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## ISSUES OF LEGAL CULTURE, LEGAL CONSCIOUSNESS AND LEGAL MENTALITY IN KAZAKHSTANI SOCIETY

Effective functioning of all elements is important for the legal system. The legal system is a system capable of changing its own structure in the course of activity. The article is devoted to the study of legal culture, legal consciousness and legal mentality in Kazakhstani society. Low level of legal consciousness and legal culture leads to the weakening of the legal culture of the society and the instability of the legal system. Concepts, mutual influence, important elements of legal mentality, legal consciousness and legal culture were studied in the article. The need to study the interaction of these legal phenomena contributes to a deep understanding of the structure of the legal mentality in Kazakhstani society. At the same time, the issues of legal mentality, legal culture and legal awareness should be considered comprehensively, taking into account the mental characteristics of citizens in society and their general value system. This is one of the important directions of national legal science. Development of social and cultural values of the society is one of the most important tasks in the context of creating a legal state. The result of the research is the development of concrete proposals for the effective functioning of the national legal system, the development of legal mentality, legal culture and legal consciousness from today's point of view, and the development of measures to deeply understand the directions and laws of their interaction.

**Key words:** legal mentality, legal culture, legal consciousness, legal regulation.

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### Қазақстандық қоғамдағы құқықтық мәдениет, құқықтық сана және құқықтық менталитет мәселелері

Құқықтық жүйе үшін барлық элементтердің тиімді қызмет етуі өте маңызды. Құқықтық жүйе жұмыс істеу процесінде өзін-өзі құрылымды өзгертуге қабілетті жүйе болып табылады. Мақала қазақстандық қоғамдағы құқықтық мәдениет, құқықтық сана және құқықтық менталитет мәселелерін зерттеуге арналған. Құқықтық мәдениет, құқықтық сананың төмендігі қоғамның құқықтық мәдениетінің әлсіреуі мен құқықтық жүйенің тұрақсыздығына әкеп соғады. Мақалада құқықтық менталитет, құқықтық сана және құқықтық мәдениет ұғымдары, өзара әсері, маңызды элементтері, өзара әсері зерттелді. Осы құқықтық құбылыстардың өзара әсерін зерттеудің қажеттілігі қазақстандық қоғамда құқықтық менталитеттің құрылымын терең түсінуге өз септігін тигізеді. Сонымен бірге құқықтық менталитет, құқықтық мәдениет және құқықтық сана мәселелері қоғамдағы азаматтардың менталдық ерекшеліктерін, олардың ортақ қалыптасқан құндылықтар жүйесін ескере отырып, кешенді түрде қарастырылуы қажет. Бұл ұлттық құқықтық ғылымның маңызды бағыттарының бірі болып табылады. Құқықтық мемлекетті құру жағдайында қоғамның әлеуметтік мәдени құндылықтарын дамыту аса маңызды міндеттердің бірі. Зерттеу нәтижесі ұлттық құқықтық жүйенің тиімді қызмет етуіне қатысты тұжырымды ұсыныстар әзірлеу, құқықтық менталитет, құқықтық мәдениет және құқықтық сананы бүгінгі тұрғыдан дамыту, олардың әсерлесуінің бағыттары мен заңдылықтарын терең түсіну шараларын әзірлеу болып табылады.

**Түйін сөздер:** құқықтық менталитет, құқықтық мәдениет, құқықтық сана, құқықтық реттеу.

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### **Вопросы правовой культуры, правосознания и правового менталитета в казахстанском обществе**

Эффективное функционирование всех элементов имеет важное значение для правовой системы. Правовая система представляет собой систему, способную изменять собственную структуру в процессе деятельности. Статья посвящена изучению правовой культуры, правосознания и правового менталитета в казахстанском обществе. Низкий уровень правовой культуры, правосознания ведет к ослаблению правовой культуры общества и нестабильности правовой системы в целом. В статье исследованы понятия, взаимовлияние, важные элементы правового менталитета, правосознания и правовой культуры. Необходимость изучения взаимодействия этих правовых явлений способствует глубокому пониманию структуры правового менталитета казахстанского общества. При этом вопросы правового менталитета, правовой культуры и правосознания следует рассматривать комплексно, с учетом ментальных особенностей граждан в обществе, их общей системы ценностей. Это является одним из важных направлений национальной юридической науки. Развитие социо-культурных ценностей общества является одной из важнейших задач в процессе формирования правового государства. Результатом исследования является выработка конкретных предложений по эффективному функционированию национальной правовой системы, развитию правового менталитета, правовой культуры и правосознания с точки зрения сегодняшнего дня, а также разработка мер по глубокому пониманию направлений и закономерностей их взаимодействия.

