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Философия ғылымдарының докторы, профессор, Қазақстан Республикасы Жоғарғы Соты жанындағы Сот төрелігі академиясының Мемлекеттік-құқықтық пәндердің ғылыми-білім беру орталығының профессоры

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ӘЛЕУМЕТТІК-ФИЛОСОФИЯЛЫҚ ТАЛДАУ КОНТЕКСІНДЕГІ ҚҰҚЫҚТЫҚ ҚҰНДЫЛЫҚТАР ЖӘНЕ ҚҰҚЫҚТЫҚ МЕНТАЛИТЕТ

Аннотация. Бұл мақалада құқықтық құндылықтардың өзекті мәселелері және олардың қазіргі адамның құқықтық менталитетіндегі көріністері қарастырылады. Авторлардың пікірінше, құқықтар құқықтық менталитеттегі құндылық ретінде екі өлшемде көрінеді: біріншісі – объективті қасиеттерге ие объективті шындық ретінде, екіншісі – сана мен мінез-құлық қасиеттері, адам қызметінің негізі ретінде. Талдаудың нәтижесінде авторлар қатаң формальды позицияларда бола отырып, құқықтың құндылығын түсіну мүмкін емес, әсіресе оның моральмен байланысынан тыс қарайтын болсақ деген қорытындыға келеді. Сондықтан құқықтың маңызды аспектілерін оның сыртқы формаларынан емес, құқықтың ішкі мазмұнынан іздеуі керек деген ой айтылады. Сондай-ақ, жұмыста құқықтық қатынастардың жаңа ментальдық моделін қалыптастыратын позитивтіктен табиғи құқықты түсіну түрлерінің өзгеруіне ықпал ететін құндылық алғышарттары талданады.

Түйін сөздер: құқықтық құндылық, құқықтық менталитет, құқық, мораль, құқықтық мемлекет, адам құқықығы, ұлт менталитеті

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ПРАВОВЫЕ ЦЕННОСТИ И ПРАВОВОЙ МЕНТАЛИТЕТ В КОНТЕКСТЕ СОЦИАЛЬНО-ФИЛОСОФСКОГО АНАЛИЗА

Аннотация. В этой статье рассматриваются проблемы правовых ценностей и их проявления в правовом менталитете современного человека. По мнению авторов, право как ценность в правовом менталитете проявляется в двух измерениях: первое, как объективная реальность, обладающая объективными свойствами; второе, как свойство сознания и поведения, как основа человеческой деятельности. В ходе анализа, авторы приходят к выводу, что понять ценность права, оставаясь на строго формальных позициях невозможно, тем более вне его связи с моралью. Поэтому, юридическая мысль должна искать сущностные аспекты права не столько в формах, а сколько в содержаниях права. Также, в работе анализируются ценностные предпосылки, которые способствуют смене типов понимания права с позитивного на естественное, которое в итоге формирует новые ментальные модели правоотношения.

Ключевые слова: право, мораль, ценность, государство, национальный менталитет, правовые ценности, права человека, правовой менталитет.

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LEGAL VALUES AND LEGAL MENTALITY IN THE CONTEXT OF SOCIO-PHILOSOPHICAL ANALYSIS

Abstract. This article considers the issues of legal values and its demonstration in legal mentality of modern person. According to the opinion of the author, rights as a value in the legal mentality manifests itself in two dimensions – first, as an objective reality, possessing objective properties - the second, as the properties of consciousness and behavior, as the basis of human activity. As a result of the analysis, the author comes to the conclusion that it is not possible to understand the value of law while remaining on strictly formal positions, especially without its connection with morality. Therefore, legal thought should look for the essential aspects of law not in the forms, but in the content of law. Also, the work analyzes the prerequisites of the values, that contribute to the change of types of understanding of law from positive to natural, which eventually forms a new mental model of legal relations.

Key words: law, morality, value, state, national mentality, legal values, human rights, legal mentality.

