын анықтайды: Макрофакторлар (әлем, ел, мемлекет, қоғам), белгілі бір елдердегі адамдардың үлкен топтарына әсер етеді, бұл әсер басқа екі фактормен байланысты. Мезофакторлар, халықтың үлкен тобын әлеуметтендіру шарттары: ұлттық негізде; олар тұратын жері мен түріне қарай; әртүрлі жаппай байланыс желілерінің аудиториясына тиесілі. Мезофакторлар үшінші тұлғаның факторлары арқылы тікелей және жанама түрде адамның құқықтық сауаттылығына әсер етеді. Микрофакторлар. Олардың ішінде белгілі бір адамдарға тікелей әсер ететін жағдайлар – отбасылық, құрдастар топтары, микроөнеркәсіп, әлеуметтік білім беру ұйымдары – білім беру, кәсіптік, әлеуметтік, діни ұйымдар. (Mudryak, 2000)

Түйін сөздер: құқықтық мемлекет, құқық, жеке тұлға, құқықтық сана, құқықтық мәдениет, әлеуметтену.

Сартаев С.А.¹, Сманова А.Б.², Калшабаева М.Ж.³

¹к.ю.н., доцент, e-mail: s.sartai@mail.ru

²к.ю.н., доцент, e-mail: akmaralbahtyar@gmail.com

Казахский национальный университет им. аль-Фараби, Казахстан, г. Алматы

³Старший преподаватель, Казахский национальный аграрный университет, Казахстан, г. Алматы, e-mail: manshuk.1981@mail.ru

Факторы, влияющие на формирование и развитие правового сознания в Республике Казахстан

В статье рассматриваются некоторые вопросы влияния историко-политических факторов на формирование и развитие правового сознания в Республике Казахстан, а также проводятся практические исследования с целью выявления места права в системе ценностных ориентаций граждан Республики Казахстан.

Правосознание не является феноменом, приобретенным от рождения, оно складывается длительно и постепенно. Формируется правосознание в результате взаимодействия личности в социуме и осмысления получаемых сведений. Правовое сознание формируется под воздействием различных обстоятельств, происходящих событий, конкретных условий жизни и разнообразных процессов, которые оказывают влияние на жизнь общества. В юридической науке принято факторы, влияющие на правовое сознание, классифицировать на следующие две группы:

1. Внешние (деятельность субъектов – творцов правового сознания).
2. Внутренние (индивидуальные особенности личности).

Отметим, что процесс формирования правосознания невозможен без социализации личности, так как правовое сознание может быть сформировано только при наличии индивида в социальной среде и становлении отношений между ним и социумом. А.В. Мудрик обосновывает необходимость рассмотрения факторов социализации как особых обстоятельств или условий, оказывающих влияние на данный процесс. Он выделяет три группы таких факторов: макрофакторы (мир, страна, государство, общество), которые влияют на очень большие группы людей, в определенных странах влияние опосредовано двумя другими группами факторов. Мезофакторы, условия социализации больших групп людей, выделяемых: по национальному признаку; по месту и типу поселения, в котором они живут; по принадлежности к аудитории тех или иных сетей массовой коммуникации. Мезофакторы влияют на правосознание человека как прямо, так и опосредованно через факторы третьей группы. Микрофакторы. К ним относятся обстоятельства, непосредственно влияющие на конкретных людей – семья, группы сверстников, микросоциум, организации, в которых осуществляется социальное воспитание – учебные, профессиональные, общественные, религиозные организации (Mudryak, 2000).

Ключевые слова: правовое государство, право, личность, правосознание, правовая культура, социализация.

Introduction

According to Yu.A. Levada, the path of man to society and the formation of his sense of justice, respectively, passes “through a small group of his inner circle.” The result of socialization is not only the assimilation of knowledge, norms, skills, abilities, but also structural changes in the human psyche – the formation of conscience – the “internal controller”, that is, the phenomenon sanctioning behavior and acting as an internal regulator of responsibility for human actions. The formation of this mechanism is the most important point in the process of socialization of the individual. (Levada, 2000: 132)

Identifying the relationship between the biological and social in the conditionality of the individual's behavior remains one of the scientific problems. But extreme judgments exaggerating the role of either the biological or social factor are debatable. It is wrong to reduce the source of social behavior only to heredity. But it is also not right to obscure the active essence of the individual, to ignore the impact of the biological factor on him. Absolutization of the role of the social environment, which supposedly can be made such, when a personality with the properties originally set by this environment is formed from any individual in it, is certainly an illusion.