**Ключевые слова:** правовой менталитет, правовая культура, правосознание, правовое регулирование.

#### **Introduction**

The effectiveness of the adopted laws and ongoing reforms largely depends on the culture, consciousness and general legal culture of society, citizens. One of the major issues is the formation of the legal culture and legal consciousness of any society and raising its level. It is impossible to create a legal state without the formation of a legal culture. It is no exaggeration to say that today the formation and improvement of legal consciousness and legal culture in achieving the strategic goals of Kazakhstan is one of the most important tasks facing the state and society.

A serious obstacle on the way to adaptation to new conditions is the reluctance of society to accept values, especially legal ones, law as a whole. The priorities that have arisen in the system of national values are reflected in the political and legal culture of deliverers of the legal mentality in the system of relations between the individual, society and the state. In addition, there is a misunderstanding in the majority of society regarding the state reforms and legal policy carried out in Kazakhstan.

The ongoing reforms in Kazakhstan in the political, economic, social and legal spheres require the

improvement of the legal apparatus and law enforcement agencies, forms and methods of service, strict observance of democratic principles, and further improvement of the organization of activities from law enforcement agencies as well. In their activities, the issues of ensuring publicity, expanding and deepening business contracts with the media and the public are of particular importance.

In this regard, the study of the mentality and the development of conceptual approaches to its formation, in our opinion, will ensure the stable functioning of the legal system, optimize the processes of Public Administration, fundamental development issues, taking into consideration the traditions, customs, values and culture of multinational Kazakhstani society.

In domestic legal science and practice, the term and concept of legal mentality is a new world. It can be assumed that the study of this phenomenon will allow us to deeply understand the features of the formation and functioning of legal consciousness and legal culture in the legal reality that has developed in Kazakhstan society, thereby increasing their level, developing new positions and ideas for raising the attitude of citizens to common law to a new mental level.

In the formation of legal culture and legal consciousness, legal education is an important factor. It is a reflection of the activities of public organizations and state bodies in the formation of legal culture and legal consciousness in society. In increasing the level of legal awareness and legal culture, the state should considerably pay special attention to legal education. This is one of the most important issues in our Kazakh society. Only the activities carried out comprehensively by the state and society make it possible to increase the degree of legal awareness and legal culture.

The quality of the activities of the legal apparatus and, in general, the proper implementation of state functions largely depends on the level of development of professional legal consciousness, the content and nature of its inherent legal value systems and directions.

### **Research methods**

The main method was the study of scientific theoretical and empirical materials. So were used the logical, system, and legal methods. In addition, during the preparation of the article, domestic and foreign literature, normative documents, as well as mass media sources were analyzed. Also, the official-legal, comparative-legal, legal modeling method, and the method of explaining legal norms were used.

### **Discussion and results**

The changes taking place in the social and legal consciousness of Kazakhstani society indicate its readiness to participate in the implementation of state legal reforms, which in fact represent signs of the formation of a new type of modern mentality in the Kazakhstan legal space. All this, of course, indicates the need to rethink the phenomena of legal consciousness and legal culture, form them through the prism of the legal mentality and justify the realism that arose in the political and legal development of the state.

Without knowing the definition of law, citizens are born, brought up and live in a legal environment, legal consciousness. According to some authors, the key to understanding legal consciousness, legal culture and legal behavior is the legal mentality and the study of the specifics of the traditional attitude to law (Anufrieva 1997: 25).

To this day, the concepts of “legal culture” and “legal consciousness” have been sufficiently deeply

and comprehensively studied in domestic and foreign literature and have become the interests of many studies, as a result of which it can be said that to this day a kind of theory of legal consciousness and legal culture has been formed in domestic legal science.

In the legal literature, a different definition of legal culture is given. Legal culture includes spiritual characteristics (views, ideas, knowledge, value systems), as well as various institutions of relations between human rights and behavior. It will depend, first of all, on the level of development of the legal consciousness of the people entirely.

Legal culture is the achieved level of development in the legal organization of people’s lives connected with the spiritual, social, political system, which is reflected in the achieved level of legal service, legal development and legal consciousness of people, as well as the degree to which the state guarantees human rights and freedoms.

An important element in assessing the legal culture is the legal system of the state. Any act of implementing human rights must be legitimate, that is, in accordance with the ideas of justice, equality, freedom that prevailed in the minds of society. The importance of the close interconnection of all elements of legal culture is that without the development of legal views, deep, conscious and mastered legal knowledge, the formation of real law and developed forms of the governmental and legal relationship is impossible.

Legal consciousness, being the most important form of public consciousness, reflects the understanding of legal phenomena and processes and their transformation. Legal consciousness refers to the tendency of a person to understand and evaluate the place and significance of law in society, to recognize and obey the norms of law. In this regard, legal consciousness is understood as a set of views and feelings of a person towards the current norms of law, the ability to judge them accordingly.

