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Legal culture of judges and employees of the judicial system in the Republic of Kazakhstan: Theory and Practice

The aim of the articles is to study theoretical and practical aspects in improving legal culture of judges in the Republic of Kazakhstan. Particular attention is given to the aspects of the legal mentality and establishment of the professional legal awareness of judges. In this article influence of globalization on development of legal culture of Kazakhstan society opens up also. Methods of research: historical, comparative-law, structural-functional, logical, technical.

Key words: legal culture, legal awareness, mentality, legal nihilism.

Алимбаева М.

Қазақстан Республикасының судьялардың және сот жүйесі қызметкерлерінің құқықтық мәдениеті: теория және тәжірибе

Берілген мақаланың мақсаты – Қазақстан Республикасындағы судьялардың құқықтық мәдениетін көтерудегі теориялық және тәжірибелік мәселелерді оқып – білу. Құқықтық менталитет пен судьялардың кәсіби құқықтық санасын қалыптастыруға ерекше назар аударылады. Мақалада қазіргі заманғы қазақстандық қоғамның құқықтық мәдениетіне жаһандандудың тигізетін әсерін оқып-білу беріледі.

Оқып-білудің әдістері – тарихи, салыстырмалы – құқықтық, құрылымдық – функционалды, логикалық, формальды – заңдық.

Түйін сөздер: құқықтық мәдениет, құқықтық сана, діл, құқықтық нигилизм.

Алимбаева М.

Правовая культура судей и работников судебной системы в Республике Казахстан: теория и практика

Цель данной статьи – изучение теоретических и практических вопросов повышения правовой культуры судей в Республике Казахстан. Особое внимание уделяется вопросам правового менталитета и формирования профессионального правосознания судей. В данной статье также раскрывается влияние глобализации на развитие правовой культуры казахстанского общества. Методы изучения – исторический, сравнительно-правовой, структурно-функциональный, логический, формально-юридический.

Ключевые слова: правовая культура, правосознание, менталитет, правовой нигилизм.

**LEGAL CULTURE
OF JUDGES AND
EMPLOYEES OF THE
JUDICIAL SYSTEM IN
THE REPUBLIC OF
KAZAKHSTAN: THEORY
AND PRACTICE****Introduction (problem definition)**

The modern state of the Kazakhstani society significantly depends on the activities of judges. This assumes particular attention from the part of the legal science to the problem of improving the professional and legal culture of judges. It should be noted, that the legal culture is wider phenomenon than the legal awareness. It includes legal awareness and legal activities of judges from the point of view of lawfulness of deeds and conformity of such activities with the generally accepted rules, moral standards and the universal human value.

Analysis of some theoretical assumptions of the legal culture

The legal culture is the system of the material and spiritual legal achievements and values, accumulated in the course of establishment and development of the legal sphere of the life of society, which reflect the level of its civilizational development and quality.

Let us turn to the term of «legal counter-culture». From our point of view, the concept of «the legal counter-culture» does not fall within the terms of both general concept of culture as a system of material and spiritual achievements accumulated by mankind, and the concept of the law as a measure of freedom and justice, cultural phenomenon and the result of civilizational development of the society. The term «counter-culture» does not promote understanding culture as a positive phenomenon of the social reality.

The legal culture serves as an indicator of the level of development of the legal life and its quality. The concept of «qualitative legal life» refers to a high level of its level of development within the terms of the supremacy of law and legal law, law and order, high level of legal awareness, adequate quality of regulatory, enabling and interpretive legislation and activities of law-enforcement bodies.

A human is a major subject of both social culture and legal culture. The crowning of the legal culture is good behavior of a human. That is why anthropological approach to the legal culture is noteworthy. High level of personal legal culture (legal awareness, desire to live according to the right and good, observe the law, respect other people, their freedom and inalienable rights etc.) serves as a condition for establishment of a rule-of-law state.

Legal culture possesses standardization. Standardization of legal culture is showed in that it through rules and code of conduct, definitive, evaluating, non-mandatory and other codes, incentives and principles of the law standardizes the life of the society, establishes reasonable scope of activities of the subjects of legal culture, legal framework for regulation of its objects, brings in stability and order to people's life, their attitude towards legal artifacts. Besides rules of law, legal culture includes earlier social rules such as legal customs, which during centuries had replaced the rules of rule-making bodies. Some legal sources (works of prominent lawyers, religious texts, sacred books, commandments, treaties etc.) have also been a component of the legal culture at different stages of history.

