

# LEGAL CONSCIOUSNESS IN THE LEGAL SYSTEM OF UKRAINE: EVOLUTIONARY PECULIARITIES, VOCATIONAL AND REGIONAL MEASURE



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*One cannot live by legal consciousness,  
but legal consciousness is essential  
in order to live by laws*

Ukrainian scholars of various generations have devoted considerable attention to the phenomenon of legal consciousness.<sup>1</sup> This problem has been significantly rethought in the post-Soviet period.<sup>2</sup> This is researched as a category of jurisprudence which is inextricably linked with law and an element in the mechanism of legal regulation. In this context, legal consciousness is qualified as one of the forms of social consciousness, as a subjective image of the legal world, a copy thereof which sometimes does not coincide as a whole with the original.<sup>3</sup> Legal consciousness was always regarded as an indispensable component part of the legal culture of a

<sup>1</sup> *I. E. Farber*, Правосознание как форма общественного сознания [Legal Consciousness as a Form of Social Consciousness] (Moscow, 1963); *G. S. Ostroumov*, Правовое осознание действительности [Legal Consciousness of Reality] (Moscow, 1968); *E. I. Lukasheva*, Социалистическое правосознание и законность [Socialist Legal Consciousness and Legality] (Moscow, 1973); *V. A. Sapun*, Социалистическое правосознание и реализация советского права [Socialist Legal Consciousness and the Realization of Soviet Law] (Vladivostok, 1984); *N. A. Bura*, Функции общественного правосознания [The Functions of Social Legal Consciousness] (Kyiv, 1986); *N. Ia. Sokolov*, Профессиональное сознание юристов [Professional Consciousness of Jurists] (Moscow, 1988), and others.

<sup>2</sup> *P. S. Bainiazov*, «Правосознание и российский правовой менталитет» [Legal Consciousness and the Russian Legal Mentality], Правоведение [Jurisprudence], no. 2 (2000); *V. N. Kazakov*, Правосознание и правомерное поведение [Legal Consciousness and Lawful Behavior] (Moscow, 2002); *V. N. Kazakov*, *V. P. Malakhov*, and *K. K. Vishniakov-Vishnevskii* (eds.), Очерки по теории права и государства [Essays on the Theory of Law and State] (Moscow, 2002); and others.

<sup>3</sup> *Iambushev*, for example, gives a complicated definition of legal consciousness: a specific normative form of social consciousness which reflects legal reality, influences it, and forms certain notions and judgments about municipal and international legal phenomena on the basis of legal traditions and social experience in the system of ideas, views, doctrines, and also mentally aware and unaware attitude towards them, legal behavior of subjects, activity of authoritative agencies with the assistance of feelings, emotions, motives, aims, and will as a process of self-regulation of a behavioral act in achieving a certain socially significant purpose in the sphere of the operation of law. See *F. Sh. Iambushev*, Правовое сознание в механизме правового регулирования общественных отношений [Legal Consciousness in the Mechanism of Legal Regulation of Social Relations] (Moscow, 2003), p. 60 (abstract diss. kand. iurid. nauk).

society which is independent of the mentality of the socium. All these provisions are correct. However, the question concerning legal consciousness and the functions and evolution thereof as a component of a legal system being transformed need a special study.<sup>1</sup> In addition, it seems advisable to reveal the specific nature of legal consciousness in two measures: (a) professional (legal consciousness of a professional group as a collective subject) with a determination of the role of the legal elite in the forming thereof; (b) regional (legal consciousness of the population of the region as a spatial object). In this formulation the two questions are illuminated for the first time in doctrinal writings.

### Functional Designation and Evolutionary Peculiarities of Legal Consciousness in a Transforming Legal System

The functional designation of legal consciousness is best revealed through its functions, and the evolutionary peculiarities are found in preserved traditions and comprehended innovations.

We observe at once that legal consciousness has such basic functions as cognitive (informational), evaluative (axiological), regulatory (establishing). They derive from the unity of two elements – orientation of consciousness (to cognize, perceive, evaluate, analyze) and the designation of law (to be a regulator of social relations) refracted through creation.<sup>2</sup> An interlinkage exists between the said function,<sup>3</sup> and a certain system is responsive to each of them expressed in the structure of the elements thereof and links between them. The realization of functions ensures the perception of legal reality and an active influence on them, although a particular process (perception or influence) may be primary in each of them.

The functional designation of legal consciousness as an essential component of a legal system of society is reflected especially in the transformation of information which emanates from the legal system to the subject of legal activity, and *vice versa*. An informational exchange in the sphere of legal consciousness is being effectuated within the framework of «juridicity», that is, cognition by people of legal reality (more precisely, the content of legal rights and duties as subjects of the realization of law; content of legal norms which form the legal foundation of reality, and so on) happens in legal categories, conceptions, feelings, and emotions. The legal informa-

<sup>1</sup> As a rule, scholars consider legal consciousness to be an indispensable component of the legal system. See V. P. Salmikov, «Правовая культура» [Legal Culture], in R. I. Matuzov and A. V. Malko (eds.), Теория государства и права [Theory of State and Law] (Moscow, 1997), p. 577; A. P. Semitko, «Правосознание и правовая культура» [Legal Consciousness and Legal Culture], in V. M. Korelsii and V. D. Perevalov (eds.), Теория государства и права [Theory of State and Law] (Moscow, 1997), pp. 331–333. However, some of them in this context write about legal ideology, and not about legal consciousness as a whole (legal ideology and legal psychology). See S. S. Alekseev, «Право и правовая система» [Law and Legal System], Правоведение [Jurisprudence], no. 1 (1980), p. 29; N. I. Matusov, «Правовая система развитого социализма» [Legal System of Developed Socialism], Советское государство и право [Soviet State and Law], no. 1 (1983), p. 19. There is a view among Russian scholars (for example, S. V. Chernichenko) that legal consciousness serves as nourishing, basic material of the legal system, «so to say, pre-system», and not as a component thereof: «legal consciousness should hardly be included therein [the legal system], in what form do we have in mind». S. V. Chernichenko, «Вопрос о соотношении международного и внутригосударственного права как правовых систем» [Question of the Correlation of International and Municipal Law as Legal Systems [Reflections on Certain Books of Colleagues]], Правоведение [Jurisprudence], no. 1 (2009), pp. 6–34.

<sup>2</sup> Scholars name many functions legal consciousness. When establishing them, it should be taken into account that the mechanism of conscious activity for all forms of consciousness (moral, religious, aesthetic, political, legal) acts on identical grounds – reflection, perception, evaluation, regulation.

<sup>3</sup> «All functions of legal consciousness manifest themselves in inextricable unity: they cannot be divorced from one another nor juxtaposed. They represent inter-dependent basic means of the forming and realization thereof». N. I. Voplenko, Правосознание и правовая культура [Legal Consciousness and Legal Culture] (Volgograd, 2000), p. 51.

tion received is linked either to specific relations which arise in a specific situation, or to requirements and an interest of a subject of law.

With the assistance of an evaluative function of legal consciousness, an evaluation is effectuated of the quality (respectively, justness) of normative-legal acts, normative legal treaties, and other forms of law, and the approval or critique thereof. When the evaluation of the legal significance of specific vital circumstances occurs through the category of justness, the links of the meanings of justness and reality have an actual basis in human consciousness. The range of evaluation may extend from a specific legal situation to an existing legal system as a whole, include evaluations of the system of legislation; behavior of people and own behavior correspond to specific legal authorizations, obligations, and prohibitions; activity of State agencies and social organizations; decisions of a court in specific cases, and so on. The evaluative function of legal consciousness reflects the active attitude towards a specific legal situation and positive law as a whole.