Let us consider in more detail the historical and political factors as the most significant factors that influence the formation and development of legal consciousness. The specificity of the sociopolitical position of Kazakhstan's society at present is that the republic has a fundamentally new legal basis in order to create the creative functioning of social processes, in which there should be no such manifestations as permissiveness, corruption, and arbitrariness.

In any conditions, the formation of legal consciousness, both of a particular person and in the whole of society, is conditioned by many different factors, which are not the same in the strength of their impact. However, at the same time, the historical and political consideration of the issue of the development of legal conscience contributes not only to the definition of its main sources, which influence its development, but also to rethink the previous theoretical ideas about legal consciousness. (Silbey, 2005)

Main part

President of the Republic of Kazakhstan N.A. Nazarbayev, speaking of the modernization of the

historical consciousness, notes the following: “I am convinced that the people who remember, appreciate, proud of their history have a great future. Pride in the past, a pragmatic assessment of the present and a positive look into the future – this is the key to the success of our country “. (Nazarbayev, 2018)

Earlier in the Kazakh society there were customary law, due to both economic and social root causes. Public relations were regulated on the basis of customary law as moral rights and obligations. Customary law of the Kazakhs, or *adat*, is a specific phenomenon of legal consciousness, which is formed under the influence of specific features of economic activity and forms of social organization of Kazakh society, which manifests itself in a deeply peculiar social and moral-legal institutions of traditional nomadic society, the analysis of which is not only an essential condition true understanding of the characteristics of the cultural, social, political history of our country, but also is difficult about General theoretical, socio-philosophical problem. (Karasar-tova, 2010: 2)

Ch. Valikhanov focused on democracy and humanism of ordinary Kazakh law: Kyrgyz customary law, by analogy of higher development with lower, which is so often referred to, is more humane than, for example, Muslim, Russian or Chinese legislation. In Kyrgyz laws, there are no intimidating and precautionary measures that are abundantly present in the newest European codes. Kyrgyz never had corporal punishment. And the legal laws, according to which members of the clan are responsible for their relative, are very useful (Valikhanov, 1985: 94).

“Kazakh customary law is an unwritten law,” wrote academician S. Zimanov. It is built on the basic normative institutions and a multitude of easily memorable, short and expressive sayings that contain the basic procedural and material standards. Procedural standards are the starting point for isolating specific legal norms corresponding to specific life situations. (Zimanov, 1996: 25)

In Kazakh society there was a certain nomadic democracy, which was manifested in the relative lack of cohesion of people by despotic principles, to a certain degree of freedom and equality of women, the absence of slave worship before the authorities. The power of the Kazakh Khans was not despotic, and the nomadic Kazakh tribes, if there was a conflict with representatives of the *zhuz* or clans, could migrate to other lands. The rights of people at that time were regulated by the laws of Tauke Khan – Zheti Zhargy, in which the economic and civil rights of individuals were enshrined. The political rights

that were granted to certain segments of society were expressed through the institution of election of the khans.

The *biy* institute was of great importance, which was designed to perform judicial and administrative functions to resolve collective or individual disputes, while the democratic nature of this institution was to obtain the title of *biy* by a person solely on the basis of his own authority among the people.

After the colonization of the Kazakh lands, traditional forms of protection of rights and freedoms were destroyed by the tsarist regime. In a Muslim society based on Islam, the goal of controlling the behavior of an individual is to conform to the interests of the faithful, Islam in general. A man who dared to oppose himself to this regime was subjected to severe punishment, he was considered an apostate of Islam. Muslim law had a religious character, in connection with this, the implementation of the norms it established in the eyes of the faithful became a religious duty. Islamic law was intended to regulate not only the external behavior of Muslims, but also the internal motivation underlying its postulates. This determines the conscious and voluntary submission of a person of community, which is based on the requirements of Islam and at the same time is a belief in the state. The idea of human rights and its claims to power in the context of Islamic culture meant an encroachment on the inviolability of religious institutions. (Syukiyainen, 1986: 3038)

With the spread of Islam in Kazakhstan in the daily life of people, both *Ata-Salta* and Muslim attitudes became widespread – the nomadic part of the population was guided by patriarchal-tribal institutions, and the sedentary – by Muslim rights to a greater extent.

