Modern Paradigms of Legal Understanding and the Development of Legal Consciousness in Supply Chain (Case Study of Russia)

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***Abstract*- This paper deals with the problem of the development of legal consciousness in supply chain of modern Russia amid the conceptual crisis of legal understanding in Russian law. The objective of the presented paper is to analyze modern paradigms of legal understanding and vectors of their development, as well as the influence of legal understanding on the development of legal consciousness in supply chain of Russia. The authors consider the current state of legal awareness in Russia. The choice of the topic is due to the existing theoretical discussion on the relationship between law, society and the state in supply chain of Russia.**

Keywords- *legal understanding, legal consciousness, Modern, supply chain, Russia.*

1. Introduction

The relevance of the study of modern approaches to legal understanding and assessment of the current state of legal consciousness in supply chain of modern Russia is due to the following circumstances. First, it is the strengthening of globalist tendencies in law and the influence of these trends on legal consciousness and legal understanding in supply chain of Russia, as well as in the world. Secondly, this is another change in the vector of reforming the legal reality, which entails a subsequent revision of approaches to the definition of the place, role and significance of legal consciousness in modern society, as well as ideas about the proper development of legal consciousness and the contemporary challenges facing society and the state in this regard.

2. Methodology

We qualify legal consciousness, as one of the fundamental categories of legal science in general and the theory of law in particular, as one of the meta-legal categories. Legal consciousness cannot be fully understood within the framework of legal methodological tools and legal research programs. And, since legal consciousness cannot be empirically inductivated from law, its research gives room for theorizing about the genetic and axiological aspects of the correlation of legal consciousness and social consciousness and influence of law enforcement and the doctrine of objective law on them. The emergence of ideas about the relationship between the human, including collective, consciousness and the norms of objective law in legal science is due to L.I. Petrazhitskii, the founder of the psychological theory of law, the developer of conceptual bases for understanding the relationship between law and psychology, the doctrine of the relationship between law and morality and the role of law in the regulation of social relations [1]. It seems that the legal consciousness and ideas about law are much closer to each other; they answer the questions "what is right?", "What is the criterion of legal legitimacy?", “How are law and morality connected?" [2]. We will of course consider this connection in more detail, including on the example of concepts that postulate the interdependence of law and consciousness, such as the psychological school of law or the eidetic phenomenological concept of law. P.A. Ol says that “there is no doubt that the law represents a unity of the two components, which can be found in virtually all classical types of legal understanding. The first component characterizes something mobile, dynamic – real, quite specific social relations, the real behavior of the subjects, determined by vital needs. ... The second component is characterized by greater stability; it involves building ... of a behavior pattern of subjects of social interaction” [3].

Currently, we may distinguish three important directions for the development of conceptual concepts of legal understanding, the place of law in the state and society, and, accordingly, the purpose and source of legal consciousness. This is primarily a normative and legal

positivism, secondly - a libertarian-legal theory and other post-naturalist ideas, and thirdly - a variety of dialogic, communicative, constructivist and synthetic theories of law. They do not just have a multi-vector impact on lawmaking and law enforcement, but, as noted by I.V. Mukhachev and M.I. Tsapko, "phenomenology, hermeneutics, anthropology, synergetics of law, communicative and dialogical theories neither claim to be paradigmatic, nor broadly used by domestic branch sciences" [4], where positivism thus far prevails. The basis for the concepts currently called "libertarian", "libertarian-legal", "institutional" in the supply chain of Russian theoretical legal science are the jusnaturalism and the psychological theory of law in its modern interpretations, which have a very serious influence on the concept of legal consciousness. A peculiar reflection of the psychological concept of law, but already through the prism of phenomenology, can be considered the concept, proposed by F. Schreier, of the identity of the rules of positive law to ideal psychic entities - eidos, which are real and, at the same time, serve as the bases and precursors of the rules of positive law [5]. Of course, the eidos in the phenomenology of law are not reducible to the concept by F. Schreier, but his interpretation shows the genetic relation between phenomenological theoretical and legal phenomena and the already mentioned psychological theory of law by L.I. Petrazhitskii. The inversion of legal consciousness was suggested by L. Legaz-y-Lacambra [6], whose views, as commonly cited, are the evolution of the views by José Ortega y Gasset. However, the “internal moral ideal" can be referred with a certain degree of admission not to Ortega y Gasset, but to the moral imperative of Immanuel Kant [7]. The law in the concept by L. Legaz-y-Lacambra acts as the institutionalization of individual manifestations of intrapersonal modes of social being, objectified in collective beliefs and customs [5].