The regulatory function is linked with a volitional aspect of legal consciousness based on normativity, rules, which are consolidated by the very level of social development. This reflects the active aspect of legal consciousness – on one hand, a readiness to adopt norms of law which exercise a regulatory influence on all society, that is, form normative orientators, and on the other hand – realize the system of social orientators established by norms of law, that is, a readiness to operate in a determined manner (lawfully or unlawfully). Law-making and all forms of the realization of law, especially the application of law, are the highest form of manifestation of the regulatory function of legal consciousness.

Thus, legal consciousness as a social phenomenon manifests itself in the direct functioning, without which it does not exist. Thanks to functions, legal consciousness (social, group, individual) is ensured by new legal values which determine the effective organization and future development of the legal system.

The legal system of Ukraine originated from the moment of the proclamation of its independence on the basis of legal consciousness which is characterized by its dynamism and stability, by innovations and traditions. As a rule, innovative legal consciousness is social-reformist and revolutionary, and traditional – orientated towards the reproduction of existing social forms, politico-legal institutions, resistance to new ideas and principles. Often legal symbioses are formed which include elements of old and new psychological survivals and ideological circumstances. Requiring new legal value orientations, subjects of law are forced either to use traditional standards of legal consciousness or to reconcile themselves to them.

Legal consciousness is one of the most conservative elements of the legal system. It painfully parts with established notions about legal reality (for example, part of the population had got used to petty regulation by the State of their life which existed in the Soviet period). In order to overcome established legal views and prejudices in a transforming society, it is essential to have significantly more time than to carry out a certain «review» of normative legal acts whose prescriptions do not meet the requirements and demands of modern social practice.

But even given the material dynamism of legal consciousness, it is capable of creating an atmosphere in which law operates, ensures the durability of a transforming legal system thanking to being based on certain constants, especially moral behests (justness, bindingness, solidarity, mutual assistance, tolerance, collectivism, and others). These embedded values of the mentality of society remain unchanged with all

modifications of economic and political (rapidly developing economic) relations<sup>1</sup> and ensure the legitimacy of the entire social system.

Traditional legal consciousness contains much positive which «works» toward self-preservation, has certain defensive mechanisms (respect for law, compliance with the hierarchy of normative legal acts, and so on). Thanks to these defensive mechanisms, a certain type of Ukrainian legal consciousness was preserved, held back from destruction of that «truncated» legal system which functioned in Ukraine during the period of being in the Soviet Union, and an autonomous legal system of a separate State was created on the basis thereof. Legal norms, laws, and legal doctrine – these are objectified legal consciousness which accumulate the experience of all previous generations as participants of legal relations. Without this experience, without the intellectual experience of the past, it would be impossible to acquire new ones.

Social consciousness at the initial state of transition to market relations survived the virtual collapse. Nurtured within the framework of vulgar notions of a materialist conception concerning the absolute priority of the economy over morality and law, social consciousness as a whole rejected this conception. The need arose for schemes of behavior and thought and concepts and acceptable rules for all members of society under conditions of development towards a market orientation. It turned out that the influence of moral postulates and legal approaches based on them might be rather effective, but far from unlimited. A high norm of profit cannot become the principal criterion of progress. The legal consciousness of society began to seek compromise paths in the legislative base for creating reliable obstacles to the use of immoral means of obtaining economic advantage. The cultivation of values (humanity, democracy, morality, law, freedom, equity, ownership) was effectuated by legal means which conditioned the choice of a new legal ideology where human rights and freedoms held a place of priority. Searches for answers to the «challenges» of the existing legal reality inevitably were realized through the prism of a specific culture and mentality.

To be sure, the legal consciousness of society during the period of building an independent legal system of Ukraine cannot be called a developed one; rather it was not fully formed, «immature», contradictory and radical for a significant part of the population. This explained the imperfection of such components of the legal system as legal norms objectified in normative legal acts; right-realization activity of subjects of law, and others, which always are reflected in human ideas and feelings. In addition, the state of society in which individual functionaries who occupy operational-administrative posts and had the opportunity (and still have this opportunity) to act outside the legal field was harmful and even disastrous for social legal consciousness.

The world-outlook core of the former («truncated») legal system of the Ukrainian SSR was destroyed as a result of the lack of the transmission of legal experience from one generation of subjects of law to another. New experience was not acquired because of the failure to resolve many legal questions and the artificial carrying over to Ukrainian soil of the values of a foreign legal culture which were not perceived. With the fall of the habitual ideology, the thin bed of mental traditions was destroyed. Under these conditions, the population anticipated difficulties in mastering a law, in

<sup>1</sup> As Friedman correctly observed, a legal system «is constantly changing, but parts undergo changes at differing speeds, and one does not change as fast as another. Some permanent, long-lived parts exist – principles of the system which were always present in the system and will be for a lengthy period of time. The structure of the legal system – its skeleton and carcass – is a long-term existing part, the form and determination of the whole». *L. M. Friedman, Введение в американское право [Introduction to American Law] (Moscow, 1993), p. 10.*

perceiving legal innovations, and was not always inclined to renounce certain former negative legal traditions.

The view of some scholars that reform of the legal system is possible only at a high level of legal consciousness is mistaken. It is impossible to rapidly introduce new ideals and values into the social consciousness which is expressed in the gradual adaptation to new social institutions in changing conditions and ensure an evolutionary (and not a revolutionary) economic and political transformation. The history of the forming of the legal system of England may be an example. In addition, to develop a traditional attitude of respect for law by subjects is possible on condition of the law continuing to function in unchanged form during the gradual accumulation of legal innovations with a view to the development of a legal system of a progressive orientation. Legal consciousness, orientated towards the evolutionary path of the modification of society, does not perceive revolutionary transformations of a legal system because of their destructive character threatening to destroy incomparably more. As the events of the political history of many States have shown, the first victims on the altar of revolutions are becoming morality and law, freedom and justness. Therefore, legal consciousness is interested not in a radical reshaping of politico-legal life, but to a certain durability of the legal system, soundness in direct political influences, and use of reserves of the civilized reformation of legal institutions.

The dramatic political situation which Ukrainian society survived in the summer and autumn of 2007 (dissolution of the Supreme Rada, extraordinary elections to parliament, tense pre-electoral campaign of the political parties, forming of a coalition majority of deputies in the newly-elected parliament) dynamically pinpointed legal consciousness. The immaturity and radicalism of the legal consciousness of the transition period was not overcome; legal nihilism deepened, reflected in lack of trust or indifference, and an ironic attitude towards positive law reflected in laws and subordinate acts.

The crises caused by legislative mistakes, especially the adoption of laws which have no base of economic realization, affected the functioning of legal consciousness and, especially painfully, the realization of the rights, freedoms, and legal interests. The moral harm caused by the failure of a law to conform to the real life conditions destroyed legality and legal order and undermines and deformed the legal system. An «unjust law [lex] is not law [jus]». <sup>1</sup> Underlying a negative attitude towards an «unlawful» law [lex] is the purpose of respect for human rights, justness, a wish not to reconcile oneself to the absence thereof, which requires from the legislator a high level of professional legal consciousness, ability to predict the social consequences and economic results of laws adopted or in draft. It is advisable for the legislator to take into account that the «legal consciousness of a person to a great extent is determined by accessibility of Law and its moral justification». <sup>2</sup> Only the reflection in normative legal acts of the optimal combination of social and personal interests is capable of influencing the forming of a conviction in the justness of legal norms.

One must acknowledge that under conditions of a transition of Ukrainian society to a new qualitative state will the majority of the population gravitate towards constitutional law transformations because it is aware of the uselessness of its former legal orientation. Ordinary models of legal behavior and stereotypes of legal consciousness

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<sup>1</sup> R. Z. *Livshits*, *Современная теория права [Contemporary Theory of Law]* (Moscow, 1992), p. 33.