Legal consciousness is the main initiator of the need to accept for the common good the legal norms that correspond to the interests of a person, citizen, and society, and satisfy their interests. Legal culture implies awareness and full understanding of the legal norms and serving activities guided by them. We understand legal consciousness as a system of legal feelings, emotions, ideas, evaluations and other manifestations that express people’s relationship to law, human rights and freedoms in domestic jurisprudence.

Legal mentality is a system of historically formed worldview ideas that reflect the attitude of a certain social or national-ethnic community to law and legal reality. It is possible to talk about the formation of a person with a high level of legal consciousness only in the case of effective interaction of legal consciousness, legal culture and legal mentality.

Some scientists believe that mentality comes from the French equivalent of «mentalis», which, in their opinion, means «worldview» (Smolensky 2003: 64). In the seventeenth century, the English word «mentality» appeared and remained a philosophical term, since it was a product of English philosophy (Tadevosyan 2003: 64). Others associate the origin of the term «mentality» with the Latin word «mens» and the adjective «mentalis» derived from it («mens», «mentis» – mind and «alls» – others) (Pushkarev 1995: 27).

In France, in the XVIII century, the word «mentality» appeared to some extent thanks to the works of Voltaire. In most European countries, this term began to be actively used in the scientific literature only from the middle of the XIX century and began to be used in ordinary speech, denoting collective systems of communication and behavior.

The concept of mentality includes a person's feelings about himself and his place in this world, sympathy and antipathy, images, and position. All these positions are determined by the consciousness and unconscious of a person, which relate to the cognitive and behavioral level of a person.

According to M. Rozhansky, «mentality» is a commonality located at the base of the unconscious with consciousness, emotional with logical, therefore the source of thinking, ideology and beliefs, feelings and emotions. Mentality is associated with the foundation of social life, however, has its own historical and social significance (Ibraeva 2002: 164).

Russian scientist A.I. Pigalov's definition should be noted. He emphasized that «mentality means a picture of the world belonging to a real individual, accepting the values, attitudes, superstructures belonging to the collective to which he belongs» (Pigalov, 1994: 393).

I.G. Dubov considers mentality as «an integral characteristic of people living in a specific cultural environment that allows them to describe their own view of the world around them and to describe the characteristics of their influence on it» (Dubov 1993: 27).

Mentality is a stable structure of consciousness that is reflected in the behavior, life and behavior of

a person or people as a whole and conditioned by their culture, language, religion, upbringing, social relations (Murunova 2016).

When considering the issue of mentality, it is worth paying attention to the doctrines of jurisprudence. In other words, questions arise as to what the national law means in the Kazakh mental context and how we should understand it. For example, according to V.N. Sinyukov «the main directions of recognition of traditional law in domestic literature, in its sources, are conditioned by the context of Western jurisprudence and culture. This, in turn, does not always allow the availability of appropriate methodological tools for the identification and acceptance of legal phenomena of a foreign legal and cultural nature» (Sinyukov 1994). Fully agreeing with the opinion of the mentioned scientist, we believe that it is necessary to develop the doctrine of domestic jurisprudence in domestic science, which takes into account the national context, in other words, the mentality of the people and society. At present, elements of natural legal and positivist theories are reflected in the Kazakhstan legal system. Despite their differences, they have a common rational paradigm of legal interpretation typical of Western European legal traditions.

Today's obvious interest in the problem of mentality proves its importance. To understand the problem of mentality, there are studies that turn to the consideration of the peculiarities of modern Kazakh society. In addition, the violation of habitual values, stereotypes of thinking and behavior, the ability to quickly understand the essence and content of the ongoing processes will allow Kazakhstanis to look at and evaluate the historical fate of their country from a new perspective.

It should be noted that although scientists have not yet answered the question of what mentality or national character is, based on their concepts, mentality is closely related to culture, the collective consciousness of the people, and is the most important component of ethnic consciousness.

The phenomenon of the legal mentality has not been sufficiently studied from a legal point of view, therefore, the problem of clarifying its interaction and relationship with legal culture and legal consciousness is important and relevant. For example, in Russian legal science, the legal mentality is considered as a system of relations of legal feelings, emotions, views and other manifestations of people's attitude to the law, rights, freedoms, obligations, as well as to the desired law and other

desirable legal phenomena. The legal mentality is not a concept that substitutes legal consciousness, but retains its special essence. The reflection of its own place in a number of other legal phenomena inherent to the legal mentality indicates its cultural and spiritual specificity (Bayniyazov 2000: 32).

Without studying the category «legal mentality», it is impossible to study the deep structures of law, the ideological basis of the legal consciousness of a person and society. That is because the recognition of difficult re flexible legal phenomena, along with legal rational explanations, requires the development of the basic elements of the legal sphere of society. Therefore, for a complete understanding of legal culture, it is important to study the legal mentality, which is its deep source.