Based on the theoretical interpretation of the concept of legal eidos within the framework of the evolution of general philosophical and philosophical and legal methodological programs, the so-called eidetic phenomenological concept is being formed within the framework of the development of phenomenological doctrines on the law; in our country it develops, first of all, in the framework of the communicative concept of law by [5]. As for the representatives of normativism and positivism, their interpretation of the concept of legal consciousness is rather conservative, and comes down to two components - cognitive and axiological. In this sense, the commonality of the conceptual bases of legal consciousness within the framework of both normative positivism and within the framework of the libertarian-legal concept of law, originating in the already mentioned psychological concept of law and legal consciousness by L.I. Petrazhitskii, is rather paradoxical [1]. Notice that, despite the significant transformation both in terms of time and in terms of conceptual grounds, the individual-group psychological determinism inherent in the psychological concept, idealization or even some inclination towards legal solipsism is still inherent in the phenomenological doctrines of legal consciousness; another matter is that numerous socio-legal and socio-regulatory experiments showed an instrumental vulnerability of consciousness and collective sense of justice in particular under the influence of various manipulative practices (behaviorist, neobehaviourist, psychoanalytic, cybernetic, neuro-linguistic programming, etc.) and the fundamental possibility of influence on the formation of intuitive notions and the right.

3. Discussion and results

In today's Russian society, amid uncertainty of value grounds, review of the meaning and content of morality, the crisis in a number of traditional public institutions that burdened with the growth of behavioral deviancy, the pressure of legal nihilism and the insufficient development of the principles of fairness and justice in relation to the new socio-economic conditions, the question of preservation and ways of development of legal culture in general and legal consciousness in particular seems nontrivial and relentlessly important. We believe that the sense of justice in supply chain of modern Russia is under the influence of relativism concepts of legal theories and paradigms (the Russian law uses the term "legal understanding”), the uncertainty of the real social significance of such meta-legal phenomena as the individual and his/her rights and freedoms, the state, its prerogatives and significance in society, and society and its collective interests. Though obvious at first glance, not the opposition of the state and law in the framework of certain concepts and a final decision of this deadlock matter, but understanding of the secondariness of the state with regard to the source of power – its people – seems more promising. In our opinion, the study of the relationship between democracy and the state as an institutional basis for its implementation will be the most promising direction and the basis for improving dialogic and communicative theories, the investigation of the possibilities for public participation, the introduction of the procedures of the deliberative and participatory democracy into the mechanisms of public authority, the possibilities of contrasting and synthesizing institutions of democracy and state institutions. We believe this theoretical assumption to be the only basis possible for the development of democracy and for the evolution of the state towards the ideals of a democratic and legal state.

We found that one of the most influential modern theories in supply chain of modern Russia is the libertarian-legal theory, which contains among other things an important element for understanding its essence - the concept of legal legitimacy. This concept is widely known and influential; it has been developed most thoroughly in the works by V.S. Nersesiants, A.V. Chetvernin and their followers [8]. The concept of legal legitimacy in a certain sense is an element of syncretic legal theory, basically having a humanist assumption of jus-naturalism of the immanent presence of any individual rights and freedoms. Another thing is that this assumption is still vulnerable to forcible extension of the immanent, because the catalog of rights and freedoms has in recent decades expanded and updated in a very peculiar, sometimes quite controversial way. We should understand that an appeal to the impact of civil society and its institutions on the situation is not always justified. For example, the resources of the state, some political parties, and some other political and legal players are sufficient to create sustainable imitations of civil institutions, in fact - the clients, who proclaim action on behalf of society. Such institutions, meanwhile, are able to draw the line of permissible, which neither the democratic procedure nor even the state represented by its official bodies and officials can cross. In this regard, the following possible scenario of social development in the framework of the concept of legal legitimacy may be proposed: the shift of the arbitrary power of the state to the simulacra of the institutions of civil society, the loss of feedback mechanisms between the society and the institutions acting on their behalf, the rejection of "the dictate of the legal text", but the transition of the dictate to the voluntarily expanded catalog of "public requirements".