Introduction

It is known that the values can be perceived as the clear reflection of the society. This expression clearly states the importance of values in human life and its significance for the development of the society. The values could be not

only reflection of the culture, but also the ideology of a particular society, determination of the trajectory of a person's behavior and his attitude to life. In other words, values underlie the development of society and the individual. By denying old values, a person develops a certain

attitude towards new values, thereby affirms a new form of life. This ultimately shapes the value orientations of the individual and society.

The value is closely related with human activity. A person, in the course of the activity, not only realizes its importance and significance, but also evaluates its usefulness and necessity for own development. In ancient times, the most important human values were goodness, beauty and truth. These values still remain important and significant for modern people. Without them, humanity would cease to be called human society. In other words, values form the basis of society and serve as guidelines for people, helping to establish the right attitude towards life. They regulate and coordinate a person's actions and act as a measure for evaluating a person's actions, as well as the actions of others. The values can become the meaning of life and form the basis of a person's spirituality and worldview.

Materials and methods

During the writing of this article, such scientific research methods as analysis and synthesis, generalization, and abstraction were used. These methods allowed the authors to ensure the quality and reliability of the results obtained. Moreover, the methods used made it possible to investigate the stated topic in the context of socio-philosophical analysis

Results, discussion

In ancient philosophy, the values were identified with genesis by itself, without being separated from it, they were considered as a single entity. Socrates and Plato spoke about goodness and justice as the highest values that are necessary for human life. Kant was the first to use values in a narrow sense, dividing them into what is it and what it should be, the real and the ideal. Hegel distinguishes values into utilitarian and spiritual.

After axiology was identified as an independent branch of philosophy, several types of theories of values were formed. For instance,

in the naturalistic psychologism of J. Dewey, the values are seen as an objective reality that can satisfy human needs. Or, in axiological transcendentalism (W. Windelband, G. Rickert), value is considered not as an objective reality, but as an ideal being. These include values such as truth, beauty, goodness, love. They, as eternal values, cannot serve as means to achieve any other goals. They are self-sufficient and form the basis of human spiritual activity. They are like norms that do not depend on a person and form the basis of culture.

The next direction is personalistic ontologism (M. Scheler). According to Scheler's opinion, values are objective and form the ontological basis of personality. The founder of the sociological concept of value was M. Weber. According to his opinion, value is a norm that has certain significance for an individual. In this regard, he pointed out the importance of religious values in human life.

Values can be distinguished as an individual and national. Every nation has its own system of values. They are developed over years, decades and form the basis of culture, human existence and serve as a guide for the development of society. They form the moral basis of the worldviews of a nation.

The attitude towards national values ultimately manifests itself in their mentality. Each nation, in the course of its historical development, puts forward certain values into the historical arena as an ideal and unites around them. Such values during the years of independence for the Kazakh people were and remain the state, independence, land, knowledge, religion, language, freedom and justice, family, custom and traditions. These values define not only the identity of Kazakh people, but also the way they approach life and underlie their existence as a nation. As the result of these values, the internal, spiritual world of the Kazakh people and their mental world and philosophy are formed.

In modern scientific literature, values are divided into material and spiritual. Spiritual values include knowledge, freedom and creativity, moral standards and morality, mercy, kindness and love, traditions and customs, religion and culture. Spiritual values play an important role both in the life of society and in the life of an individual. Without spiritual values, society cannot function in a civilized manner and achieve progress in its development. Furthermore, spiritual values allow a person to understand the meaning of his own existence, and develop personal qualities. Nowadays society is dominated by material values. A person is most interested in money, wealth, career and position in society. These values become the subject of person's needs and aspirations. They begin to regulate the behavior, attitude to life and views to the world.

A person enriches his inner world with new types of knowledge, develops professional skills, and develops a certain attitude towards life. According to some scientists, in the 21st century the system of values and stereotypes that has developed over thousands of years is no longer able to fully ensure the existence and progress of human civilization, undergoing serious changes in the context of globalization. The process of secularization, being a consequence of the objective laws of the development of society, led to the loss of consciousness of the highest spiritual principle, concentrated in religious faith.