Scholars of the Soviet period also pointed to the well-known indifference of the Kazakhs towards the Muslim faith. So, for example, M.O. Auezov stated: “For the most part, the Kyrgyz people were not fanatical ... They were little known to the dogmas of Islam, religious rites were performed not precisely and not by all.”

Based on the foregoing, it can be assumed that the public and family life of Kazakh society in the past was regulated by both national *adat* and Muslim law. But the degree of their action depended on concrete historical conditions.

It should be noted that the principle of tolerance has always taken place in the traditional worldview of the Kazakhs. The historical fact that mosques and churches, synagogues and churches stood along the route of the Great Silk Road that ran along the Ka-

zakh steppe also confirms the tolerance of the Kazakh people. (Zhengisbek, 2014)

In the Kazakh steppe, the most important basis for the legitimacy of power was its justice. For this reason, the cultural foundations of the legality of the norms of customary law are wider than the framework that is outlined by the historical period of the practical use of its norms in the country's judicial and legal system. Without exaggeration, it can be argued that universal human rights, such as humanism, social justice, respect for the individual and the protection of their fundamental rights and freedoms, are embodied in ordinary Kazakh law. (Zhiyenbayev, 2018)

It should be noted that the usual norms and ideas acquired by the consciousness of people, of course, were not updated instantly due to changes in living conditions. Additional measures were needed that would facilitate the introduction of a new legal consciousness into the consciousness of people. Thus, the unremitting efforts of the Soviet authorities to raise the educational and cultural level of the people and their political consciousness allowed them to convince the people about the fairness of the actions of Soviet legal institutions.

The next stage covers the period from 1917 to 1990, when Kazakhstan was on the path of evolution by the time it gained state independence. In accordance with the Constitution of the USSR in 1936, the Kazakh Autonomous Soviet Socialist Republic was transformed into a union republic. February 18, 1926 the Constitution was adopted by the Decree of the Central Election Commission of the Kazak ASSR.

With the adoption in 1977 of the Constitution of the USSR and the Constitutions of the Union Republics, as well as in 1978, Kazakhstan, the areas of joint terms of reference of the USSR and Union Republics deepened. Since in the Constitution of 1977 the USSR competence was fixed in general vague wording – the text did not contain “a list of all-Union Union Republican ministries and state committees of the USSR, there were no references to the 1922 treaty on the formation of the USSR. There were no provisions on the principles of the distribution of competence between the USSR and the Union republics, and contained only a general list of the powers of the Union and separate instructions as to which and in which areas of public life Union legislation should be adopted. The text of the Constitution also in an extremely general form stated that the Union would ensure unity of legislative regulation throughout the country. It was particularly noted that the Union of SSR only establishes

the general principles of organization and activity of republican and local bodies of state power, ”which actually led to the republics duplicating union acts and, in essence, limiting their powers in legislative and management activities, which undoubtedly had an impact on the formation of legal consciousness in Kazakhstan society. (Zkim, 2018)

After the collapse of the USSR on December 16, 1991, Kazakhstan adopted the Constitutional Law of the Republic of Kazakhstan of December 16, 1991 No. 1007-XII “On the State Independence of the Republic of Kazakhstan”, which stated: “The Republic of Kazakhstan is an independent, democratic and legal state. It has full power in its territory, independently determines and conducts domestic and foreign policy. The Republic of Kazakhstan builds its relations with all states on the principles of international law. The Republic of Kazakhstan is open to the recognition of its state independence by other states. Throughout the entire territory of the Republic of Kazakhstan, the Constitution and laws of the Republic of Kazakhstan, as well as the recognized norms of international law, are in force. The territory of the Republic of Kazakhstan within the existing borders is integral, indivisible and inviolable.

On January 28, 1993, the Supreme Council of the Kazakh SSR adopted the Constitution of the Republic of Kazakhstan as the basis for the formation of the legal consciousness of citizens. Kazakhstan “was proclaimed an integral part of the world community, the republic’s adherence to international norms and the course towards the creation of a democratic and legal state was confirmed. The constitution proclaimed inter-ethnic harmony in the country under the rule of the Kazakh nation, ensured equal rights and freedoms to all citizens, enshrined rights and equally human responsibilities. According to the Constitution, the state language in the republic was the Kazakh language, and the Russian language received the status of a language of international communication. Restrictions on the rights and freedoms of citizens on the basis of ignorance of the state language or the language of international communication were prohibited.”