<sup>2</sup> A. I. *Kovler*, *Антропология права [Anthropology of Law]* (Moscow, 2002), p. 18.



are changing. Moral and political consciousness each play a significant role in this. The forming of legal consciousness commences on the basis thereof, and the evolution thereof is occurring. Consequently, as the systemic social crisis matures, legal consciousness as a whole (and not in parts) is capable of outpacing the transformation of the legal system. However, it loses this ability when systemic contradictions cover legal reality. As a result, legal consciousness, which is formed together with political and other contradictions and fluctuations, lags behind – in an unstable situation it acquires an uneven character of development.

Legal consciousness is not simply and not only a component of the legal system. It is a paramount component of the forming, functioning, and development of a legal system. Because communicative links in a legal system are continuous, legal consciousness is called upon to reflect the orientation and state of legal development of society and to determine the ideological and socio-psychological functioning of the legal system. Legal consciousness is «everywhere» in the legal system – permeates the entire structure (or sub-systems), mechanism for legal regulation, and mechanism of legal impact which encompassed the legal system in its functional meaning. Legal consciousness acts as a certain form of social consciousness by virtue of the fact that phenomena of legal reality are an object of reflection and reaction.

The undeveloped nature of legal consciousness of society is a reflection of the uncompleted forming of the legal system, expresses not only the imperfection of the mechanism of legal regulation, but also the immaturity of subjects of legal activity. With a sharp change of the milieu of social life and its values amongst some of the subjects of law, the destruction occurs of obsolete stereotypes of legal consciousness and of ordinary spiritual and cultural orientators which justness, equality, and freedom are.

A vacuum of values is especially dangerous for a legal system being transformed under conditions of a weakening of the ideological function of the State – it may be filled by the «values» of the criminal world or clans and their attractive promises to exit from the crisis rapidly. The legal consciousness of citizens who rely on pseudo-legal categories serves to slow down the improvement of the legal system. Therefore, the constructive process of developing a renewed system of legal values, norms, and principles may outpace the process of destruction of obsolete traditional values. However, the maximum complication of the system of law (as a normative foundation of the legal system) is capable of bringing an every greater distancing of legal consciousness from its moral primordial foundations.

The reality of any society is the correlation of legal consciousness and legal culture of persons not involved in the legal process and legal professionals taking decisions of a legally significant character.

### **Professional Legal Consciousness and Role of the Legal Elite in the Forming Thereof**

The professional legal consciousness of jurists is a scientifically-substantiated symmetrical system of legal knowledge, convictions, and feelings of persons who have legal education and use the special knowledge and skills obtained in all legal forms for the effectuation of the functions of the State (law-creative, law-application, law enforcement, right-defensive, control-supervisory, constitutive, and legal-interpretative). These legal forms at the level of the use of legal means may be considered to be varieties of professional legal activity, that is, activity connected with

the legal profession. All types of professional legal activity assume the use of legal instrumentation – work with norms and legal means, fulfillment of legal operations and procedures. Law-making activity is directed towards the development, adoption, and introduction into operation of normative legal acts. Interpretative-legal activity is expressed in the official interpretation of legal norms, as a result of which legal propositions and holdings are elaborated having obligatory significance for the realization of legal norms. Law enforcement activity lies in the exercise of legally-significant actions directed towards protection against violations of social relations regulated by law and the prevention of violations. Right-defensive activity has the purpose of defending the individual against violations committed and bringing the guilty to responsibility. Control-supervisory activity is manifested in legally significant actions with regard to observation or verification of the state of compliance by subjects of legal norms under supervision and the termination of violations by certain organizational-legal means.

Unlike law-creative activity, the result of which is the issuance of normative-legal acts, law-application activity in any variety thereof (judicial, notarial, administrative, and others) is expressed in authoritative, organized actions of competent State agencies for the rendering of individual-specific legal prescriptions and decisions.

A special form of professional legal consciousness is scientific (or doctrinal) legal consciousness, to the domain of which the majority of researchers relegate the development of problems of legal ideology, legal nurturing, the «aggregate of intellectual purposes and paradigms»,<sup>1</sup> various theories, legal conceptions, and so on.

Professional legal consciousness serves as a necessary element of all forms of legal activity and is within the structure thereof. Professional readiness for a specific type of legal activity is characterized by a special (meeting legal forms of the effectuation of the functions of the State) level of legal consciousness, professional qualification, presence of legal knowledge and skills, convictions, and feelings. The special level of legal consciousness in which rational components predominate (knowledge about legal norms and principles, mechanism of legal regulation as a whole) makes it possible to cognize, evaluate, and use legal means in a specific sphere of legal activity.

Being formalized, professional legal consciousness is formed in a social group of persons professionally active in the legal process (procuracy workers, investigative agencies, courts, notariat, advokatura). It is refracted in the individual legal consciousness of a jurist «on the basis of legal practice and under the influence of legal science and theoretical legal consciousness».<sup>2</sup> The process of acquiring a command of the legal profession is rather prolonged and complex and requires much effort. Some legal knowledge and skill obtained as a result of higher legal education are insufficient for practical legal activity of high skill. It happens that it is also insufficient for the further development or deepening of legal consciousness in the process of acquiring legal experience. This occurs when the spiritual and moral foundation is lost. The level and character of professional activity of a legal professional is reflected in the not simple interlinkage of rational-ideological and socio-psychological components which operate through the prism of moral consciousness and general world outlook.

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<sup>1</sup> V. S. Nersesiants, *Проблемы общей теории права и государства* [Problems of General Theory of Law and State] (Moscow, 2004), p. 386.

<sup>2</sup> V. A. Sapun, «Правовые средства и профессиональное правосознание в структуре правоприменительной деятельности» [Legal Means and Professional Legal Consciousness in the Structure of Law-Application Activity], in V. A. Romashov and N. S. Nizhnik (eds.), *Юриспруденция XXI века: горизонты развития* [Jurisprudence of the XXI Century: Horizons of Development] (St. Petersburg, 2006), p. 335.

Only when based on moral aims does a high level of the knowledge of law help one become a professional in legal activity<sup>1</sup> – a person distinguished by two qualities: (1) abilities to adequately perceive legal reality and influence it and take an active position relating to the legal policy of the State; (2) knowledge and undeviating fulfillment of norms of their activity and competence norms. Therefore, the criteria for evaluating professional legal consciousness depend not only upon moral, spiritual, and other qualities of the bearer of legal consciousness, but also on the degree of having mastered the legal profession – the authority of a legal professional in legal consciousness. All this combines the legal consciousness of subjects of law-creation and law-application activity as persons of the legal profession.

The peculiarities of legal consciousness of representatives of legal professions of various departments are determined to a great extent by their specialization requiring the endowing of legal phenomena (their features, structural elements, means) with respective specific properties. Professional jurists working in legal divisions of law-making agencies of power in the center and in the localities and taking part in the preparation of draft normative acts approach law as a systemic phenomenon of a regulatory character, and jurists who apply law use it as an «instrument», with the assistance of which legal matters are decided.

Professional legal consciousness in law-making activity is directed towards the achievement of the effectiveness of legal regulation – improvement of norms adopted, clarification and honing of individual normative prescriptions of legislative acts, and detection of the need to publish subordinate normative acts with a view to the concretization and development of laws. The activeness of the professional «law-making» legal consciousness manifests itself when developing plans for drafting norms and norm-creation. Thanks to the «norm-creation» legal consciousness, the preparation is ensured of conceptions of laws, selection of the type of normative legal act; ways and means of legal regulation. This influences the determination of the purpose of issuing the act and implementing its purpose through adequately chosen concepts and categories; the establishment of the sphere and boundaries of the regulation of relations by this act; and the elimination of conflicts or divergences between normative legal acts, and so on.

