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CULTURE AS A WAY OF COGNITION OF LAW (SOCIAL AND CULTURAL PARADIGM LAW)

The purpose of the article is to highlight culture as a means of knowledge of law through a description of the interrelation of these social phenomena. **The methodology** of the research is based on the complex use of phenomenological, hermeneutical and systemic methods of scientific knowledge, allowing to comprehensively consider social phenomena. **The scientific novelty** of the research carried out is to prove the necessity of cognition of law through its connection with culture: only a social and cultural paradigm will allow an adequate understanding of the essence of law and strengthen its regulatory capacities, since law is the cultural heritage of the people, and therefore the gnoseology of law should be ambivalent, including both rational, and non-rational means. **Conclusions**. The current transitive state of domestic law is largely stipulated by the consideration of law as a phenomenon that is artificially created by public authorities (there is an identification of the law and law), to which the people are not directly related. The development of national law in the direction of enrollment into the Western legal culture necessitates the understanding of law as a phenomenon of culture, which is created with the participation of the people, reproduces its identity, mentality, values, culture. Culture is a factor in the pluralism of understanding of law by different peoples and determines the relativism of legal values. It is the social and cultural paradigm that allows us to know the true nature of law, to strengthen its regulatory capacities. The epistemology of law should be based not only on rational means but also on non-rational once – feelings, emotions. There is a need to supplement the conceptual and categorical apparatus of domestic jurisprudence with the term "legal civilization (culture)".

Key words: culture, mentality, law, social and cultural phenomenon, civilization.

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Культура як спосіб пізнання права (соціокультурна парадигма права)

Мета роботи полягає у висвітленні культури як засобу пізнання права через дескрипцію взаємозв'язку цих соціальних явищ. **Методологія** дослідження ґрунтується на комплексному використанні феноменологічного, герменевтичного та системного методів наукового пізнання, що дозволяють усесторонньо розглянути соціальні явищ. **Наукова новизна** проведеного дослідження полягає у доведенні необхідності пізнання права через зв'язок з культурою: лише соціокультурна парадигма дозволить адекватно розуміти сутність права та посилити його регулятивні можливості, адже право є культурним надбанням народу, а тому гносеологія права має носити амбівалентний характер, включаючи як раціональні, так і позараціональні засоби. **Висновки.** Сучасний транзитивний стан вітчизняного правознавства, багато у чому зумовлений розглядом права як явища, що штучно створене публічною владою (відбувається ототожнення закону та права), до якого народ не має безпосереднього відношення. Розвиток національного права у напрямі на долучення до західної правової культури, зумовлює необхідність розуміння права як явища культури, що створюється за участю народу, відтворює його самобутність, менталітет, цінності, культуру. Культура є фактором плюралізму розумінь права різними народами і зумовлює релятивізм правових цінностей. Саме соціокультурна парадигма дозволяє пізнати справжню сутність права, посилити його регулятивні можливості. Епістемологія права має ґрунтуватися не лише на раціональних засобах, а включати і позараціональні – почуття, емоції. Існує необхідність доповнити понятійно-категоріальний апарат вітчизняного правознавства терміном «правова цивілізація (культура)».

Ключові слова: культура, менталітет, право, соціокультурне явище, цивілізація.

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Культура как способ познания права (социокультурная парадигма права)

Цель работы заключается в освещении культуры как средства познания права через дескрипцию взаимосвязи этих социальных явлений. **Методология** исследования основана на комплексном использовании феноменологического, герменевтического и системного методов научного познания, позволяющих всесторонне рассмотреть социальные явления. **Научная**

новизна проведенного исследования заключается в аргументировании необходимости познания права через связь с культурой: только социокультурная парадигма позволит адекватно понять сущность права и усилить его регулятивные возможности, ведь право является культурным достоянием народа, поэтому гносеология права должна носить амбивалентный характер, включая как рациональные, так и внерациональное средства. **Выводы.** Современное транзитивное состояние отечественного правоведения, во многом обусловлено рассмотрением права как явления, искусственно созданного публичной властью (происходит отождествление закона и права), к которому народ не имеет непосредственного отношения. Развитие национального права в направлении присоединения к западной правовой культуре, вызывает необходимость понимания права как явления культуры, которое создается при участии народа, воспроизводит его самобытность, менталитет, ценности, культуру. Культура является фактором плюрализма понимания права разными народами и предопределяет релятивизм правовых ценностей. Именно социокультурная парадигма позволяет познать истинную сущность права, усилить его регулятивные возможности. Эпистемология права должна основываться не только на рациональных средствах, а включать и внерациональные – чувства, эмоции. Существует необходимость дополнить понятийно-категориальный аппарат отечественного правоведения термином «правовая цивилизация (культура)».