We should pay attention to ideological components of the legal culture. We shall emphasize that ideas, beliefs, concepts and theories, related to protection and approbation of the values of the legal culture, have established and made their way in conjunction with the idea of a rule-of-law state. In particular, the values of the legal science (human rights, personal freedom, mutual responsibility of a state and a person, rule of law, law and order etc.) have been established in the course of advancement and development of ideas and theories of a rule-of-law state at different historical stages. In order to turn ideas, values and institutes of legal nationhood into reality, and introduce them into social fabric, consciousness of civil servants and citizens, member of society, the high level of the legal culture is required.

Legal culture of judges should not be narrowed down solely to legal literacy and understanding of juridical dogma. The basis of legal culture are humanitarian, moral, and in whole, spiritual principles. Without these the social role of the legal awareness and legal culture may not be relative, which adversely affects the condition of law and legal order in the society.

Legal culture of judges closely linked to their moral qualities. For judges it is important to keep the balance between humanness (kindness) and severity (justice). Here understanding of their duties by judges, their beliefs and self-improvement play a key role. This is both a personal and public task. It should be noted, that these qualities are not achievable on a single occasion, but they are raised and established in the course of judicial activity. Here the key factor is the maturity stage. «Kindness and severity is a dual concept for a public employee, and for a judge in particular. Separation of theme

leads to formalism, professional deficiency and ignorance. In particular it is especially dangerous for judicial authorities» [1].

Impact of legal mentality on development of legal culture

It must be admitted that national legal mentality is an integrated part of the legal culture of a society, which has impact on the nature of a positive law and particular qualities of its implementation. Understanding of a special nature of a legal mentality of Kazakhstan is based to a great extent on the principles of successful and effective activities of judges. Understanding the scope of the legal mentality of a society by judges makes their activities more meaningful, and makes the aim a judge shall pursue for clear, and reveals what should be done.

The legal mentality is an underlying level of the legal awareness, expressed in structured single and integral commonness of legal perceptions, stereotypes, habits, reactions etc., in a nature and way of legal perception. However, the legal mentality is unable to understand the legal reality theoretically and ideologically on its own. Here an *abstract (logical) legal awareness* is required. It is a legal idea expressed at the level of categories and concepts.

Kazakhstani mentality is characterized by traditionalism, collectivism, pursuance for search of truth, kindness, equality, mercy and justice. All these are reflected in the legal mentality.

A special significance in legal culture of judges should be given to their creative initiatives, crucial to mainstreaming of rights. We suppose, that the society requires such a judge, who would possess the spirit of creativity, critically transforming the perception of law principles, since without all these a judge is unable to perform his/her duties and rights imposed by Article 78 of the Constitution and assess applicable laws from the point of view of protection of human rights and freedoms.

Developed legal awareness of judges shall assess rights not only from the point of view of a concept of priority of human and citizen rights, but from the point of view of obligations of a person before a social group and the government. One may not emphasize only human rights. It is more important for an individual legal awareness to consider its duties before the rest subjects, and maintaining of principles of positive responsibility. In other words, an idea and a sense of obligation, duty and responsibility are absolutely critical components of the legal awareness, without which

it would be challenged. These are *global values*. We should also not forget obligations of a government, society, community before a human, implementation whereof is called to maintain a dignified life for a human. Obligations (as legal rights) shall not have an unilateral nature; they are integrated, complementary and interdependent.

We do adhere the opinion of well-known lawyers scientists (Kazakhstani researchers S.Z. Zimanov, S.S. Sartayev and the Russian researches R. Bayniyazov) [2-5], who believe, that legal consciousness of judges shall possess *wisdom* and *beauty*. These spiritual and cultural values appropriate to *a creative*, but not dogmatic legal awareness. Wisdom of the legal awareness is expressed in spiritual harmony of a legal idea and a legal sense, when legal ideology and sense of law do not contradict each other. Wisdom legal awareness is a state (spiritual statics) and a process (spiritual dynamics) of a intellectual and willed synthesis of the legal awareness, legal experience and, above all, of a high philosophical and cultural understanding as regards its intellective power and real-life orientation and sense of a real nature of the legal world. Wisdom of legal awareness is included not in incogitant glorification of the legal law and unreasonable elevation of its role in the society etc., but in its real evaluation as a formal (in the finest sense of the word) regulator of social relations, which on no account is ranked above moral and religious awareness.

Legal wisdom is seamless with beauty (aesthetics) of the legal awareness. Wisdom on its own is an inner (spiritual) beauty, however in alliance with aesthetical ideals, beauties and senses it acquires inimitable intellectual shine. Beauty of the legal awareness is even more expressed in clear, explicit and laconic ideas, principles, doctrines, sources and deeds, which correspond with the legal logics. At the psychological level aesthetics of legal awareness of judges is particularly strong in a legal sense, which is a sense of legal conscience, law, legal obligation and duty etc.