Professional legal consciousness in law-application activity perceives legal phenomena as a special legal means, and a law as a professional instrument and basis of employment activity. Penetrating into the deep content of legal means, a «law-application» legal consciousness takes into account details of circumstances during the ensuing of which a legal norm begins to operate, and legal consequences which arise when conditions are present provided for by a legal norm.

The problem continues to be topical of differentiating levels of professional legal consciousness which does not accept the application of the same yardsticks for evaluating the legal consciousness of a judge, procuracy worker, notary, jurisconsult, State executor, police personnel, and so on. Special knowledge, experience, and skills form a professional legal consciousness. Specialization provides for specificity and detail of legal knowledge, greater depth in determining the domain of law and legislation on the basis of general theoretical knowledge about general principles of law, typical and atypical norms of law, and so on. Therefore, jurists who draft administrative

<sup>1</sup> The subjects of such activity in certain instances may not have the legal qualification of a legal professional with a degree, but they should possess the special legal knowledge and skills to fulfill necessary actions and operations in the domain of a specific form of legal activity of the State.



legislation and submit changes and additions should be specialists in the domain of administrative law. A criminal investigator or security officer of a criminal search needs profound knowledge of norms of criminal law and procedure; a security officer combatting economic crimes needs a knowledge of civil and procedure, and so on. This mottled diversity of legal consciousness is explained by the fact that various professional groups, not to mention individuals, who are in positions of legal nihilism or idealism, perceive legal reality variously. However, the specific nature of legal consciousness of each professional group of jurists is not a shortcoming. This is a virtue of the professional legal consciousness of jurists having specialized means and legal procedures, rules, and methods of legal technique, with whose assistance their competently effectuate their activities.

The systemic nature of special knowledge is important for a professional legal consciousness, which is conditioned by the systemic nature of law when one norm of law does not operate, being isolated from another, and norms of material law are in close connection with norms of procedural law. That is why a professional legal consciousness in law-making activity provides for the coordination of norms of law being created, changed, or added to, and in law-application activity – the application of norms of material law together with norms of procedural law when criminal, civil, and other cases are considered.

Professional legal consciousness is characterized by skills to apply legal knowledge in practice, skills to purposefully use legal instruments. When creating normative legal acts, this is expressed in a systemic vision of the objective and subjective right, professional use of legal concepts and categories therein, a coordinated structure of legal constructions, a logical and clear exposition of norms of law, the possibility to write new norms of law relying on means of their interpretation within the existing structure of the branches of legislation. In the course of law-application activity, the specialization of legal knowledge means the professional use of legal instruments when considering legal cases effectuated in procedural forms. This is based both on knowledge, an understanding of norms of law and the art of interpreting them, and on having a command of skills of law-application practice, and the technologies thereof – special procedural legal means and legal procedures, rules, and methods of legal technique; procedures for rendering decisions, and their documentary formalization; rules and procedures for the fulfillment of decisions, and so on.

Special legal knowledge and skills determine the continuing and situational readiness of a jurist for law-making, law-application, and other legal forms of activity of the State. Therefore, professional legal consciousness includes the requirement to permanently maintain «professional form». This is reflected in the correct organization of work by specialization, compliance with the boundaries of their competence, and continuous raising of the quality of theoretical training by means of self-education, encouragement to acquire experience and knowledge in a specific branch of law, and daily work as a specialist.

The effectiveness of the functioning of the mechanism of legal regulation and ensuring the planned development and improvement of the legal system depends significantly on the level of professional legal consciousness which is based on the system of own principles (ethical, organizational) adequate to the specific moment in the life of society and the State.

The legal elite play a symbolic role in forming the professional legal consciousness in all of its stages and in all of its legal forms of activity.<sup>1</sup> The legal elite is a naturally-selected part of a professionally educated community of jurists with a highly-developed legal consciousness by which it is guided in scientific, practical, and scientific-practical activity in the sphere of jurisprudence. They are that portion of the intellectual intelligentsia whose spiritual, intellectual, and practical achievements are used by the authorities and by the population — legal scholars, workers of judicial agencies, officials of the Procuracy, *advokatura*, and other professional legal workers of legal sections of State and non-State structures, as well as deputies who have a high level of professional legal intellect and accumulated world-outlook foundations of national and world legal culture. The high level and breadth of legal world outlook (which is combined with official position and experience in the professional sphere), profound legal thinking, understanding of the purpose and designation of law and requirements of specific norms are determining factors of influence of the legal elite on the direction of forming the legal consciousness of workers of the legal sphere.

The basic indicia of representatives of the legal elite are as follows: (1) they have creative, discursive thought, relying on professional legal knowledge and accumulated practical experience; (2) possess abilities to interpret (reflect, master, understand, evaluate) socio-legal reality and formulate a thought with maximum formal logical relatedness and consistency; (3) freely rely on legal terms and master a broad range of concepts having an evaluative character; (4) participate (directly or indirectly) in enriching the methodology of jurisprudence as a whole or individual branches thereof; (5) influence the law-making process and law-application practice thanks to: (a) direct and active participation in drafting norms and developing conceptions of draft laws or discussion conceptions of law reform; (b) generalizing legal practice, analyzing the effectiveness of the realization of laws, subordinate acts, normative contracts, and so on; (c) commentate normative legal acts and conduct the expert examination thereof; (6) take part in modeling legal and innovation policies of the State directed towards the provision of legal doctrine, training of scientific and practical personnel, and organizing the interaction of academic and applied legal science; (7) facilitate the activization of introducing innovations into the normative-legal base and influence innovation processes in practical legal activity; (8) predict the development of the national legal system in the context of European and world civilization; (9) create (thanks to knowledge and experience) real constructive elements such as professional legal consciousness of the community of jurists and the legal world outlook of all of society. This is that portion of society which assumes responsibility (in the sphere of professional legal activity) for the future and works for the future.

The legal elite<sup>2</sup> (according to the criterion of participation in scientific activity) may be divided into: scientific-teaching (combines teaching and scientific activity; works, as a rule, in institutions of higher education); scientific research (works in

<sup>1</sup> The science of «elitology» engages in the study of elites. Scholarly studies have been conducted (sociological, political, philosophical, culturological, administrative) on the «ruling» elite, administrative, authorities, political, politico-administrative, and others. However, no study is devoted to the legal elite. The problem of the legal elite deserves special attention and study.

<sup>2</sup> The emergence of the scientific legal elite is linked with the origin of legal science. The commencement of this process in Europe may be counted from the grounding of Bologna University in 1087, the first professor of law of which was the noted specialist in Roman law, Irnerius.

scientific research institutions of legal profile); and scientific-practical (combines scientific and applied practical activity). In accordance with their specialization, the legal «practical elite» may be represented by the legislative, judicial, procuracy, notarial, advokat, and other vocations.<sup>1</sup> On the basis of the principle of separation of powers, one may differentiate the legislative, executive, and judicial elite. To be sure, this division is conditional because legal practice is closely linked with legal science and education and the «elites» formed in these spheres, thanks to the high level of legal consciousness «feed» one another by their achievements and innovations. Scholars (candidates and doctors of legal sciences are appointed judges of the Constitutional Court) often become the elite in agencies of legislative, executive, and judicial power or, on the contrary (noted legal practitioners move into the sphere of scientific or teaching activity). Thanks to this interaction, the legal elite «keeps the bar» of professional legal consciousness when training young specialists, raising their qualifications, and selection of personnel, when executing official powers in agencies which effectuate functions of the State in legal forms, and also in other State and non-State structures.