Ключевые слова: культура, менталитет, право, социокультурное явление, цивилизация.

Relevance of research topic. In the transitive stages of the development of society and state, issues of cultural identification, moral principles of the interaction of members of society and regulatory powers of law are actualized. "Global politics has begun to fall into line along new lines - cultural ... In the world after the "Cold War" flags are important, like other symbols of cultural identification, including crosses, crescents and even hats, because culture is important, and for most people, cultural identification is "the most important thing"- says American sociologist S. Huntington [12, 14-15]. It is at this stage that Ukraine is today, for which one of the main reasons for slowing down the transition from a legal culture based on normativism to a legal culture based on the provisions of the natural law school is the failure to consider the factor of culture. By the end of the XX th century - the beginning of the XXI century. domestic legal science actually continued to develop according to the vector given by the Soviet jurisprudence, which denied the value of an individual and affirmed the prevalence of a social group: a collective, community or society in general, the rule of the law. The proclamation in 1996 of the direction for the development of a democratic, law-based state, the recognition of the rule of law and of a human being as the main social value has become the determining factors that have indicated to the direction of development of the domestic system of law: integration into a European legal culture, for which the fundamental values are the rule of law, human rights and human dignity, constitutional democracy. However, de jure consolidating the identified legal values in domestic law, de facto they are not implemented. Moreover, a significant part of the provisions of the national science (especially the theory of state and law) are inherent dogmatism, the lack of link with the practical law activities, etc. And to this day, some domestic scientists do not consider law as a social and cultural phenomenon. At the same time, the lack of awareness of the fact that law is an element of the culture of the corresponding society does not allow developing a methodology for cognition of this social phenomenon and, accordingly, effectively use its regulatory capabilities. The abovementioned determines the relevance of the study of the relationship between culture and law and, in particular, culture as a means of cognition of law.

Analysis of recent researches and publications. Until recently, the problems of the interaction of law and culture did not become the subject of a comprehensive study by domestic law science. Only a few scientific articles were published on this subject, among which O.V. Petrishina "Law as a social phenomenon: peculiarities of the legal approach", where the author focuses attention on the necessity of considering law through interconnection with the processes of socialization of man, and also taking into account the mentality, the national legal culture, social expectations of the people from legal regulation [8, 81]. as well as the work of A.I Pavco "Law and Culture: Methodological Problems of Interaction", where the author points to the importance of knowledge of the law as a social and cultural phenomenon in the context of the relationship of legal cultures, which is manifested, in particular, through the reception of law. At the same time, in the opinion of the domestic law, the social and cultural system includes a personality in the system of communications and culture as a system of norms and values, institutions [7, 14-17]. At the beginning of 2017, O.M. Litvinov presented his thesis for the degree of Doctor of Law sciences on the topic "Law as a phenomenon of culture", devoted to the philosophical and legal conception of the functioning of law in culture. However, the author firstly highlights culture as a legal category, and then the law as a category of culture and focuses on the genesis of legal ideas as cultural development. Consequently, the scientist changes the emphasis on law as an element of culture to the opposite (as indicated by the use of terms such as "legal consciousness" and "legal culture" [5, 11-36].

It should be noted that these scholars emphasize the general ties between culture and law, leaving the illiterate issue of culture as a means ofcognition of law, do not outline the possible aspects of using the cultural paradigm of understanding law. At the same time, we note that in part the answer to these questions is provided by a team of authors, highlighting the civilizational approach in jurisprudence and cultural components of the motivation of law [6, 48-62, 131-146]. However, given the importance of the social and cultural paradigm of understanding law, they need a more thorough knowledge.

The aim of the study. The purpose of the study is to highlight culture as a means of cognition law through a description of the relationship between these social phenomena.

Presentation of the main material. Even O. Erlich noticed that when asking a traveler who came from another country, about the law of the peoples where he was, he will tell about how marriages are made, how the families live, contracts are concluded and, unlikely, will indicate on the rules for resolving legal conflicts

[14, 71]. The action of law is manifested through the interaction of subjects, which is based on the cultural traditions of the people, determined by them. In the introduction to the “Fundamentals of Sociology of Law” O. Ehrlich in one sentence expressed the main contents of the proposed paper, the cornerstone in the following way: “The center of gravity of the development of law in our time, as at all times is not in the law, not in jurisprudence and not in law enforcement, but in a society itself" [14, 64]. To this conclusion, the founder of the law school of sociology O. Ehrlich came while studying the life of the population of Bukovina and Galicia, which was multinational; at the same time, different ethnic groups, trying to preserve their cultural characteristics and mentality, often did not comply with the normative requirements of the current legislation at that time, and even the courts permanently turned not to legal norms, but to the rules that were developed in the process of interaction of various ethnic groups – living law [1, 106].

