

V.A. Turlyayev\*, B.I. Karipbayev

*Karagandy University of the name of academician E.A. Buketov, Kazakhstan  
(E-mail: vlad-turlaev@mail.ru; karipbaev@mail.ru)*

### **Legal culture as a factor of legal reality (socio-philosophical analysis)**

The article examines the defining legal culture problem as one of the main legal reality factors, considered in philosophy and in the law theory. The purpose of the investigation is to generalize scientific knowledge and theories that reveal the relationship between legal culture and legal reality. By applying general and special research methods, analysis and scientific material generalization, consideration of various approaches to legal culture and legal reality to identify these categories relationship of their constituent elements are carried out. The authors analyze and compare the perspectives and scientific positions of philosophers and legal theorists in the researching field of the legal culture development in modern society in the legal reality formation. The categories “legal reality”, “legal validity”, “legal culture” as phenomena of social reality interacting with each other and constituting the broadest philosophical and legal category “legal reality” are considered. The result of the research is the legal culture consideration as a factor that determines legal reality, which includes the entire spectrum of legal phenomena encountered in legal life. The legal culture research and legal reality are considered as the basic modern humanitarian science necessity, which aims to ensure the most complete development of the human personality in harmony with public interests and needs, the most important are mediated through law. We highlight the main problems of the legal culture and legal reality definition, which are due to a wide range of considered categories, a large number of constituent elements, different understanding of a law and legal life. Legal culture defines legal reality as the real existence of legal matter as one of the types of social reality.

*Keywords:* legal reality, legal validity, legal culture, legal consciousness, law sphere, problems of definition, legal category.

#### *Introduction*

Currently, an intensive search for new law development paradigms is being carried out because of the continuously developing social conditions, in which the legal state acts as the main reference point in the political and legal sphere, as a generally recognized ideal of public life and the relationship between the state and the individual. The legal state is based on democratic principles of management and human rights as the main goal and criterion for the management methods correct application. At the same time, legal culture has a significant role in whole society considered as the legal culture of various social groups and the individual legal culture. Modern legal researchers note that the general legal culture level of Kazakhstan society is low, while there is a significant gap between the proclaimed constitutional norms and real legal relations [1; 4]. This is due to the fact that in modern conditions a new legal culture is being formed, which is trying to combine liberal-democratic principles and traditional religious culture. This process is accompanied by various deviations and experiments that are designed to show the phenomena compatibility. Besides, legal culture is the result of this compromise, and legal education and law-making process are of a great importance for the legal culture development, which form each individual and society as a whole legal consciousness. This determines the law existence in the legal culture form and has a huge impact on the legal culture formation,

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\*Corresponding author's e-mail: [vlad-turlaev@mail.ru](mailto:vlad-turlaev@mail.ru)

considered as an integral part of the society general culture. The abstract phenomena investigation, such as “legal culture” and “legal reality”, is necessary to understand these phenomena’s existence and development. “Legal reality” concept includes all legal reality phenomena that have subjective and objective properties. Legal reality is contained in public consciousness and is the human activity result consciousness, which is mediated through legal culture. The phenomena included in the category of legal reality are considered within the framework of various scientific approaches, philosophical theories and directions, sociological and legal research, while the category “legal reality” is recognized to show the main trends in the development and basic social and legal institutions improvement, showing the social and legal relationships complexity in modern society. Being the broadest category, legal reality includes not only positive, but also legal relations (crimes and misconduct) negative aspects, lawful behavior positive manifestations, as well as neutral behavior in society, which is expressed through the categories of “inaction”, “lawful behavior”, “misconduct”. In this case, there is an understanding of the legal culture problem, which can be considered as a positive activity under legal norms, and illegal. Behavior that does not comply (contradict) legal norms, that is, unlawful (unlawful) behavior may be a sign low legal culture, or it may go beyond the legal culture. Legal reality covers the things categories and what should be in the law field, legal culture (legal psychology and legal psychology as constituent legal culture elements) and other areas that are legal reality factors. All human life is associated with the rights and obligations implementation, which are due to a variety of social and legal ties that generate abstract and concrete legal ties that are intertwined with abstract and concrete social relationships that determine the existence and functioning of the individual as a social and legal relations subject. All these relations are simultaneously objective and subjective, since they exist in reality as legal relations, and on the other hand, in the public consciousness and find their expression in human activity. Thus, the law awareness (legal concepts and categories) makes it real and allows us to state that it is legal consciousness that is the prerequisite and basic condition for the law existence as an objective reality and legal culture resulting from the implementation of legal ideology and legal psychology.