Purely utilitarian and pragmatic values began to assert themselves as the dominant value orientations: attention began to be paid mainly to physical well-being and the accumulation of material wealth. The understanding of a more subtle, higher meaning of life than the accumulation of material wealth has gone. This is the emphasis in the conceptual framework of the "consumer society", aimed at satisfying the most bizarre material demands, and at the same time, at expanding consumption based

on the formation of more and more new material needs" [1]. Despite this, in modern society there is an increasing demand for spiritual values. Gradually there is an awareness that ignoring moral standards is dangerous and fraught with consequences for the development of society itself. This is evidenced by moral and psychological deviations, which began to manifest themselves more clearly in the views and actions of modern people, in the form of various forms of radicalism, extremism, aggression and intolerance in the spheres of socio-political and spiritual life of society. For example, extremely radical religious fans began to speak out against the traditions of the Kazakh people, pointing out their incompatibility with the canons of "pure Islam", Sharia. How can one understand such a phenomenon when playing the national musical instrument *dombra* is declared haram, or the "Betashar" ritual is considered a manifestation of shirk (polytheism) or a source of gender inequality. At the same time, its cultural and historical potential, aimed at strengthening the tradition of respect as a whole in Kazakh society, is deliberately ignored. This is a solemn ceremony, as a national value must be preserved and passed on to the next generation, which is building a new Kazakhstan.

Under these conditions, taking into account the axiological aspects of problems becomes key, especially when solving complex problems of social development. For example, the mentality of the Kazakhs is dominated by a tolerant attitude towards the traditions, culture, customs, and languages of the ethnic groups that live in Kazakhstan. Such mutual respect for each other has a cultural and historical premise and forms the foundation of civil harmony in modern Kazakhstan, and further strengthening of this in the mentality of Kazakhstanis, as a value, meets the fundamental interests of all Kazakhstanis. Besides, for most Kazakhs, land is not only an object of market

relations, it is also a symbol of spirituality. In the national culture of the Kazakhs, the land is considered as a mother, as “atameken” - the lands of ancestors, as a holy, sacred place where he was born and raised. Poets and composers dedicate poems and songs, glorify the beauty and greatness of their motherland, and cultivate a feeling of attachment to it. All this is fixed in the mentality of the people, rooted as a spiritual value. It is simply impossible to ignore or deny this. Any attempt to resolve this issue in a violent or voluntaristic way is fraught with consequences, both for the country and for the nation.

As for legal values, they require separate study and understanding. As is known, legal values have long been outside of the view in the field of legal science. There were own reasons and justifications for this. As V.P. Ponomareva pointed, in Soviet times, jurisprudence did not specifically talk about legal values. Since, there was a set of textbook values of a socialist society that were formulated in the moral code of the builders of communism. During the post-Soviet period the situation has changed dramatically [2].

Scholars in the field of law began to turn their attention to problems of legal value after scientists actively began to research and talk about democratic transformations, human rights and trends in the development of the rule of law in post-Soviet countries. During this period, scholars actively hold scientific, theoretical and practical conferences on the problems of legal values, the value of law and values in law [3].

Problems of legal value and their substantive study are for the first time carried out in the depths of the philosophy of law, and on this basis there has appeared a whole theoretical direction - legal axiology [4].

The subject of legal axiology is the problem of understanding and interpreting law as a value. It devotes a special place to assessing the legal significance of the law. Also, legal

axiology in its subject of research, along with law, includes the state as a legal phenomenon, as organizing legal relations in society. She substantively studies the relationship between rights and law, natural law and positive law, morality and law. At the same time, natural law is understood as a moral phenomenon, and is recognized as an absolute value that constitutes the essence of man. As a result, natural law represents the unity of the principle of law and moral norms [5].

Also, it should be said that legal value, as a factor influences the legal development of society and underlies the legal mentality of people, and also serves as the basis for assessments in the field of law and knowledge of legal reality, serve as a means of transmitting significant experience in the process of legal communication [6].