Most clearly and systematically, the relationship between culture and law is pointed out by the historical school of law, according to which law is likened to language and is regarded as an organic phenomenon of the national spirit, the formation and development of which is not an artificial and arbitrary process, but takes place in an evolutionary way with the development of folk needs and mentality. Accordingly, it is impossible to find a universal system of norms, which can be equally implemented in the social relations of different nations.

Speaking on August 3, 1903, at the events dedicated to the memory of the founder of King George Frederick Wilhelm III, the Berlin University, Otto von Girke spoke quite positively about the historical school of law in general, and about K.F. von Savinie in particular, noting that the essence of the new doctrine was extraordinary. After all, it referred to the truths that, once opened, could not be forgotten. In the consciousness of the scientific community came the awareness that law is a historical product of the common life of people, that its development and change – is a part of the process of development of culture, which state at each moment of time is stipulated and determined by the constant interaction between its organizing force and forces, acting in all other functions of the social organism [3, 40-41].

An important means through which culture affects law is religion, especially when it comes to oriental civilizations. “Analyzing the causes of the sustainability of norms, traditions, customs in the eastern civilizations, – K. Zhebrovska notes, – one can not but admit that the greatest resistance to innovations is made by social and cultural entities, where religion and its postulates are all-embracing, defining the entire lifestyle of the people, linking its earthly life with cosmic, transcendental one”[4, 20]. In this context, one must agree with V. Shynkaruk as to the influence of the myth on the formation of human life's attitudes, his/her worldview, and interaction with other people. And, even “giving way to philosophy and science, mythology has not lost its important place in human history. Mythological narratives were borrowed by many religions” [17, 17].

Considering the abovementioned, the words of the futurist F Fukuyama of today are becoming clear: "Official rules can easily change, being a matter of public policy, culture rules - only after a long time, and therefore it is much harder to direct their development” [11, 57].

The very fact that law is an element of culture explains the existence of relativism in law, the regionality of the contents of human rights. Thus, within the limits of the western tradition of law, this issue is the subject of comprehension of scientists. In particular, such studies by authors include: “Human Rights: Universality and Diversity” [15], “Universality of human rights and cultural diversity: A Perspective” [19], “Philosophische Argumente fur und wider die Universalitat der Menschenrechte” [16] etc. In view of the fact that the essence of law is justice, which can not be unequivocally perceived within the limits of pluralism of cultures with their historical, value, and mental characteristics. Oswald Spengler in his famous work, “The Twilight of the Western World. Essays on the Morphology of World History” (Der Intergang des Abendlandes Umrisse einer Morphologie der Weltgeschichte) substantiated the statement that “phenomena of other cultures are spoken in other languages. For other people there are other truths. The thinker accepts them all or none of them” [13, 37]. Lynn Visson, an American of Russian descent who taught Russian language and literature at US universities, came to this conclusion, and then, for more than twenty years, she carried out a simultaneous translation from Russian and French into English into the UN, stating that in order to speak correctly English in the US, you need to know American culture (although you need to know the language for this). Therefore, it is necessary to learn both language and culture simultaneously. “Speaking in English, not knowing the realities and cultures behind it, means ... to condemn ourselves to endless mistakes" [2, 16].

Old Roman lawyers argued: "Jus est ars boni et aequi". Law can not be recognized, using only rational means, the factor of which is the close connection of law with morality, religion, folk customs, etc. So, for example, is it possible, using only the mind, to explain the value of such paintings as “Untitled” (Sai Twumbi), “The Blue Fool” (Christopher Wool), “The Black Square” (Kazimir Malevich), etc.? For the epistemology of cultural phenomena, the necessity of using non-rational means is immanent, first of all, we mean feelings and emotions. It should be noted that within the Western legal culture, for a long time, it has been pointed out that it is impossible to apply to the estimation of legal phenomena the categories of Aristotelian logic - true/untrue, justifying the necessity of using deontological logic, which uses the modalities “allowed”, “forbidden”, “necessarily”. And the appraisal claims such as due/inadequate. At the end of the nineteenth century. The French mathematician and philosopher Henri Poincare proved the inability to substantiate morality with the scientific means (and accordingly, to know), there can not be any scientific morality. “In order for the conclusion to be formulated as an imperative (modus imperativus), it is necessary that at least one of

the statements be in the form of an imperative. The principles of science, the postulates of geometry are expressed only in the form of an indicator (modus indicativus), in the same form are expressed experimental truths, and on the basis of the sciences, there can not be anything else. ... He will never receive suggestions that would say: do it or not do that, that is. judgments that correspond or contradict morality" [9].