#### *Experimental*

The application of general scientific and private scientific research methods made it possible to reveal the relationship between legal culture and legal reality as a dichotomy that is in continuous development. During the research, general philosophical and special legal research methods were used. The dialectical method of cognition was used as the main method, and the following were used as general scientific methods: Induction and deduction, analysis and synthesis, systemic method, structural-functional method, anthropological method. When developing the conclusions of political cognition, legal methods and legal phenomena were used — this is a comparative legal method, formal legal, and other scientific knowledge methods. In the research course, the historicism method was applied, through which the historical patterns of the legal culture development as a social phenomenon were identified. By means of comparative analysis and synthesis of the main and secondary social and legal categories main features, philosophical and legal concepts “legal culture” and “legal reality” correlation in terms of their volume were revealed. Through induction and deduction, the essential purpose of the broadest legal categories “legal culture”, “legal reality” were identified. By applying the systemic and structural-functional methods, the categories “social reality”, “legal consciousness”, “legal culture” correlation were considered. Via the comparative legal and the formal legal methods, the interaction and relationship of all legal culture elements with the systemic category of “legal reality” were examined.

#### *Results*

Currently, a new legal culture is being formed, both globally and nationally, which is due to the dynamic law development, the legal systems and legal norms convergence, the universal values and cultural relativism elaboration. Through legal culture, law is realized, which is essentially the existence of legal reality (legal life). At the same time, the legal reality is designed to comprehensively reflect the legal norms (conduct enshrined rules in law), legal behavior and legal consciousness, which form the legal culture in practice. The right implementation is also greatly influenced by moral and ethical standards determined by the post-Soviet history, various religions and certain social groups’ cultures. Accordingly, legal culture is the result of the society development in specific historical conditions; however, historical results are assessed by society, as a rule, after some time, while the legal reality category should include not only the legal culture that exists at present, but also the legal culture that exists in the past, while being reflected by modern public consciousness. This emphasizes the continuity of social and legal development from the past to the future, which al-