The most important mechanism for the implementation of state power has always been right. The role of law is that, unlike other norms of social regulation, it enshrines the stable form of the state, guarantees the rights and freedoms of the individual. In order to function effectively, law must become a generally binding law, since law is the official specification of law, the sovereign will of the state. Thus, in the section “Fundamentals of the Constitutional

System” it was said that “the Constitution of the Republic of Kazakhstan has the highest legal force, its norms have direct effect. Laws and other acts contrary to the provisions of the Constitution are not legally binding.

The people of Kazakhstan are the only source of state power of the republic. The people exercise state power directly and through their representatives. No part of the people, either an organization or an individual, can arrogate to itself the right to exercise state power. ” It should be noted that the 1993 Constitution did not clearly formulate the form of government. At the time, the country was simultaneously possessed features of a presidential and parliamentary republic. The 1993 Constitution did not contain such notions as “public consent” and “political stability”, “economic development for the benefit of the people”, “Kazakhstani patriotism”, “voting in the republican referendum”. All these concepts were introduced later – in the current 1995 Constitution. Thus, “the Kazakhstan model of the political system in its development went through three stages in the first half of the 1990s. The first stage (March 1990 – November 1991) is the formation of a parliamentary republic. At the second stage (from December 1991 to January 1993) a semi-presidential republic is formed. At the third stage (from January 1993 to March 1995), features of both the parliamentary and presidential (especially from December 1993) republics are manifested. Strengthening state sovereignty and the institution of the presidency. 1995 Constitution of the Republic of Kazakhstan. On August 30, 1995, 212,773 citizens, or 81.14% of the electorate, took part in the national referendum. Only 9.9% of the referendum participants spoke negatively. As a result, 89% of the referendum participants voted for the new Constitution of the Republic. According to the Constitution, the Republic of Kazakhstan is a democratic, secular, unitary, social and legal state. Essentially, Kazakhstan has become a state with a presidential form of government. The Constitution established democratic principles for the separation of power in the republic into legislative, executive and judicial branches, which interact on the principles of deterrence and balance. (Zhanazarova, 2013)

The principle was that the institution of the presidency from now on became the personification of the unity of the state and the people of Kazakhstan, and according to the Constitution of 1993 it was within the framework of the executive power.

With the acquisition of the status of a sovereign independent state, a subject of international law, the

“own” process of legislation began to develop, influencing the formation of people’s legal awareness, the growth of their legal culture, the establishment of the foundations of civil society. Legal culture has an enormous role in terms of strengthening the rule of law and the rule of law in society, ensuring social justice, and establishing a moral atmosphere in which a person can live and work freely. At the same time, it is obvious that one of the reasons for the low level of legal culture in society is the “alienation” of a citizen from the processes of managing public and state affairs, from values preached by the authorities.

The formation of the legal culture of the individual is a complex process that includes social and psychological factors. The legal culture of an individual reflects its readiness for the perception of progressive laws and ideas and is characterized by the absence / presence of certain legal cultural orientations. (Savchenko, 2007: 5)

Legal culture is a reflection not only of a high level of legal consciousness, but also of the high quality of all legal activities, regardless of who specifically undertakes it: the state or public body, official, group of citizens or an individual.

As a result of the study of the legal consciousness of Kazakhstan’s society, it is permissible to note that the theory of legal awareness should be based on new empirical data that should be obtained taking into account the latest achievements of scientific activity based on the use of modern research techniques that take into account both general and Kazakhstan-specific features of legal awareness civil society.