Noting that legal legitimacy presupposes restriction of the role of the state, establishing the rights and freedoms of the individual as the border of its interference, we shall consider counterarguments to the assertion about the opposite of legal legitimacy and the legitimate, but non-legal "arbitrariness" of public authority. It is obvious that the rights of the individual cannot exist in the form of merely declarative rules or constitutional dispositions – they need socially-enforceable normative hypotheses, sanctions and guarantees, the mechanisms for implementation, protection and restoration. They need procedures, proceedings and processes. Each subjective right or freedom, declared and then legally set forth, in order to generate legal reality within the framework of the continental type of objective law, inevitably turns into a set of rules adopted by both legislative, executive and judicial bodies. And in this case, it is the state that fills the subjective law with meanings and social enforceability. Within the framework of the continental approach to objective law, a detailed legal regulation of the implementation and protection of subjective law becomes a guarantee against the arbitrariness of the state. The Anglo-Saxon model, in the extreme case, deals with an adversary clarification of the boundaries and depth of intervention. In none of the cases the hypothetical application of the scientific approach and the libertarian-legal theory, of course, cannot generate the will and duty of the law enforcer. Of course, a detailed and reasoned legal concept can serve as a scientific basis for argumentation.

But open and transparent influence on public authority requires such concept to go beyond the law enforcement process and move to a level recognized by a society that has an ideological influence and a value measurement. This is possible only if the scientific concept is consistently reduced to a generally accepted idea or notion. For this, the concept must initially be consistent, which is difficult for constructivist, communicative and other eclectic concepts. Further, it should be a mass, reducible and verifiable concept, rather than an elitist theoretical construction. However, in this case, the model of recognition, ascending to the psychological concept of law, disintegrates. As for a generally accepted idea, it can be a horizontal transformation from a local intuitive to general social concept of a positive justice. But further, we need an act of recognition by an authorized subject, an act of will, even if it is a will, as fiction: the actual abstract will of the state or group is always that. This problem is not eliminated in the Anglo-Sanson model; in its case, this refers not to the development of a rule, but to the assessment of an already occurring or continuing public relation, and, then, the analysis of a specific situation (case), determining the boundaries of due and things existent, and, the, the creation of a precedent through the act of the authorized body (court) and its further enforcement. A deadlock matter of this approach is the impossibility in some cases to determine the measure of lawful behavior, since the boundary of freedom of the other is extremely subjective. There is another form of influence of the concept on the legal reality. This is institutionalization of actors of influence - the development of institutions, informal rules and regulations built within the framework of the concept and influencing through various forms of dialogue on power institutions. In the modern world, among the mechanisms of influence capable of transferring conceptual grounds to the level of lawmaking, one can point out lobbyism, influence through educational structures (university and postgraduate education and professional development), influence through the structures of think tanks, influence through interpretation, examination and the formation of doctrine. But, apart from lobbyism in some of its forms, influence through various informal connections and

other things, these impacts, if they achieve the goal, are of a point nature, and do not meet certain criteria of "lawful", in particular, they also represent “arbitrariness", but no longer publicly authoritative, but "conceptual". However, it would be a big mistake to consider such changes in law as impossible.

Following a specific catalog of declarations has led to a kind of attempt to restructure the legal system not through real reform, but through the artificial introduction of certain "sign" features. There was a signification of the right by the markers of "freedom and democracy", but not its transformation into a democratic one and ensuring freedom. In turn, this created the most serious contradictions within the legal system, as well as the contradictions between the enforcement declared in the science of law and the legal doctrine on the one hand, and the real enforcement on the other. As for the contradictions within the legal system, as an example, we can point out a serious contradiction between the first two chapters of the Constitution and, for example, its fourth chapter (which deals with the powers of the President of Russia). If in the first case we can speak of conditionally "liberal" paradigms (the natural-legal theory, as Russian lawyers understood it then), then in the second, it goes about the specific evolution of pseudo-positivism, which, having rejected the "crutch" of Marxist-Leninist dogmas, has played itself out, increasing internal contradictions, revealed both at the level of the assessment of the rules of chapter four in the framework of the legal and technical method and at a deeper, but less incontrovertible level of assessment of the conceptual foundations and meaning of this chapter. This conceptual contradiction of natural law and legal positivism was reflected in the Russian legal system in general: "In our country, the end of the 1980s and the beginning of the 1990s was marked by a rejection of ideology and part of the methodological guidelines typical of Soviet legal understanding. If we do not take into account the theory of state and law, then the science of state law mostly determined by ideological attitudes has experienced the greatest influence of the natural-legal doctrine that dominates in the "Western democracies". In fact, there was a paradigm turnover, but it affected rather ideology (supposedly de-ideologization took place), and the content of individual legal institutions. The methodological toolkit, however, has not experienced the influence characteristic for the paradigm shift. Undoubtedly, there was a mass rejection of the Marxist-Leninist approach, which in many cases, unfortunately, was not a full-fledged approach to research, but was reduced to quasi-scientific “ritual” procedures, which deprived it of genuine research significance” [4].