lows us to consider legal reality as a factor set that make up a dialectically developing phenomenon. On the other hand, legal reality is contained in the consciousness that exists at the present time, in which, as knowledge, there are ideas about legal reality, legal life and legal culture existing in the past. The legal literature notes the relativity and diversity of legal culture assessments as a philosophical and legal phenomenon. People Communities, political parties, various social institutions, persons in power, and oppositionists may evaluate cultural achievements in the legal sphere in different ways. There may be different opinions and attitudes towards legal norms and their application practice by state bodies. However, in the law theory and state, it is noted that history has already developed some general civilization criteria in determining the culture level in general and legal culture in particular. Based on this an opportunity is created to determine the main criteria for understanding legal culture and directions for its improvement. These are the following factors: The formation of law and legality sense; Mastering the logical and legal thinking achievements; Legislation improvement; Legislative work raising level; An increase in the volume and qualitative improvement of law-abiding behavior; Jurisdictional improvement and other law enforcement activities; Power into legislative division, executive and judicial branches (institutions); Research law monuments and law enforcement practice as the legal education basis [2; 441–442]. All these directions of legal culture improvement are designed to characterize legal reality as a contradictory philosophical and legal category, reflecting the contradictoriness of the current legal state culture and general culture in general. In modern conditions, in our opinion, the legal culture should be based not only on the law and legal categories norms but also on moral, ethical principles that are designed to play the role as an individual's limiter in his own rights and freedoms exercise. In any national legal system, legal norms must have their own moral meaning, every law and by-law every legal principle must have not only legal but also a certain moral value. It should be noted that law without morality is powerless, since legal norms are social norms part, accordingly, the right culture existence is impossible without a general society culture. The social development level predetermines the degree of legal relations development, which can penetrate into all public life spheres. This level reflects development results of the state, law, legal relations, legal consciousness, legal culture, and other elements from which legal reality is formed. The legal reality reflection is the concepts manifestation and categories in the subjective world in the legal life process, and ideal objects (ideas, theories, scientific positions and other theoretical and practical research results) that affect the behavior of an individual in society. In general, the legal reality understanding is intended to reflect the entire legal phenomena set at the present time, while all phenomena in one way or another related to law can be attributed to legal phenomena. For instance, Yu.A. Zhilina emphasizes that legal reality is the law existence in the material aspect and in the ideal aspect. This being includes all existing legal phenomena and phenomena. The author notes: "... from the defining legal reality problem, its structure and its relationship question with other philosophical and legal concepts and categories, such as legal ideals, legal opportunities, legal consciousness" [3; 640] and other legal phenomena covering all legal life aspects. All of these categories are included in the legal reality concept, since legal reality is the broadest category designed to characterize social reality in the legal sphere. It should be noted that the very legal reality is a human consciousness product, trying to comprehend itself in the development process and the search for patterns of this development. Professor S.L. Slobodniuk states: "... the legal reality understanding is conditioned by the legal understanding type or that author adheres to. At the same time, legal reality is characterized, as a rule, either from a formally defined side, or in a certain metaphysical aspect" [4; 345–347]. This is due to the fact that the law understanding in different historical epochs, as well as at the present time, in different societies is different, which is due to the legal consciousness and legal culture of a specific historical society. For example, law in the religious and traditional law family and law in the Romano-Germanic system have not only different forms of expression but also the very idea of law as a social value and the main legal social relations regulator, which is due to different legal consciousness and legal culture. Accordingly, it is rather difficult to determine the phenomena range included in the category of "legal reality", since there are many approaches and phenomenon definitions to the "law" concept, which are adopted in different social groups in different ways, forming an appropriate legal culture. At the heart of modern legal culture is (should be) liberal-democratic principles, which should be guided by society as a whole and each individual in particular. The public relations formation based on liberal-democratic ideas is the most important step towards the legal statehood formation as a legal reality. It should be noted that the category "legal state" acts as both legal reality and political reality element, forming an inseparable phenomena set as political and legal nature. Accordingly, as a broader social reality category, one can single out political and legal reality, subsequently trying to separate legal reality from political and legal reality as a set of exclusively legal phenomena and categories, which seems impossible, since many

phenomena and categories are both political and legal at the same time. Law and politics can be correlated as the form and content of the same phenomenon, while in certain cases changing their purpose, acting in legal relations as a form, and in political relations as content, and vice versa. Accordingly, legal reality and political reality are different forms of social reality that differ from each other in main criterion terms: Law is a social relations regulator, through generally binding rules of behavior; politics is a methodology for managing and developing society. Thus, in a modern state, political activity is limited by a legal framework, and the law development and its implementation is carried out both by legal and political methods. It is possible to separate these phenomena from each other only conditionally, abstracting from certain qualities and phenomena characteristics under study.