The fact of the adoption of the Basic Law in 1995 plays an important role in analyzing the development of legal consciousness in modern Kazakhstani society. The preamble to the Constitution states: ‘We, the people of Kazakhstan, united by a common historical fate, building statehood in the original Kazakh land, conscious of themselves as a peace-loving civil society, committed to the ideals of freedom, equality and harmony, wanting to take a worthy place in the world by present and future generations, on the basis of our sovereign right, we adopt this Constitution’. (Constitution, 2011)

If we consider the relationship of law and legal consciousness at different historical stages, then the right of a person to life can be considered as a criterion. Subjective perception of law is characteristic of the primitive communal formation, “when the concept of society in the modern sense did not exist when egoism dominated as the basis of morality. With the beginning of the allocation of

ideas about good and evil by a person, inevitably the conception of what to do should be born. During this period, each person determined for himself what and how he can and should do. The thesis dominated: everything that is good for me is good. The question of human life was solved simply. If a neighbor bothers me, I must kill him or drive him away. At the same time, each person himself determined what he should do: kill or drive out.

The next period of development of society was already consistent with such a level of consciousness, like rational egoism. “With the advent of the first social formations of the family, clan, tribe and nationality, the view on the concepts of good and evil changed. The thesis became dominant: everything that is good for my family, clan, tribe and people is good. Therefore, the murder of a person was perceived from this side. If a dead person belonged to my family, people, it is bad, if on the contrary, it is good.

Conclusion

In a class society, the perception of law expanded the boundaries of those who belonged to their own. Cosmopolitan elements began to appear. But the ambiguous attitude towards the murder of man persisted. With the development of humanity began to come to the idea that the life of every person is priceless. That is how the humanistic approach to law was formed.” (Yermukhametova, 2016)

To identify the place of law in the system of value orientations of citizens of the Republic of Kazakhstan, we conducted practical research. We interviewed 170 respondents at random, who were asked to respond to the questionnaire.

One of the questions is the questioning of respondents’ opinion on whether Kazakhstan is a legal state today. According to the results of the survey, it can be concluded that for the majority of respondents Kazakhstan is a legal state (Fig. 1).

60% of positive answers, in our opinion, the figure is not high enough. With the existence of such phenomena as corruption, bureaucracy, and others, the right is not sufficiently a subject of respect, much less a value. To a greater degree, law is perceived as an analogue of external coercion, which is necessary to be observed if there are those bodies or officials that control its observance, but in the absence of such, it can be simply ignored. In such a situation, non-legal (“informal”) elements, often transforming into such phenomena as robbery, fraud, violence, etc., begin to prevail in society.

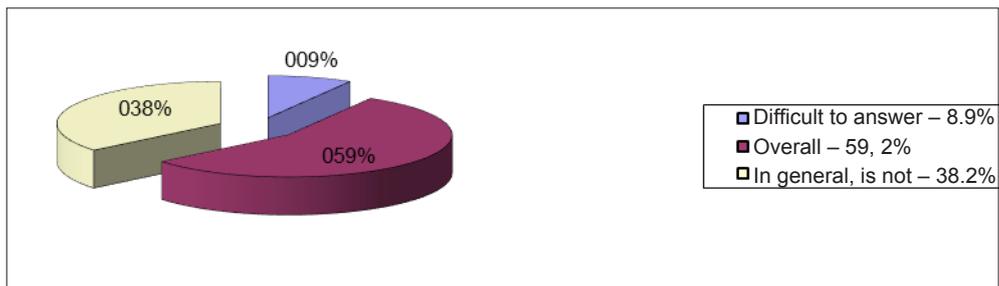


Figure 1 – Respondents’ opinion on whether Kazakhstan is a legal state

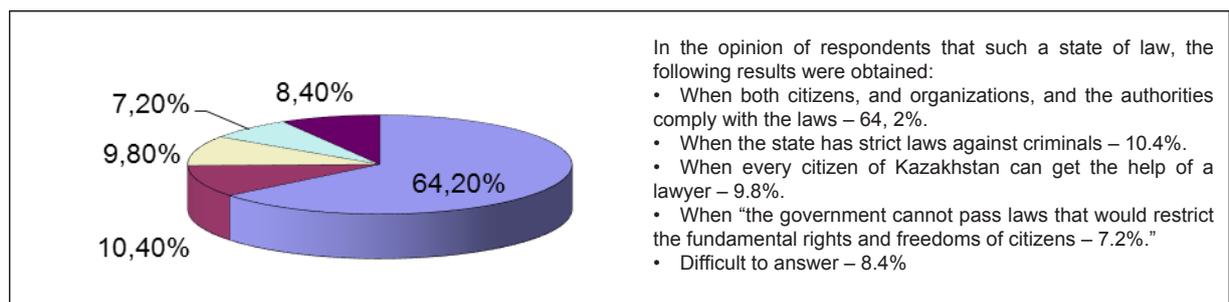


Figure 2 – the opinion of the respondents that such a legal state

In the opinion of respondents that such a state of law, the following results were obtained:

- When both citizens, and organizations, and the authorities comply with the laws – 64, 2%.
- When the state has strict laws against criminals – 10.4%.
- When every citizen of Kazakhstan can get the help of a lawyer – 9.8%.
- When “the government cannot pass laws that would restrict the fundamental rights and freedoms of citizens – 7.2%.”
- Difficult to answer – 8.4%

According to the results of the survey, it can be concluded that the overwhelming majority of the respondents (64, 2%) believe that a state is considered legal if the laws are respected by citizens, organizations, and power structures. The second place according to the results was the definition of the rule of law in which strict laws exist for criminals (10.4%). Thus, “the following

criteria of a rule of law state were established in the minds of Kazakhstan: the observance of the laws by all without exception and the observance of the fundamental rights and freedoms of citizens of Kazakhstan by the authorities.

The next question of the questionnaire was the question of what functions the law should perform (Fig. 3).

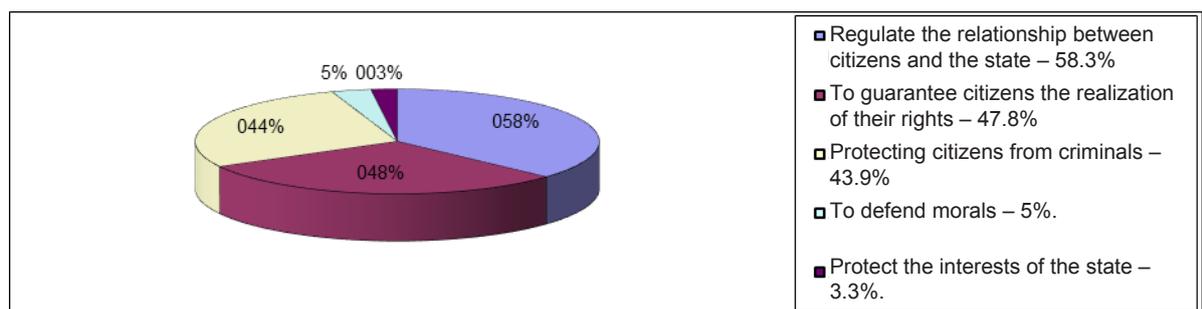


Figure 3 – Respondents’ opinion on the functions that the right should perform

On the basis of the obtained results, it can be concluded that the main function that should realize the law is the regulation of relations between citizens and the state, the least result was obtained by such function as the protection of state interests. This result seems to us

understandable, since in the legal consciousness of Kazakhstan citizens personal over social, personal interests, rights and freedoms over state ones prevail.

When asked what role law plays in society, the following answers were received (Fig. 4):

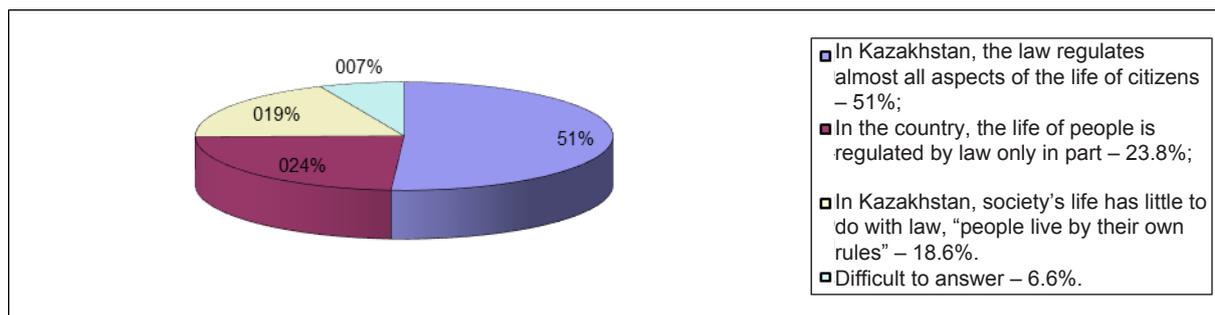


Figure 4 – Opinion of respondents about the role of law in the daily life of Kazakhstan society

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