In other words, legal values are formed in certain historical conditions, which features of the development are determined by the state of development of democratic institutions of power in civil society and the rule of law. If we look to the state of affairs of the legal values of Kazakhstani society from this position, we can state that they do not satisfy the expectations of the society. Their mentality is dominated by disbelief in legal values as an instrument of social regulation of modern society. The origins of such a negative attitude towards legal values can be traced back to 1995, when the Constitutional Court was abolished in the country. It is clear that such a step on the part of the current government pursued certain goals, namely, it was necessary to quickly privatize state property in the country, transfer the economy to a market economy, and form a class of owners and a national bourgeoisie. As is known, the privatization of state property was carried out in violation of laws and human rights. It opened up a wide avenue for corruption and raider seizure of other people's property and business. In such a situation, the existence of

the Constitutional Court could interfere with this legal chaos, popularly called “privatization.” Overall, all this ultimately formed among Kazakhstanis a negative attitude towards laws and justice as values. After 30 years, we are reviving the Constitutional Court again. For now it must serve as a guarantor of constitutional human rights, protect rights and freedom. For example, in five months of 2023, over three thousand citizens applied for constitutional protection of their rights. 41% of appeals concern disagreement with court decisions, other appeals are related to non-execution of judicial acts, housing and labor relations, social protection, execution of punishments, access to information, bankruptcy of individuals, as well as verification of the constitutionality of laws and other regulations [7].

From this we can conclude that the Constitutional Court, on the one hand, is an important legal institution of modern society, especially in the protection of human rights, at the same time, it plays a key role in the institutionalization of constitutional values as the basis of the legal mentality. In this situation, constitutional values include not only the legal provision and protection of individual rights and freedoms, but also the observance and implementation of the principles of justice, equality of all before the law and equal protection of forms of property, which ultimately represent the constitutional values of a modern state.

In the system of legal values, a special place belongs to the state. There was a time when the state occupied a dominant position in the legal mentality of Kazakhstanis; its interests were always placed higher than the interests of a particular person. The rooting of the cult of state power gave rise to statism, a totalitarian way of thinking. Now the situation has changed, there has been a turning point in people’s consciousness. The pendulum of behavior has swung towards individualism, and the interests of a particular individual have come

to the fore. It must be said that modern society is gradually overcoming this legal imbalance, a destructive structure that has existed for a long time. Today, the legal relationship between the state and the citizen is being reviewed. Adjustments are being made to existing legal norms that ensure compliance with the rights and obligations of each party based on the principle of fairness. As noted, A.N. Babenko: “in this case, two types of values arise: the value of state activity for the individual and the value of individual behavior for the state” [8]. In this point, this process deeply affects the system of values associated with trust, responsibility, law-abidingness, as well as observance and maintenance of order and legality in the country. Their implementation of legal values in reality depends on how trust in laws and rights in the legal mentality is strengthened. It will ultimately determine the effectiveness of the authorities and the state, and, accordingly, human behavior that complies with legal norms. In this regard, there is a need to take a deeper look at the real state of affairs of the legal behavior of people in modern society. As it is known, legal behavior is guaranteed by law and protected by the state. It should be carried out not on the basis of fear, order and coercion, but on the basis of inner conviction and morality. However, the reality is that the legal behavior of citizens is far from perfect. It sometimes diverges from the requirements of legal norms, and in a certain sense appears to be a contradiction with new norms of law. Such intermediate, unequipped behavior to the new legal conditions creates fear of the law in the mentality of Kazakhstanis. Marginal behavior increasingly deforms legal consciousness, gives rise to legal nihilism and, accordingly, reduces the value of individual behavior for the state. At the same time, as noted by V.V. Oksamytny and N.K. Pototsky “in legal terms, marginality is characterized by a special, “intermediate”, transitional state between

the lawful and illegal state of an individual, whose behavior is caused both by one's own socio-psychological deformation and by certain (voluntary or involuntary) provocation on the part of state institutions and society as a whole" [9]. Marginality, as an intermediate state of personality, can arise for other reasons and have various forms of manifestation. The reasons for marginality can be economic, social, political and cultural, and others. For example, unemployment, poverty or low income of people can contribute not only to a decrease in social activity, but also to the emergence of a protest mood, aggression against the authorities and the existing order. Lack of social justice in the distribution of wealth or lack of access to quality education and health care may be a contributing factor to marginality. The state and society must take all measures to eliminate the underlying causes of marginalization of the population. Such a step on the part of the state contributes to the creation of a fair society, where respect for human rights will become an important indicator.