### *Discussion*

Legal reality reflects discussions in the law field, since through these disputes and discussions, a generally recognized human behavior model in society is formed, as well as the social institutions necessary for the management and development of this society are created. Various authors consider legal reality through the legal reality category. For instance, A.V. Petrov notes that legal reality is a universal theoretical jurisprudence object, more precisely, legal reality, which theoretical jurisprudence is trying to understand as reality, defining the essential and natural in its content and forms [5; 150–158]. At the same time, in the analyzing monographic publications process, the author notes that when defining legal culture, a rather elements arbitrary list is included in this concept, while an exhaustive concepts list is not always included in the concept under study. An example is the author L.A. Petruchak's opinion, who in his monograph made an attempt to analyze the legal modern society culture [6; 246–249]. The authors in legal studies, without delving into philosophy, are limited to a general approach to legal reality and legal culture. According to Hegel, reality differs from immediate being as the beginning of theoretical thinking. "Being is not yet real: it is the first immediacy; his reflection is therefore becoming and transition into another" [7; 186]. A similar approach is typical for modern philosophy. For example, P.V. Alekseev and Panin A.V. note that in a broad sense, reality is taken as the entire objectively existing world, objective reality in all its concreteness, the entire totality of existing phenomena taken in unity with their essence [8; 509]. Of interest is the approach of A.V. Petrov, who tries to determine legal reality by means of legal will. The formation of legal will is conditioned by specific social needs and the bearer of legal will is society as a whole, and the exponent is the dominant social groups in it. The legal will has special objective goals — the social relations forms consolidation, which allows ordering to ensure the social ties stability to achieve interests of the main social groups balance, and ultimately the public interests harmony [9; 254–257]. This author indicates that the legal reality is revealed from different angles. From the outside, it is a stable legal phenomena sequence and their necessary connections with each other. From the inside, legal reality is a way of expressing and objectifying legal will, a way of existence of the essence of legal phenomena. Legal reality is the unity of internal and external, essence and its manifestations, legal force and its expression in the essential content of individual legal phenomena and their natural combination order. In this capacity, legal reality should be distinguished from legal reality, which is a cut of the immediate legal phenomena existence. Immediate being or legal reality is a mixed stream of essential and inessential, necessary and accidental, natural and natural, which must be distinguished by highlighting the real [5; 157]. V.V. Kozhevnikov adheres to the same approach, who believes that legal reality is understood as legal reality that does not fully reflect objective laws. As a criterion that distinguishes legal reality from legal reality, this author considers through legal possibilities. Legal opportunities arise from legal reality, since it is the reality that demonstrates the process of the emergence and implementation of law [10; 9]. Legal reality reflects not only regular connections and tendencies but also random phenomena that conflict with legal reality because of the free will of an individual person and many options for his behavior, which is due to legal culture. Legal reality is a realized reality, incorporating not only realized things but also ideas and ideals. Accordingly, it is the legal culture of society as the implementation of law in one form or another that predetermines the legal reality and legal reality.

The relationship issue in general, personality and law is one of the fundamental philosophical and legal and socio-legal issues. Currently, the formation process of a legal personality has just begun. A legal personality is a substructure of a social personality with special typological and behavioral characteristics, adequate to civil society and the rule of law. A legal personality differs from other personality types in the degree of lawfulness and behavior activity. Conscious legal prescriptions fulfillment, active protection of both one's own rights and the rights of third parties, active participation in law-making state bodies activities, participation in legal educational activities determine the content of a legal personality. Different levels of loyalty to

legal consciousness inherent in people make it possible, along with a legal person, to single out a group that comes into contact with it and ensures the legal state stability as a system — these are individuals with loyalty to legal consciousness, which is at the level of passive or conformal positivism [11; 4–8]. The key figure in this case is a socially active person who measures his activities with the theory of human rights and the legal culture of its implementation in the lawful behavior form. From the point of view of jurisprudence, the basic concept for truly legitimate behavior of a socially active person is legal culture. Legal culture acts as the basis for the law implementation, being defined as the basic component of the entire law theory. In the scientific literature, it is noted that legal culture is a certain legal education level and society legal education. Its main indicators are the development level of the legal space, the legal acts perfection and legislation in general; the legislative and law enforcement quality practice in the country; the level of rights awareness, duties and mutual responsibility of the state and the citizen; the effectiveness of the law enforcement system [12; 124–127]. In the literature, scientific views on culture are reduced to three groups: 1) anthropological; 2) sociological; 3) philosophical. In anthropological analysis, culture is understood as the totality of all goods created by man, in contrast to natural goods. The sociological approach interprets it as a spiritual values sum: Here culture acts as a social life component. From a philosophical perspective, culture is considered among the phenomena that are singled out purely analytically, not related to social development. The positive side of the anthropological approach lies in the breadth of analysis, since culture is seen as a manifestation of the most diverse social life spheres [13; 571]. We should adhere to the conclusion of V.P. Salnikov, that to understand legal culture, considering the existing differences in the views of scientists studying culture, to determine that all of them are united by the analysis of culture from the standpoint of the historically active creative activity of a person and his development as a subject of this activity. With this approach, the progress of culture coincides with the personality development in any social life sphere [13; 573]. Accordingly, the person activity and the need to regulate his behavior characterizes legal reality as an objective phenomenon, on the one hand, and on the otherhand, a human activity result, his actions and awareness of the results of his activities in the law field as an subjective phenomenon.