An assessment of the loss of the links determining the regime of the lawfulness between legal consciousness and the law will be significant for assessing the initial stage of transformational processes in the legal consciousness from the Soviet to the post-Soviet. It seems that the law largely ceased to be "lawful" not only and so much in connection with the weakening of state institutions for ensuring lawfulness, but in connection with the legitimization of a number of political and socioeconomic transformations that were negatively perceived by citizens both as preceding the establishment of a modern constitutional order, and as present in the first years of its development. The situation began to improve in the last decade. The improvement in the quality of feedback between the authorities and society stimulates the raising of citizens' awareness, the readiness to implement civic initiatives; the improvement of the socio-economic conditions of life of a significant part of the population prompts the rejection of legal nihilism and illegal behavior, which is especially noticeable among young people. Law is increasingly perceived as meaningful, and sometimes as the only regulator of everyday interactions. Therefore, the return of the regulating role of law and the strengthening of its importance in public life will contribute to actualization of the question about either its conceptual integrity, consistency, or at least about conceptual communications and dialogue.

4. Summary

We shall finally note that amid the rapidly developing integration and globalization processes, there is a noticeable convergence of positions between the lawyers of different legal families regarding the role of judges in the process of lawmaking, but certain differences in the legal thinking of practicing lawyers who represent these legal families will obviously remain. The differences in legal understanding are manifested increasingly in legal families of non-European civilizations that preserve the traditions of the so-called "collectivistic", rather than "individualistic" legal understanding. Despite the fact that many of the countries of "collectivist" legal thinking formally borrowed "Western" models of law, lawyers of these countries continue to apply them to the extent that they meet the national legal traditions - Muslim, Chinese-Confucian, Japanese, etc. [9]. We should mention the growing influence of globalist tendencies in the law on legal consciousness and legal understanding in supply chain of Russia and the world in general, noting, on the one hand, great opportunities for building dialogical concepts in a country, whose legal reality was seriously reformed, and which taught participants of legal relations to operate amid fragmentariness and internal contradictoriness of the understanding of law,

but, on the other hand, the permanent and in the foreseeable future unavoidable obstacles in the formation of a consistent picture of legal reality and respect for the law, which is one of the most crucial conditions for the development of legal consciousness and legal culture in general [10], [11].

References

[1] Petrazhickij, L.I. Teoriya prava i gosudarstva v svyazi s teoriej nravstvennosti. SPb: Lan'. (In Russian). 2000.

[2] Baofu, P. “The Future of Post-Human Law: A Preface to a New Theory of Necessity: A Preface to a New Theory of Necessity, Contingency and Justice”. *Cambridge Scholars Publishing*. p. 11. 2010.

[3] Ol', P.A. “Pravoponimanie: ot plyuralizma k dvuedinstvu. SPb”. Russian. P. 181. 2005.

[4] Muhachev, I.V., and Capko, M.I. “Konstitucionno-pravovoj status yuridicheskoj nauki v situacii konceptual'noj neopredelennosti”. Obshchestvo i pravo. Russian. Vol 5. No. 42. pp. 66-71. 2012.

[5] Polyakova, A.V. Kommunikativnaya koncepciya prava: Voprosy teorii: Obsuzhdenie monografii SPb. Russian. 2003.

[6] Legaz-y-Lacambra, L. Rechtsphilosophie. Neuwied. 1965.

[7] Gricenko, A.V. “Krizis pravosoznaniya v situacii konceptual'noj neopredelennosti v sovremennom prave. Vestnik Mezhdunarodnoj akademii nauk”. Russkaya sekciya. Russian. Vol. 1. pp. 12-13. 2014.

[8] Chetvernin, V.A. “Sovremennye koncepcii estestvennogo prava”. Russian. Nauka. 1988.

[9] Kozyubra, N. “Pravoponimanie: ponyatie, tipy i urovni. Pravo Ukrainy”. Russian. Vol. 1. P. 25. 2011.

[10] Seuring, S., and Müller, M. “From a literature review to a conceptual framework for sustainable supply chain management”. *Journal of cleaner production*. Vol 16. No. 15. Pp. 1699-1710. 2008.

[11] Bozarth, C., and Handfield, R. “Operations and supply chain management”. *Strategies*. Vol 21. P. 22. 2008.