According to Professor N. L. Garnet, legal culture is not only a result, but also a type of activity, in this context, spiritual legal culture is interpreted as an image of thinking, standard and norms of behavior, and in relation to the personality is reflected in its mentality (Garnet 1998: 6).

The most important elements that fully characterize the concept of legal culture are basic beliefs, norms, values focused on the legal system. These elements also characterize the legal mentality. However, one of the basic features of the legal mentality is its stability, inertia, complexity, duration and difficulty of change.

The legal mentality reflects the stable worldview of social groups, classes, nationality, and personality concerning the functioning of the law and state, on legal and political realities in the life of society. It is a system of worldviews of assessment and impact on objects of stable specific historically formed state legal reality, which is most characteristic of a particular social or national-ethnic sociality. We can offer that the legal mentality is a deep reflection, a lower stage of the legal reality that exists among other legal phenomena of the spiritual life of society.

Today, many authors agree that legal mentality defines a set of conscious and unconscious psychological attitudes and tendencies of an individual to act, think, feel, perceive, and understand various phenomena of legal significance. Legal mentality is a less changeable phenomena that reveals a person's attitude to legal reality.

The theory of legal mentality has not yet been developed in modern domestic science. Attempts have been made to establish only the initial aspects of the doctrine of domestic legal mentality. This doctrine is multifaceted, including special legal,

ethno-cultural and specific social dimensions, and it requires regular systematic research.

There is an organic connection between the close mutual influence of legal worldview, legal consciousness, legal mentality and legal thinking and in the formation of legal worldview, legal consciousness, legal thinking by the legal mentality. In turn, these mentioned are the most important means of internal life and functioning of the legal mentality.

According to some specialists, the following main features of the legal mentality can be highlighted:

- binary;
- cultural identity with its own history;
- conservative, stable, and static character;
- typicality of principles, assessments, and impressions;
- political and legal nature (Gorokhovskaya 2007).

It should be noted that the legal principles, legal stereotypes, legal mentality are formed under the influence of such factors as geographical location, territory and density of people's location, multinationality, natural and other factors. The combination of these factors forms the path of development of the unique specific history formed by living conditions of statehood, law, culture, and mentality.

Mentality and its features are reflected in proverbs, sayings, mythologies, fairy tales, traditions, and customs, which are natural forms of expression of the legal culture of the people. Its features are reflected in the national legal positions and reactions of political legal reality in relation to the state, rights, law, customs, reforms, and public servants.

Currently, the main features of the mentality of the society of Kazakhstan are often discussed. They are primarily determined by the geographical, geopolitical and historical reasons, the depth of mutual influence of cultures of different nationalities, the emergence of common living, household, traditional, worldview features in them. The peculiarity of the Kazakh mentality is that «commonality» is more important than «individuality», that is, the interests of the individual are subordinate to the interests of society and the state.

## Conclusion

The study of this issue creates a practical and theoretical need, since the customs of life

and relationships of people, changes in their consciousness and mindset are directly related to their value orientations, their main idea of the spiritual life of the people, that is, their mentality. The change in legal consciousness depends on the development and transformation of the legal mentality. In turn, the higher the level of legal culture in society, the higher the level of compliance and strict execution and implementation of legal norms.

In the process of forming legal consciousness with legal culture, legal education, in turn, is directed to the foundation of the legal mentality of bearers of rights, influencing their level of mentality. The problems of legal education should be intertwined with the theory of the study of the legal mentality, and their mutual influence, impacting factors should be developed in a deep scientific way, which cannot be imagined without comprehensive improvement of the theoretical base and methodological equipment for teaching legal disciplines in general education and higher education. Legal education is based on people's conscious acceptance of legal knowledge, attitudes, and ideas. They are aimed at preventing the decline of individual legal consciousness and eliminating the causes and conditions that cause it. Their use should be carried out simultaneously with the system of socio-economic, socio-political, legal,

organizational and other measures implemented by the state and society in order to increase the level of legal awareness (Golovchenko 1985:26).

The purpose of nurturing legal culture in citizens should be determined primarily at the social level. Through the introduction of a culture of interpersonal communication from kindergarten and school, legal behavior is formed, which is able to voluntarily fulfill and defend the humane principles of interaction in life. As a result, socialization of a person with a high moral and legal culture is achieved. Legal culture is a process and result of the creativity of people in the legal and political system, which strengthens socio-political values. In short, legal mentality such as legal culture and legal consciousness, covers the social sphere of public life, therefore, it is very important to study their interaction and interdependence more deeply and comprehensively.

From our perspective, the study of the issues of interaction, relationship and interdependence of legal culture, legal consciousness and legal mentality in modern Kazakhstani society is relevant. We express great confidence that the results of research aimed at studying this issue will make an important contribution to the formation of a spiritually developed society with a dominance of law and high level of legal culture.

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