According to the analysis of scientific literature, culture includes four most important elements: 1) Concepts (categories) are the generalization result and (isolation) of objects or phenomena of a particular class according to more or less essential characteristics [14; 268]. 2) Relationships. Culture not only conceptually defines certain elements of relations but also reveals how they are interconnected — in space and time, semantically (“black” is opposite to “white”) and within the framework of causality. 3) Values are generally accepted criteria that form the basis of moral principles. The problem of the value system today becomes the central all human thought problem, all sociology, all politics and all philosophy. 4) Rules are norms that regulate people’s behavior under the values of a particular culture [15; 14–15]. All these elements also reveal the legal culture concept, considered as part of the society culture. Accordingly, the following should be considered as the legal culture basic elements: 1) Concepts; 2) Relationships; 3) Values; 4) Rules. All these categories can be considered as the main legal reality components. Legal reality as a philosophical and legal category, as well as legal culture, it is built from concepts, relationships, values and rules. Moreover, the concepts, relationships, values and rules are determined by the nature of the category in question. Accordingly, in the philosophical and sociological aspect, legal reality and legal culture are separated from the conceptual system with the help of specific definitions designed to reflect their essence and main features in this system of concepts. In the philosophical science field, legal reality is distinguished by defining the main features of the concepts under consideration in the categories system of law philosophy. In our opinion, legal culture emphasizes the connection with the general culture, and regulates individual and social relations behavior on the legal norms basis as legal reality phenomena. Legal reality is a category wider than the legal culture category, while legal culture, considered in the context of the law philosophy, sets the limits of an individual’s possible behavior using the same social norms, but reasoned and proven in each category in different ways. From the legal reality point of view, the individual freedom degree is determined by the common culture development, reflected in law, and motivation is primarily socio-cultural in nature and reflects the relationship between society and the individual needs. At the same time, the productive forces development and production relations, considered at the basis of the formation approach, is also a great importance. Accordingly, the degree of individual freedom is a unifying category for civilization and formational approaches to understanding legal reality. This aspect (the degree of individual freedom) unites the legal state and legal culture.

### Conclusions

Legal culture is an important factor in the law existence, considered as a driving force in the process of law realization (life of law in legal relations) and determining legal reality. At the same time, legal culture is one of the main legal reality elements, defining it as a legal and philosophical category that objectively exists in the subjective world in its positive and negative manifestations. Legal culture is part of a broader category of “culture of society”, which are inextricably linked and conditioned on each other. At present, it is necessary to develop not only the legal culture but also the general society culture, to develop basic moral and ethical standards that determine the limits of individual freedom in society. These limits should be reflected both in legal norms and in moral norms and agreed in modern society. This ratio also applies to the categories “legal reality” and “social reality”. Legal reality is a social reality form. It reflects not only regular connections and tendencies but also random phenomena that conflict with legal reality, because of the free will of an individual person and many options for his behavior, which is due to legal culture. Legal reality is a realized reality including realized things and ideas and ideals. Accordingly, it is the legal culture of society that is a factor in legal reality, since, in addition to legal reality; it includes legal ideas, legal ideals, legal knowledge, legal opportunities, legal incidents (accidents), as well as illegal behavior. Thus, through legal culture, legal reality as a dynamic phenomenon reveals the process of implementing the law. Legal reality covers all stages: From awareness of one’s own needs to a legal act (action or inaction). Phenomena that have not been sufficiently studied in legal and philosophical science are also included in legal reality: The ratio of legal culture and illegal (criminal) behavior, legal culture and criminal culture in all its manifestations. Criminal culture in all its varieties is included in legal reality, despite the fact that it has an illegal character and illegal psychology and illegal ideology. Thus, beside entire legal phenomena set the legal reality concept includes also anti-legal phenomena aimed at destroying legal relations, including criminal psychology and ideology, which has not yet been implemented in illegal behavior. Accordingly, legal reality reflects the entire legal phenomena set, which include legal categories, anti-legal categories, as well as legal ideology and legal psychology that determine legal culture as a legal consciousness set and the law implementation.