In the legal mentality, rights take a special place as a value. However, rights as a value in the legal mentality manifests itself in two dimensions - the first, as an objective reality with objective properties - the second, as properties of consciousness and behavior, as the basis of human activity. If the first is related to the form of existence and functioning of law, then the second is related to its internal content, where the core is morality. It is important here that the external form of law does not prevail over the content and does not become dominant and determining. However, in legal practice there is a predominance of form over content, norms over morality. As E. Ponomareva notes, "the form is capable to transform natural feelings and states into social and civil ones, potential into real ones. Likewise, law does not exist without its own formal objectification outside, and objectification requires publicity" [10].

Further, the author claims that formal certainty also concerns the architecture of law itself - its structure, expressed in the ideal structure of a logical rule of law, the systematicity of legal norms, the unity and consistency of legal regulations. Any value, idea and ideal for consolidation, approval, development and implementation must receive external objectification, form. This ensures the strength and effectiveness of law in society. Having this form, law turns into a direct social value, since it provides organization and legal order [11].

Thus, in the legal mentality, law as a value looks like objectivity, formal certainty, where its content is filled not with contradiction and unambiguity, universal obligatoriness, coercion and normativity. All this in the legal mentality provides its direction and forms certain positions when solving legal problems. At the same time, we must remember that by remaining at the same level, we will not be able to solve the problem of law as a value at the essential level. Why? The fact is that it is difficult for law as a value to understand from itself, much less to define it as a value, limiting itself to only characterizing its external features. Of course, external forms are important and significant, but they remain secondary, derived from the internal essence of law, which is associated with human activity. Today, it is not possible to understand the value of law while remaining on strictly formal positions, especially without its connection with morality and morality. Consequently, legal thought should not be locked in its dogmatic ideas about law; it should look for the essential aspects of law not in forms, not in its external regulators, but in the very essence of law. Although it should be said that the normativity of law brings order to the structure of human activity and forms a certain type of legal mentality. However, introducing normativity into the structure of human behavior, as a value, should not be absolutized as the only way to regulate human behavior.

As practice shows, any attempt at absolutization leads to the replacement of the law of conscience with legal laws, the liberation of law from morality, which is fraught with consequences for the functioning of law itself as a value. When rights begin to lose their moral basis and, as a result, the population's distrust of the activities of law enforcement agencies increases, the population ceases to support their activities. The population will appreciate their activities when the legal norms coincide with the culture and moral norm that is embedded in it. Therefore, the penetration of moral principles into the content of law is the key to effective influence between the population and law enforcement agencies, including the judiciary. And in general, the effective functioning of law is possible if one takes into account not only its external regulators and norms, but also the peculiarities of the legal mentality, which has deep connections with the spiritual and cultural world of the nation.

Man, as a rational being, always strives to be guided in his actions by common sense. The latter are most associated with the so-called natural law (freedom, equality, justice) and it does not just passively exist in the mind of the individual, but plays an important role in the formation of the legal mentality, and even determines the trajectory of its development. In other words, natural law plays a leading role in the formation of a legal mentality. As the law grows from the inner world and essence of a person that determines the worldview and attitude to life. As L.I. Petrazycki said, "law is rooted in the psyche of the individual. A lawyer would act wrongly, if he began to look for a legal phenomenon "somewhere in the space above or between people, in the "social environment", etc., while this phenomenon occurs in himself, in his head, in his same psyche, and only there" [12].