Because within jurisprudence a pluralism of approaches to law exists, each representative of an elite scientific jurisprudential milieu may in modern Ukraine use various types of legal cognition and law-comprehension (natural-law, positivist, sociological, psychological, and others) or adhere to a synthetic (or integrative) theory, or be an adherent of monism in an ultimate synthesis of theories. The pluralism of methods in the cognition of law may not serve as an obstacle to the performance of professional duties: it is evidence of methodological equipment for achieving the main object – to identify the essence of law and embody this in practical legal activity in support of lawful legality and legal order as results of the functioning of the legal system.<sup>2</sup>

An attitude of respect is needed for alternative views, ideas, and conceptions so that a single truth is not canonized anew, as was the case during the Soviet period of the development of education, science, and practice. However, on issues of principle it is desirable that the legal elite have a common core of professional convictions (principles of democracy, freedom, equality, justness) as the basis for communication and understanding and implementation in their jobs with a view to the humanitarian transformation of the legal system of society. Then in the context of a universal world outlook the common peculiarities of legal convictions become a reflection of universal properties of life.

Timely, full, and reliable information has an important role in the mastery by society of legal innovations which emanate primarily from the legal elite and affect the improvement of the legal system. The structure of the legal information process occurring between the legal consciousness of the legal elite and the professional groups of jurists may be represented by these systems: the system of legal consciousness of the legal elite from which legal information emanates; the system of professional legal consciousness of jurists as recipients of this information; the system of the bearer of information which combines the first two systems. The purposeful and

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<sup>1</sup> The representatives of a particular elite are evaluated within their ambit by intellectual, professional, and moral qualities.

<sup>2</sup> The types of legal cognition and law-comprehension of the legal elite is a separate topic for scientific study. A special study also is needed of the influence of programs of specific political parties on the legal consciousness of the legal elite (taking into account compliance with the legislatively established political neutrality of a certain part of legal practitioners). The interaction of legal consciousness of the ruling political and legal elite deserves attention.

systematic transfer of legal information from the legal elite to professional groups of jurists is the basic link of influence of legal consciousness of the first on the legal consciousness of the second with a view to the further transfer for politico-legal aims and personal convictions of citizens and norms of behavior thereof.

The legal elite summarized as a synthesis the legal ideas existing in society which are the grounds for theoretical knowledge to arise concerning the nature of legal regulation and grant to them the status of generally-binding prescriptions with the assistance of legislation by means of including respective provisions in specific normative documents. In essence, the legal elite take direct part in the creation of the system of law and its branches and institutions.

The legal consciousness of the legal elite acts in the form of a dominant legal ideology – complex, program-targeted, value, cognitive, and socially organized system of the existence and operation of law in society; adjoins objective law, works in close contact with it, discovering the essence and peculiarities of the content thereof; and imparts a targeted, socially-determined character to law-making, law-application, and the entire legal system. With the assistance of legal doctrines, theories, and ideas, the legal elite are capable of penetrating into the flesh of law, become a direct expressor thereof. The being reflected by the legal consciousness of the legal elite has, as a rule, an ideological character and serves as the highest form of spiritual existence of law which determines the value orientations of law. Under certain historical conditions, legal ideology of the elite is capable of taking a place allotted by the logic of social processes to objective law.

No doubt the creation of a new generation of the legal elite in an independent Ukraine is one of the factors of raising the level of both the professional legal consciousness of jurists and the legal world outlook of citizens and simultaneously expressed the ability of a civil society to be a source of forming the legal elite. The existence of a highly conscious moral legal elite influences positively the tempo of improving the legal system and building a rule-of-law State.

The processes of the professionalization of judges, procurators, advokats, notaries, and other practical legal workers placed on the agenda the issue the competence and level of legal consciousness of those who are appointed or elected to the high echelons of power – the Constitutional Court, the Supreme Court, the High Economic Court, the High Administrative Court, the General Procuracy, the Ministry of Justice, and other structures. The professional jurists who hold executive posts in the same high State agencies of legal profile may be considered to be representatives of the legal power elite. One cannot deny that by their authoritative positions (relying on administrative foundations, but not necessarily being solely administrative) the workers of these spheres direct the development of the legal system of the State.<sup>1</sup>

A distinctive feature of the legal consciousness of the legal elite is the existence of the possibility of regulating social relations, incorporating in them a uniquely admissible order, representing the interests of the majority of the legal community. Officials of the highest legislative and judicial agencies direct, and adjust the development of law and, consequently, the professional legal consciousness of jurists and all citizens. The qualitative peculiarities of legal consciousness of the legal elite is manifest in an understanding of the possibilities of legal means, time and place of their application,

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<sup>1</sup> The character of legal consciousness of a person, professional group, or society as a whole, their functional orientation, social significance, and also status of legal professions, determine, together with other indicia, the type or family of the legal system.

taking into account that social prerequisites and the readiness of society to perceive legal purposes influence the realization of norms of law. The legal elite is intended to be aware of, evaluate, and provide for changes in the content of social relations under conditions of a modern democracy and make necessary adjustments in respective normative acts. The link of the deficit of legal consciousness of the legal (especially, law-making) elite with the quality and balance of modern legislation is a natural one.

A no less important task confronting the legal elite holding authoritative or official powers in the State is the exercise of control over legality and the fulfillment of normative prescriptions by subordinate and ordinary citizens who fall within the domain of their competence. A legal, and not a political or employment, motive should be the primary motive in the legal consciousness and activity of the legal elite and in any power-wielding elite.

The legal consciousness of the scientific legal elite now endowed with State authoritative powers also is capable of exerting a direct or indirect impact on the improvement of the legal system through various forms of expression of own concepts concerning law – publications, addresses, appeals to law-making agencies, explanations of the advisability of taking practical legal decisions, and so on.

A reduction of the legal elite bar and level of legal consciousness of the legal elite is a manifestation of elements of legal cynicism, legal idealism, legal dogmatism, legal demagogy and an abuse of right and official position – negatively affecting the professional legal consciousness of jurists of various specializations at all levels and influences not only the prestige of the legal profession and, as a whole, the effectiveness of the functioning of the legal system. The more developed is professional legal consciousness, the more responsible does the legal elite relate to raising the level thereof, the more perfected does the legal system become. That is why defining the concept of the legal system should not be confined to indicating the complex of mutually-dependent and coordinated special, or regulatory, means of legal impact on social relations. This should be included in general legal means – legal culture and legal consciousness of society, the individual, and especially the professional legal consciousness of an official who has a legal specialization and competence. The effectiveness of the functioning of the legal system depends directly on specific people who effectuate this professionally. Without people who have the proper level of legal consciousness, professional jurists, and coordinated professional legal activity of the legal elite, it is impossible to establish a dynamic legal order adequate to the constantly changing social relations. Such a legal order is one with a high form of durability of the legal system.

### **Regional Legal Consciousness as an Integral Element of National Legal Consciousness**

With the considerable attention of legal scholars to the problem of the national legal consciousness, the regional legal consciousness, its correlation with national legal consciousness, the actors which condition its peculiarities, the elite which directs it, the potential and influence on the evaluation of modern legal and political reality prove to be little studied.<sup>1</sup>

The category «regional legal consciousness» was separated out by the author for the first time with the assistance of a spatial measure (geography) as a specific form of legal consciousness. In classifying legal consciousness by subjects into individual,

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<sup>1</sup> By national legal consciousness one has in view the social legal consciousness of a specific State, for example, Ukraine.



group (including elite), and social, it should be noted that the individual legal consciousness is a fundamental legal category which acts as a unique representation of a person in law. A regional legal consciousness has a collective character; in generalized form (or evaluative function) it represents a legal psychology and legal ideology of the population of a region and its intellectual and emotional-psychological state.

A region has a territory whose significance depends upon the functional and political content thereof. Within the framework of a region, social institutions are developing, legal activity is being effectuated, and legal relations are developing. A region takes part in the formulation and realization not only of own-territorial, but also general interests in the State and inter-State formations, especially in forming a civil society of that State of which it is a part. Not without reason is «regional studies» defined as a science concerning the territorial organization of society.<sup>1</sup>

The territorial component when defining regions, if not expressly mentioned, is fundamental. Here geography (or natural peculiarities) is closely linked with the economy, which establishes its basic opportunities, and the economy influences law, legal consciousness, and policy. Nonetheless, physical space may condition social interaction, but not determine it. The autonomous significance of territory predetermines the activity which it encompasses and feeling of identity which it generates. In this broad meaning, territory is a social, economic, and political construction which cannot be reduced to a single factor. The territory of regions is correctly understood not as a self-sufficient factor, but as a mediating factor, thanks to which other factors (religious, social, political, and others) are comprehended and endowed with content.