Legal awareness of judges in the Republic of Kazakhstan

Today a great significance in professional culture of judges should be given to development of constitutional legal awareness based on aspiration of judges to achieve peace and reconciliation in the society. Judges must understand, that their primary task is not to penalize or punish, but to educate society members, achieve compromise and

reconciliation in the society and in spiritual state of the society members.

It is also necessary to give special priority to development of a constitutional spirit. Without it no constitution will take on. Since it is a spiritual source of constitutional arrangement, development and operation of nationhood, inoculation of constitutional-legal aspirations to a citizen.

Today it is important to rest upon legal experience, achievements of traditional legal culture of Kazakh people, and on achievements of universal legal civilization. Here it is necessary to take an appropriate judicial optimum, at the same time throwing in a line, but not mechanically assimilate western political and legal institution and values into the national legal environment. In Kazakhstan a fundamental scientific work in volumes «Ancient World of Kazakh Law» prepared under the direction of S.Z. Zimanov, the member of the National Academy of Science of the Republic of Kazakhstan. This research was intended to disclose a unique legal world of Kazakh people in the conditions nomad civilization. The central figure of the research is «Bi» – judge from people, his moral and legal qualities. We suppose, that each judge in our country shall be aware of history of his/her people and special nature of «bi» court.

Practical issues in establishing professional and legal culture of judges

Being based on these theoretical provisions, I shall transfer to go into practical issues of the professional and legal culture of judges. Today mass-media often refers to a low professional level and law legal culture of judges. Notwithstanding the fact, that in most cases such information does not correspond to the facts, we should note a negative impact of such information on the state of the society in whole. I suppose, that we cannot talk about the whole judicial system of the Republic of Kazakhstan negatively. However, there are some negative developments.

From the point of view of indicators of the legal culture these disadvantages may be qualified as follows:

- 1) Inability to treat people with respect.
- 2) Low level of culture in whole.
- 3) Inadequate level of civil responsibility and patriotic consciousness.
- 4) Low level of professional qualification.
- 5) Some judges possess negative legal awareness, based on distrust, doubts in decency and honesty of people, so called presumption of guilt.

6) Today there are some cases, when in practice an obvious or concealed distortion of the meaning of the law by judges is observed, which leads to formation a negative attitude towards lawyers, the law and the Constitution in the society

7) In some cases in the course of judicial activities, a kind of negligence of social opinion, overvaluation of own personality and misfeasance in office are observed

Certainly, issues of establishment of the professional legal culture touches on different activities of judges. However, the principal moment is professional and personal qualities of a judge. In this regard we suppose necessary to take the following measures.

1) It is necessary to start with improvement of the quality of the legal education. It is no secret that in Kazakhstan there are many great legal universities, but there is no quality therein.

2) Harden requirements to judges. Raise age limit and work experience limit. Violation of such ethical rules shall automatically be considered as a ground to remove judges from their offices.

3) Perform continuously public opinion researches as regards judge activities. The finding of such researches shall become a ground for attestation of judges.

4) Give special consideration of legal universities to ethical principles in the education process. Develop a code of ethics for students from law faculties and law universities in the Republic of Kazakhstan. Violation of such ethical rules shall lead to expulsion.

5) It is necessary to conduct large-scale scientific researches in this area attracting representatives

of different sciences such as political scientists, sociologists, lawyers, psychologists, cultural specialists and historians. Such researches shall be performed under the aegis of the Supreme Court of the Republic of Kazakhstan.

6) Today a close contact, an intimate alliance between the legal science and practice are required. In Kazakhstan different conferences are held, and many recommendations are developed. However, unfortunately, most of them are not applied in the legal practice and are not studied by experts; they die on the vine.

7) We suppose, that judges shall directly participate in establishment of a state standard for higher professional legal education.

Conclusion

As a rule, legal culture of a certain country is established in the course of contradictory interweaving of different universal values and methods of political and legal participation of citizens, as well as of national traditions, customs and methods of public acceptance of a person and other circumstances, which express sustainable features of the civilizational development of a society and a state. Legal phenomenon in the national legal system on their own appear as cultural values to the extent, they are accepted by legal awareness, national and legal mentality.

Legal culture is a wider phenomenon than the legal awareness. It includes legal awareness and legal activities of judges from the point of view of lawfulness of deeds and conformity of such activities with the generally accepted rules, moral standards and the universal human values.

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