In the work "Introduction to the study of law and morality. Emotional psychology" L.I.

Petrazycki believes that legal science sees legal phenomena where they do not exist, and does not see them where they actually are. He says that law has a psychological basis, legal phenomena exist within the mental experience of law, people become familiar with law in the forms of judgments that exist in their psyche and are experienced emotionally [13]. Interpretation of law from the perspective of the individual's mentality allows us to correctly understand law as a value that is associated with a person's behavior and rooted attitude to legal reality. It is necessary to agree with the opinion of L.I. Petrazhitzky, when he said that until a legal norm becomes a stereotype of behavior, the law will not function. In the same way, the state can adopt any regulatory legal acts it needs, counting on their positive effect, but until the norms embedded in them become part of people's psychology, they will not begin to work.

Thus, rights as a value in the legal mentality are formed in two ways: first, through positive law, where normativity not only dominates, but also determines the trajectory of development of the legal mentality. The normative order created by the institutions of state power forcibly becomes not only the place of residence of a person, but it also becomes a regulator of the behavior. Positive law, integrating a person into the world of legal categories, formalizing his attitude to legal reality, introduces rigor, consistency and sober calculation into them. It teaches a person to look at everything through the prism of specific legal norms. Person's legal mentality is formed in this paradigm. Overall, the legal norms enshrined in it determine the ways of understanding and perceiving the essence of law; secondly, rights as a value are formed by affirming the principles of natural law. Here morality is the beginning of understanding the essence of law. As V.D. Zorkin correctly notes, "too obvious gap between law and moral regulators

not only reduces the effectiveness of its action, but is fraught with a dangerous undermining of the fundamental foundations of human co-existence”[14]. Without going into discussions on the relationship between morality and law, we would like to note that in recent years there has been an increasing interest in natural law, and in general in the moral aspects of law, as values that function in the legal mentality of the individual. The strengthening of ethics of law becomes the cornerstone of legal reform, the starting point for the modernization of the judicial system. Achieving justice is recognized as the primary property and main goal of justice. More and more articles began to appear in the scientific literature pointing out the shortcomings of legal formalism, the danger of absolutizing the external forms of law over its content, and the harmfulness of the predominance of procedural norms over justice. The issue of existing contradictions between law and justice began to be widely discussed. As A.M. Velichko notes: “The law no longer just regulates the activity of an individual, it evaluates and replace morality. That is, the law becomes in itself the alpha and omega of the universe, evaluates itself and does not need any higher moral guidance” [15]. This situation certainly requires a serious and thoughtful approach to solving the problem of the relationship between law and morality, law and justice, as a unity of opposition, as mutually presupposing and complementary phenomena in the legal mentality. However, today there must be a change in the types of understanding of law from positive to natural, establishing the priority of human rights over any law that claims his rights. This is due not only to a change in

our views and beliefs, principles of thinking, but also to a change in the system of social relations itself. Also, this is due to a change in the civilizational paradigm of the development of modern Kazakh society. Against this background, new mental models of legal relations are being formed. We already live, think and act in them, creating images of new legal relations. This is the manifestation of law as a value in the legal mentality. Therefore, it is important to know and take into account these mental changes when modernizing the country’s legal system. Freedom, justice, democracy, human rights and other legal values are not alien to us; on the contrary, they form the deep basis of the legal mentality of modern man and form the mental strategy for the development of Kazakhstani society.

Conclusion

Based on the above, the following conclusions can be drawn:

- the formation of legal values at different historical stages of the development of society has its own specifics. This specificity is determined, first of all, by the moral, political and legal state of the development of society;
- modern scientific understanding of the value-legal sphere of Kazakhstani society lags behind the demands and needs of modern life;
- the crisis of the spiritual and moral foundations of society and the individual negatively affects the affirmation of legal values, as a factor in the development of the legal mentality of Kazakhstanis;
- the state is obliged not only to proclaim, but also to ensure the implementation of legal values as the basis for building a rule of law state.

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