The subject-matter of the reflection of a regional legal-consciousness is the real social relations which require legal regulation, as well as law itself, the functioning thereof, human behavior in the sphere of law, and other legal phenomena which arise in connection with the operation of legal norms within the boundaries of the region. A regional legal consciousness is developing against the background of forming legal realities in the State as a whole and in the region, in particular, on the basis of new (respective human rights international standards) legal concepts concerning the rights and duties of members of society and manifest in their regional perception. One may say that a regional legal consciousness has a certain autonomous legal-cultural identification which conditions the original cultural path of spiritual-moral development of law within its territorial boundaries. This not only reflects the legal reality of a regional scale and human behavior in the region in the sphere of law, but also participates in the regulation of behavior and in determining those relations of social life which objectively have a need for legal (as a rule, subordinate) regulation on the part of regional authorities.

When considering a regional legal consciousness, it is essential to take into account that a region is an institutional system (in the form of regional agencies of power) or aggregate of administrative institutions which operate on the particular territory. Regions even within a single State may have various legal statuses. As indicated in the 1996 Declaration on Regionalism in Europe, this diversity is dictated by the aims of preserving the historical, political, social, and cultural peculiarities of regions. The territorial designation of regions may be various in the States of the world, depending upon the forms of State structure. The world numbers more than 300 regional

<sup>1</sup> I. I. Sigov, «Регионоведение, как наука о территориальной организации общества» [Regional Studies as the Science on the Territorial Organization of Society], in Регион: политика, экономика, социология [Region: Policy, Economy, Sociology], no. 1 (1998), p. 16.

structures. They exist as self-governing entities within unitary and federated States.<sup>1</sup> All these regional structures conduct legal policy within the boundaries of the region (with a certain degree of autonomy and at the same time coordinated with the central authorities), have own representative, executive, and judicial agencies, and issue and realize normative acts on the territory of the formation. In Russia these are subjects of the Federation or combinations thereof. In accordance with the «Fundamental Provisions of Regional Policy in the Russian Federation», by region is understood «part of the territory of the Russian Federation which has a commonality of natural, socio-economic, national-cultural, and other conditions. A region may coincide with the boundaries of a territory of a subject of the Russian Federation or combine the territories of several subjects of the Russian Federation».<sup>2</sup>

In unitary regionalist (or regional) States (Spain, Italy, Sri Lanka, and others), in addition to administrative regions, there are regions with a special status of political or legislative autonomies. In Spain these are autonomous regions and so-called «autonomous communities» — areas of the Basques, Catalonia, Galicia, Andalusia, Valencia. In Finland, there are the Aaland Islands. In the United Kingdom, there are Scotland, Wales, and Northern Ireland. Since 1997, in China there is Hong Kong. Within the framework of centralized unitary States the Faroe Islands (Denmark), Azores and Madeira (Portugal), and others have been endowed with real autonomy in deciding internal and regional problems (in accordance with their constitutions and general laws).

The Autonomous Republic Crimea in Ukraine has its own parliament and government; however, it is not a legislative autonomy because the sphere of powers of its parliament is limited to the publication of subordinate normative acts within the boundaries of the territory. Regions in Ukraine — administrative-territorial entities — are the Autonomous Republic Crimea, regions, and the cities of Kyiv and Sevastopol. As we see, the main factor in defining a region is the conformity of the boundaries of the region to another entity of the territorial-administrative system. Therefore, in the early 1980s a region was defined as an administrative-territorial community which is characterized by a unity and relatively high level of development of the production, transport, and social infrastructure with well-established, permanent labor and socio-cultural links of the population.<sup>3</sup>

Now (in accordance with the Declaration on Regionalism in Europe) a region is considered to be a territory which is endowed with a respective status in order to perform administrative matters and occupies an intermediate position between the central and local agencies of power. A region also may designate a territory which claims political individuality marked by ethnic, historical, or linguistic peculiarities or meet both characteristics. Regrettably, a normative definition and unification of the concepts «region», «regional policy», «subjects and objects of regional policy», and so on are absent in Ukraine.<sup>4</sup>

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<sup>1</sup> I. N. Mukienko, «Типология современных правовых систем: критерии и сравнительная характеристика» [Typologies of Modern Legal Systems: Criteria and Comparative Characteristics], История государства и права [History of State and Law], no. 3 (2007), p. 37.

<sup>2</sup> «Основные положения региональной политики в Российской Федерации» [Basic Provisions of Regional Policy in the Russian Federation], Российская газета [Russian Newspaper], 11 June 1996, p. 4.

<sup>3</sup> I. M. Aisinova, «Непроизводственная инфраструктура регионального центра» [Non-Production Infrastructure of a Regional Center], Социологические исследования [Sociological Studies], no. 3 (1984), p. 78.

<sup>4</sup> It is necessary to precisely distinguish regionalization, which is occurring within the framework of the continent, and regionalization within the boundaries of the State, where a region acts as an inseparable component of the territorial organization thereof.

It would seem that in a unitary State (Ukraine), where there is a single system of superior agencies of power whose jurisdiction extends to the territory of the entire country, where a single system of legislation functions and a single judicial system, there should not be differences in the legal consciousness of the population of regions which have no political or legislative autonomy. But this is refuted by an analysis of legal reality.

Distinctive peculiarities of the legal consciousness of the inhabitants of individual regions of Ukraine (western, eastern, central, southern, northern) should be sought in geographical location, historical conditions of their formation, and the ethnic composition of the population. They are conditioned by the political past of the regions, economic peculiarities,<sup>1</sup> unique social culture, legal traditions, religion, mentality of the population manifest in peculiarities of thought, languages, and other factors. One cannot fail to take into account the existence of regions (within a State) in the history and the role of history itself in creating conditions for regional identity and legal consciousness.

The population of regions is not one in national, ethnic composition. As a rule, it is ethnographically mixed, «diverse in nature» population which lives permanently or temporarily on a particular territory, has a differing degree of development of an awareness of a regional cultural-historical unity, adaptation to the surrounding life situation, legal links with regional authorities (or agencies thereof – administrative, law enforcement, judicial, and so on). The custodians of regional and local traditions and the legal mentality on which the legal stability of awareness depends are the native inhabitants of the regions working in the legal sphere and transmitting to the next generations the uniqueness of their perception and understanding of law [jus], lex, attitudes towards law-making, law-application, and other State agencies of the country and the region.

Legal reality has changed – the population increasingly directs attention to the organizational-legal activities of regional and local authorities, and does not seek «law» or «justice» solely in the capital of the State. This is linked with the fact that strong leaders have emerged in the regions with fundamental politico-legal orientations and convictions. This may be explained by the fact that the powers and possibilities of regional authorities have expanded. A regional legal consciousness is being constantly enriched at the expense of the interpretation and evaluation of normative-legal acts adopted in the localities, and not only by general State acts. It graphically reacts to the conducting of quasi-legal policies of the local authorities expressed in the imitation of legal activity and issuance of acts not having a positive influence of social changes.