The need for "cultural reading" of law was also substantiated by the American sociologist and cultural scientist P Sorokin, in particular, with the help of the theory of legal civilizations. According to the scholar, there are ideational and sensual legal civilizations, each of which is inherent in particular: mentality, system of knowledge, criteria of truth, worldview and philosophy, morality, economic and political system, type of personality with his/her characteristic composition of mind and the style of behavior [10, 61] In the idiatinal legal civilization, God is recognized the highest value, who is also recognized as a source of law; law is the commandments of God and, accordingly, are not subject to discussion. The most serious are crimes in the field of religion: violation of God's prohibition, sacrilege, etc. Procedural norms are likened to sacred rituals. But judges priests and clergy at the same time. For sensual legal civilization the main values are sensual pleasures. The meaning of the person's life is viewed through the pursuit of happiness and pleasure. Accordingly, social relations are regulated on the basis of expediency and mutual utility. At the same time, the essence of law is the protection of the elite, which has access to material goods and their distribution. According to P. Sorokin there is a transitional type of legal civilization – an idealistic, where the main features of the previous two civilizations are integrated [10].

Taking into account the polysemicity of the term "culture", in our opinion, it is expedient to introduce the concept of "legal civilization (culture)" into domestic jurisprudence. At the same time, basing on the principle of the objectivity of scientific knowledge, one can not but point out that, according to Susan S. Silbie, the use of the term "culture" in law can have negative consequences (it is about the terminological uncertainty), given the ambiguity of its interpretation, which intensifies with the lack of a unified understanding of the meaning of the term "law" [18]. However, this can not be accepted, given that the basis of law, human rights is human dignity, the essence of law is justice, which is also not clearly defined, and this is not an obstacle to their permanent application in the legal field. We will add that Suzanne S. Silbie in the indicated paper points to authors who recognize the positive result of introducing the concept of "legal culture" into the jurisprudence.

Novelty. The scientific novelty of the carried out research is to prove the necessity of cognition of law through its connection with culture: only a social and cultural paradigm will allow an adequate understanding of the essence of law and strengthen its regulatory capacities, since law is the cultural heritage of the people, and therefore the gnoseology of law should be ambivalent, including both rational, and non-rational means.

Conclusions. Thus, the current transitive state of domestic jurisprudence is largely stipulated by the consideration of law as a phenomenon that is artificially created by public authorities (there is an identification of the law and law), to which the people are not directly related. The development of national law in the direction of enrollment into Western legal culture, necessitates the understanding of law as a phenomenon of culture, which is created with the participation of the people, reproduces its identity, mentality, values, culture. Culture is a factor in the pluralism of understanding of law by different peoples and determines the relativism of legal values. It is the social and cultural paradigm that allows us to know the true nature of law, to strengthen its regulatory capacities. The epistemology of law should be based not only on rational means, but also include non-rational once – feelings, emotions. Taking into account the abovementioned, we consider it expedient to supplement the conceptual and categorical apparatus of domestic jurisprudence with the term "legal civilization (culture)". For a person, identification with certain social groups, including civilization, is imminent.

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АНАЛІЗ ВПЛИВУ ЛІНГВОКУЛЬТУРИ НА МЕНТАЛЬНУ ІДЕНТИЧНІСТЬ ЕТНОСІВ

Мета статті - дати визначення терміна «ментальна ідентичність», з'ясувати різницю між поняттями «ментальність» і «менталітет», прослідкувавши їхню етимологію, а також дослідити сутність впливу лінгвокультурних чинників на формування ментальної ідентичності. **Методологія** дослідження ґрунтується на антропоцентричному підході до проблеми вивчення діалектичного взаємовпливу між мовою, мисленням і ментальною самоідентифікацією особистості в межах певних етнолінгвоспільнот. **Наукова новизна** полягає у визначенні ментальності як детермінованої лінгвокультурним тлом суб'єктивної, імпліцитної, частіше непрорефлектованої світоглядно-когнітивної настанови особистості, що має іноді усвідомлений, але найчастіше спонтанний характер прояву, зокрема через стереотипні оцінки й поведінкові моделі, латентні імпульси й автоматизми. **Висновки**. Ментальна ідентичність вибудовується шляхом ототожнення себе з менталітетом певної етнолінгвоспільноти. Її конструювання і детермінація здійснюються усвідомленими або підсвідомими колективними творчими зусиллями багатьох генерацій протягом багатовікового історико-культурного розвитку під безпосереднім впливом лінгвокультурних чинників цієї етнолінгвоспільноти.

Ключові слова: лінгвокультура, ментальність, ментальна ідентичність, національна ідентичність, етнічна ідентичність, семіосфера, картина світу.

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