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В.А. Турлаев, Б.И. Карипбаев

## **Құқықтық мәдениет құқықтық шындықтың факторы ретінде (әлеуметтік-философиялық талдау)**

Зерттеудің мақсаты — құқықтық мәдениет пен құқықтық шындықтың байланысын ашатын ғылыми білім мен теорияларды жалпылау. Жалпы және арнайы зерттеу әдістерінің көмегімен ғылыми материалды талдау және жалпылау, олардың құрамдас элементтерінің осы категорияларының арақатынасын анықтау мақсатында құқықтық мәдениет пен құқықтық шындыққа әртүрлі көзқарастарды қарастыру жүзеге асырылды. Құқықтық шындықты қалыптастыру жағдайында қазіргі қоғамның құқықтық мәдениетін дамыту мәселелерін зерттеу саласындағы ғалым-философтар мен теоретик-заңгерлердің көзқарастары мен ғылыми ұстанымдары талданып, салыстырылған. «Құқықтық шындық», «құқықтық жарамдылық», «құқықтық мәдениет» категориялары бір-бірімен өзара әрекеттесетін және «құқықтық шындық» кең философиялық және құқықтық категориясын құрайтын әлеуметтік шындық құбылыстары ретінде қарастырылған. Авторлар зерттеудің нәтижесі құқықтық мәдениетті құқықтық өмірде кездесетін құқықтық құбылыстардың барлық спектрін қамтитын құқықтық шындықты анықтайтын фактор ретінде қарастыру болып табылады деген қорытындыға келген. Қазіргі гуманитарлық ғылымның негізгі қажеттілігі ретінде құқықтық мәдениет пен құқықтық шындықты зерттеу, оның мақсаты адамның жеке басының қоғамдық мүдделер мен қажеттіліктерге сәйкес толық дамуын қамтамасыз ету болып табылады, олардың ішіндегі ең маңыздылары заң арқылы жанама болады. Құқықтық мәдениет пен құқықтық шындықты анықтаудың негізгі проблемалары анықталды, олар зерттелетін категориялардың кең ауқымына, құрамдас элементтердің көп санына және құқық пен құқықтық өмірді әртүрлі түсінуге байланысты. Құқықтық мәдениет құқықтық шындықты құқықтық материяның нақты болуы, әлеуметтік шындық түрлерінің бірі ретінде анықтайды.

*Кілт сөздер:* құқықтық шындық, құқықтық жарамдылық, құқықтық мәдениет, құқықтық сана, құқық саласы, анықтау мәселелері, құқықтық санат.

В.А. Турлаев, Б.И. Карипбаев

## **Правовая культура как фактор правовой реальности (социально-философский анализ)**

Целью исследования является обобщение научных знаний и теорий, раскрывающих взаимоотношение правовой культуры и правовой реальности. При помощи общих и специальных методов исследования осуществлены анализ и обобщение научного материала, рассмотрение различных подходов к правовой культуре и правовой реальности с целью выявления соотношения этих категорий составляющих их элементов. Проанализированы и сравнены точки зрения и научные положения ученых-философов и теоретиков-правоведов в сфере исследования проблем развития правовой культуры современного общества в контексте формирования правовой реальности. Категории «правовая реальность», «правовая действительность», «правовая культура» рассмотрены как явления социальной реальности, взаимодействующие друг с другом и составляющие наиболее широкую философско-правовую категорию «правовая реальность». Авторами сделан вывод относительно того, что результатом исследования является рассмотрение правовой культуры как фактора, определяющего правовую реальность, включающую в себя весь спектр правовых явлений, встречающихся в правовой жизни. Исследование правовой культуры и правовой реальности в качестве базовой потребности современной гуманитарной науки, имеющей своей целью обеспечить наиболее полное развитие человеческой личности в гармонии с общественными интересами и потребностями, наиболее важные из которых опосредуются посредством права. Выделены основные проблемы определения правовой культуры и правовой реальности, которые обусловлены широким спектром изучаемых категорий, большим количеством составляющих элементов, различным пониманием права и правовой жизни. Правовая культура определяет правовую реальность как реальное бытие правовой материи, как один из видов социальной реальности.

*Ключевые слова:* правовая реальность, правовая действительность, правовая культура, правовое сознание, сфера права, проблемы определения, правовая категория.

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