The normative legal acts themselves of a regional level serve as a manifestation of a specific legal consciousness because the normative part of this legal consciousness becomes law. Representative and executive agencies of regional self-government of Ukraine, in accordance with national legislation, issue subordinate normative acts within the boundaries of their powers which clarify the normative prescriptions of national legislative and subordinate acts or change and repeal their acts, coordinating with local requirements and interests. Legal values are reflected in regional law-making as the aggregate of cultural-historical, religious, national, domestic, and

<sup>1</sup> The central core of any region in the sphere of the economy is its production specialization and purposeful orientation to resolving «technical tasks».

other peculiarities of a particular region. The legal consciousness of persons creating so-called «municipal law», which represents the hierarchically organized block of territorially operating acts of general regional significance, influences through its norms the legal consciousness of the inhabitants of the region. As noted the French jurist, Leon Duguit, a territory is a material boundary of effective actions of the bearers of power. We add that by its activity the bearer of power influences the relative autonomy and certain uniqueness of a regional legal consciousness.

One should bear in mind that the legal consciousness of the population of a region is under the influence of the real process of law-application activity on its territory. This is mediated by the quality of work of «its» law enforcement, judicial, and other agencies — the legal professionalism of workers of these agencies often forms the legal consciousness of persons who one way or another have turned out to be in a state of legal relations with regional State structures. The legal consciousness of jurists who effectuate law-application activity through individual legal acts issued by them is reflected in the development of the legal consciousness of inhabitants of a region, expands their notion of what is permitted and what is prohibited by the laws of the State. However, it would be erroneous to exhaust the forming of a regional legal consciousness by factors solely of a «legal» influence of local and general State power.

Legal consciousness is a constant interpretative practice, a process of defining and redefining a social situation where a legal phenomenon does not have sharply established, absolute significance, values, functional burden because it will not be devised or reproduced by legal consciousness in the process of interpretation through the prism of content, norms, and values of its own «living world» — a world spiritual and material. Legal consciousness does not exist autonomously from political, economic, religious, and other practices of consciousness; it is a manifestation of an integral consciousness. In this sense the «own juridical» components of legal consciousness are not subjectively isolated from economic, political, moral, and others.

The principal bearers and subjects of a regional legal consciousness are local business elites for whom the economic factor serves as the strongest factor of the legal substantiation of regionalism. The territorial division of labor, the creation of economic markets, trade of all levels and types, the free movement of capital, labor resources, and goods, and the interests of economic subjects may ensure the economic interest of territorial elites in the development of regionalism. In addition to the existence of their own finances with whose assistance the elite of regions optimally resolve their own economic and social problems, the participation of the representatives thereof in general State and local agencies of power (government, parliament, councils, courts) has great importance, which means the transformation of the business elite into a political elite. When legal education is present, this category of persons may influence the authoritative legal elite — occupy executive posts in institutions of legal profile.

Competitive campaigns in elections are becoming the norm for entry into the political elite in modern democratic States, which requires a respective level of legal consciousness of their participants expressed in political programs of competing parties. The political elite in regions represent especially the officials of administrative agencies and agencies of self-government. Their power is derivative from State power (the people are the source thereof), and not from municipal authorities (the sources

thereof is territorial communities).<sup>1</sup> As regards the legal consciousness of deputies and other high State officials of the national and regional levels, they may be regarded as a politico-legal (linked) substance. As a rule, the ruling elites represent political groups capable of expressing their interests and will by the language of a politico-legal ideology. Together with the function of administering power, the development of such an ideology is a sphere of political calling for regional elites.

The legal consciousness of the elites of regions, just as the elites of Ukraine as a whole, includes elements of political consciousness (here there is a close connection of subjective right and power as structural elements of human activity) and relies on norms of law and policy as regulators of the social system. Therefore, it is important that when conducting regional policy the legal parameters be clarified, and when developing priorities for regional development, legal priorities be established at the level of the functioning of power structures.

The interaction of law and policy in regions may be rather productive. For this it is essential each time to find the sole possible balance between them which, as Matuzov correctly observed, «is achieved if the policy is lawful».<sup>2</sup> This comment resounds in the comment of Kant: «all policy should bend its knee to law». Ideally, law may be higher than policy, but only ideally. Political power naturally reacts rapidly to the processes of the development of society. Without the power of policy, legal consciousness often proves to be socially constituted (cannot react rapidly) as a consequence of the continuous undergoing of various procedures for the adoption of legal decisions.

The significance of legal consciousness in political life is conditioned not only by the role of law in the modern world as a necessary factor of the exercise of State power within certain boundaries, but also by the fact that the most significant myths, symbols, and conceptual constructions of legal consciousness are included within the system of policy and ideology and take part in the legitimation of the political order and designing and reproduction of political reality. The idea of a social State permits legal consciousness to become a source of «political resources», social mobility of society, which may be used also as an instrument of social requirements ensuring worthy conditions for the life of the population and as a means of manipulation of mass consciousness and achievement of narrow corporate aims.

With regret it must be said that the great majority of the population of a region (especially less active territories), alienated from participation in the just redistribution of ownership and social product, are among the impecunious or, at best, average strata of the population. Therefore, as a rule, it does not have proper representation not only in the Supreme Rada of Ukraine, but in agencies of local self-government. Lawful behavior of part of these persons has a legal foundation (as an element of legal consciousness) not for legal activeness in a specific situation with a view to receiving such representation, but conformism, adaptation, conciliation. This is expressed most often in blind support of a leader who a head recommends or supports, or one of the slogans of a political program of a party which this leader heads. Often conciliation (treated as «regional patriotism») operates, dictated by the aspiration to affirm regional self-sufficiency by means of the representation of «its» leaders in central

<sup>1</sup> V. Bordeniuk, «Диалектика соотношения самоуправления, местного самоуправления и государственного управления» [Dialectic of Correlation of Self-Government, Local Self-Government, and State Administration], *Право Украины* [Law of Ukraine], no. 12 (2002), pp. 120–122.

<sup>2</sup> N. I. Matuzov, *Актуальные проблемы теории права* [Topical Problems of the Theory of Law] (Moscow, 2005), p. 225.



agencies of power. The last variant is most typical during election of the president or elections to parliament and the subsequent appointment to office of the prime minister and ministers from among deputies of a parliamentary coalition. Conformism is expressed in the fact that the voters are subordinate to group standards and demands and act the same as the basic mass of adherents of the particular leader or political party («crowd syndrome»), without delving into the essence of the party program or displaying legal activeness.

To be sure, we are far from reproaching all of the said portion of inhabitants of a region, except the business elites and political elite, of conformism and considering them to be completely deprived of own legal and political consciousness. Regrettably, a considerable part of society prefers conformist legal behavior, and this shows the existence of its legal consciousness primarily at the level of legal psychology (emotions), and not legal ideology (intellect).

Regional groups of the political elite (senior officials of the procuracy, *advokatura*, court, and so on), being guided by professional legal consciousness, have been called upon to orientate the population of the region towards compliance with norms of law with a view to affirming legality and legal order. Officials of law enforcement and judicial agencies who honorably comply with the principle of political neutrality (as law behests)<sup>1</sup> are capable by their professional actions and law-application, and procedural acts to create an atmosphere of not accepting behavior that is not law-abiding. They thereby demonstrate that the normativity itself and compulsoriness of positive law is to a great extent conditioned by the level of legal consciousness.

The existence of a system of qualities inherent in a national legal consciousness is important for a regional legal consciousness, thanks to which it acts as a symbol of the reality of the national legal order in the region: consistency; coordination; purposefulness; necessary organization; structured nature of actions and relations. As a result, the very procedure for the manifestation thereof is important during the legal regulation of local issues – self-sufficiency, a form gravitating towards external visibility which contains not only means (norm of law) but also the result, which is legal order. Here the formalization generates normativity.<sup>2</sup> That is why regional authorities are interested in the legislative regulation of issues of ensuring and defending the rights and interests of regions, the competence, and representation in central agencies of executive power, that is, in bringing the legislation of Ukraine on local self-government into conformity with the European Charter on Local Self-Government and other international legal standards.

In addition to the economy, politics, morality, and religion, the influence of the ethnic factor is exerted on the regional legal consciousness. In some regions of Ukraine the population of the titular nation dominates (Ukrainians), and in others, on the contrary, another nation (for example, Russian); yet other regions are populated, in addition to Ukrainians, by small ethnic groups without a numerical majority of one over the other. It is interesting that irrespective of nationality preference quantitatively and having regard to historical, social, economic, and geographical links, the ethnoses identify more with their own regions (Donetsk, Lugansk, Kharkov, Poltava, and so on). Ukraine, however, is not Russia and has a smaller range of territorial

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<sup>1</sup> For example, a judge may not be a member of political parties, take part in any political activity, or have a representative mandate.

<sup>2</sup> V. P. *Makakhov*, *Правосознание: природа, содержание, логика* [Legal Consciousness: Nature, Content, Logic] (Moscow, 2001), pp. 82–87.

contrasts, although the natural or geographical «uniqueness» of a territory influences the psychology of the local population and leaves an imprint on its character not only by ethnic diversity. In addition, the regions in Ukraine, as noted above, do not have an own legal system; they do not engage in law-making which is characteristic for subjects of a federation in federated States or for legislative autonomies in unitary regionalist (or regional) States. Local bureaucracy and groups of political elites, the unequal application of ambiguous legislation, cultural differences in conducting business, political propaganda (unreasonable, structured on contrasting the contribution of western and eastern regions to the total State budget, without taking into account their objective possibilities) during pre-electoral campaigns lead to the disassociation of the legal consciousness of the population of various regions of Ukraine.

The juxtaposition of «west and east» relating to the legal consciousnesses of regions in Ukraine should not be considered to be correct because irrespective of the peculiarities of local law-making which «feeds» below the legal consciousness of inhabitants of regions, the legal consciousness of all of society prevails, based on the community of legislative and subordinate acts which emanate from the central authorities. Being guided by norms of positive law, the population of a region compares tariffs for municipal services, gas, water, transport, and so on established by the local authorities in their region with neighboring regions and interprets the reasons for existing discrepancies. They «root for» their own region, for «justness» in the legal regulation of the municipal economy at the local level. Nonetheless, in their consciousness national (and not regional) law is the center of the legal world of Ukraine. As Durkheim asserted, the territorial criterion cedes to the functional criterion when dividing labor and organizing society. He added: «One may even say that the people who have advanced ahead have a territorial division of a more superficial character».<sup>1</sup>

Indeed, law as a substantive «clot» of legal consciousness is an objective systemic formation which has a regulatory function (normativity) and institutional mechanism of operation in each region and in Ukraine as a whole. Multivariateness is peculiar to legal consciousness, that is, it exists not only in legal forms, but in a multiplicity of other autonomous ideas, theories, and views on the same legal question, and therefore does not comprise an integral organic formation. Its normative functions have to a considerable extent an informational and value-orientation character consisting chiefly of a general legal evaluation of acts and situations through their conformity to State-recognized and guaranteed rules.<sup>2</sup>

Regional legal consciousness, taken as a special instance of consciousness in general and national legal consciousness in particular, may be regarded as a special adaptive mechanism specially intended to ensure the existence and development of a regional community within the framework of a certain eco-sociocultural environment. Through the attachment to legal benchmarks and archetypes of objectified cultural tradition of a region it become possible to «implant» in people who populate the region with specific socio-legal conditions and to realize their own vital projects.

<sup>1</sup> E. Durkheim, О разделении общественного труда. Метод социологии [On the Division of Social Labor. Method of Sociology] (Moscow, 1991), p. 179.

<sup>2</sup> N. M. Iurashovich, «Правосознание и право: общность и различия» [Legal Consciousness and Law: Community and Distinctions], Государство и право [State and Law], no. 7 (2005), pp. 73–74; E. K. Temnov, Теория государства и права [Theory of State and Law] (Moscow, 2002), p. 706.

Thus, a regional legal consciousness cannot be isolated from the national legal consciousness or juxtaposed to it. It is an indispensable component of the system of national legal consciousness and directed towards the preservation and development of the general state social organism with the assistance of ensuring an adequate milieu to satisfy the requirements, harmonization of the mutual interests of people, and order inter-regional social links. The destruction of a value-normative core of national (or legal) culture, the lack of inter-regional amity with regard to the principled foundations of social life leads to anemia, disorganization, of social relations, the subversion and decline of the integrity of the social organism. A regional legal consciousness should know how to resist orientations of extremist advantage, such as nationalism or separatism.

The coordination of regional legal consciousnesses on the scale of Ukraine as a whole may facilitate the transfer to regions from the center of respective functions and resource provision under the principle of «subsidiarity», when powers are excluded from the competence of agencies of central executive power and transferred to the jurisdiction of local self-government, which may be realized at the level of territorial hromadas. This may facilitate granting direct participation to representatives of regional power in developing State decisions, programs of regional policy, and the coordination of State and regional programs; movement of highly-skilled workers from the center to the regions and return thereof for some period to previous or higher positions, and also ensure stability and measured socio-economic development of regions, identical standard of social services, non-interference of agencies of State power in officials thereof in conducting electoral campaigns, and so on.

Consequently, the image of a region is created not only on the basis of economic, political, and social factors — it depends upon the level of legal consciousness and quality of activity of law enforcement agencies, procuracy, judicial agencies, and agencies of executive power, on their abilities to perform the functions of custodian and sentry of order on their territories in accordance with the requirements of national legislation. All the same, the professional elite level, and not the everyday masses, will determine the specific nature of a regional legal consciousness. However, a domestic legal consciousness in complex situations of the transition period (especially during the actualization of various orientations of vectors of the political system of Ukraine which emanate from regional reformist forces) demonstrates frequently a higher level of legal culture thanks to the durability of notions about mutual responsibility. And the legal elite of regions is called upon to cultivate ideas concerning a civilized upholding of regional interests in central agencies of power, consensus actions of all regions to overcome the economic crisis, movement towards the purpose of building a democratic, social, rule-of-law State. The cleansing and actualization of a regional legal consciousness is a beginning and major step towards affirmation of the principle of the supremacy of law in the process of the effectuation of the functions of the State in its various legal forms, because democracy, decentralization, and self-government provide the possibility for regions to expand their participation in the life of society and the State and firm up the legal system.

And last. Man does everything in the social world. He is the creator of all legal phenomena and processes. He is the value core of the legal system. The quality of law and the effectiveness of forming the legal system depend upon the level of his legal consciousness and activity.

**Skakun O. Legal Consciousness in the Legal System of Ukraine: Evolutionary Peculiarities, Vocational and Regional Measure**

**Abstract.** The article disclosed the specifics of legal consciousness in two dimensions: professional (legal consciousness of a professional group as a collective entity) with the definition of the role of the legal elite in its formation; regional (legal consciousness of the population of the region as a spatial object).

**Key words:** law, legal consciousness, legal culture, legal system.

**Скакун О. Ф. Правосвідомість у правовій системі України: еволюційні особливості, професійний та регіональний вимір**

**Анотація.** У статті розкрито специфіку правосвідомості у двох вимірах: професійному (правосвідомість професійної групи як колективного суб'єкта) з визначенням ролі правової еліти у його формуванні; регіональному (правосвідомість населення регіону як просторового об'єкта).

**Ключові слова:** право, правосвідомість, правова культура, правова система.

**Скакун О. Ф. Правосознание в правовой системе Украины: эволюционные особенности, профессиональное и региональное измерение**

**Аннотация.** В статье раскрыта специфика правосознания в двух измерениях: профессиональном (правосознание профессиональной группы как коллективного субъекта) с определением роли правовой элиты в его формировании; региональном (правосознание населения региона как пространственного объекта).

**Ключевые слова:** право, правосознание, правовая культура, правовая система.