

Dolgoplov A. A.

ABOUT SOME ASPECTS OF ADMINISTRATIVE-LEGAL REGULATION¹

*Dolgoplov Aleksandr
Aleksandrovich,
Doctor of law, Head of the
branch of Federal State Owned
Institution "All-Russian Re-
search Institute of the MIA of
the RF" in South Federal Dis-
trict, colonel of police, Kras-
nodar,
vnii-kk@mail.ru*

The author considers the role and place of legal consciousness and legal culture in the mechanism of administrative and legal regulation. Here is especially emphasized the specificity of administrative-legal regulation, in view of the fact that it is designed mainly for such social relations, which exclude legal equality of their participants. Emphasis is given to the role of subjects that exercise law enforcement process.

Keywords: administrative-legal regulation, legal regulation, law enforcement activity, legal culture, legal self-consciousness.

The rapid development of our society is being accompanied by sometimes loud scandals associated with the violation of legal norms, at that, by high-level officials, law enforcement employees, officials of different ranks. Sufficient to mention the known by publications in the media cases of "Oboronservis", JSC "Rosagrolizing", problems in housing and communal services, offenses in the internal affairs bodies of the recent years and a number of other. A quite natural question arises: why does this become possible? Because all the relations in the mentioned spheres of activity are strictly regulated by relevant legal norms, and it would seem, it is needed only to comply with them, but they are not complied. The answer to these questions is on the surface, it is notorious human factor, without which just no one legal norm will work. The scientific community of lawyers has long began to explore the problem and has come to such scientific categories as

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“legal consciousness” and “legal culture”. So far, however, there is no yet a single opinion in the legal science about the place of these definitions in the mechanism of legal regulation. Consider the views of both the scholars of the theory of law and the scholars of administrative law on the notion of “legal regulation”, including administrative-legal one, as well as its mechanism.

S. S. Alekseev believes that the category of “legal regulation” is of fundamental, crucial significance for jurisprudence. On its basis it is possible, not looking up from legal ground and making full use of the original data of analytical jurisprudence, in one more point – after lighting legal means in statics – to expand beyond the limit of purely legal dogmatics, so necessary in the field of legal knowledge and yet narrow in its theoretical potentialities.

The distinguishing feature of legal regulation is that it has its own specific mechanism. In the most general way the mechanism of legal regulation can be defined as a system of legal means taken in unity, with the help of which an efficient legal impact on public relations is ensured.

In the mechanism of legal regulation as a dynamic structure exist three key links:

1) legal norms – the basis of legal regulation, when typed opportunities and necessity of a certain behavior of subjects are enshrined in abstract form at the level of positive law;

2) legal relations, subjective rights and legal responsibilities that in presence of specific life circumstances (legal facts) switch abstract possibilities and necessity to the specific, targeted, subjective legal rights and responsibilities, and therefore, switch legal energy of legal norms to the level of specific subjects – holders of rights and responsibilities;

3) acts of exercising rights and responsibilities, in accordance with which comes a result in society life programmed in positive law, actual resolving of life situation (case) [1, 264-266].

The sign of legal regulation is the unity of law-making, law-exercising and law-protecting (law-enforcement) activity of relevant bodies and persons. Legal recognizing of existence of a real legal regulation (law in action) is impossible without taking into account law enforcement activity in conditions of conflict regulated by the law of social interests (relations). Non-application of sanctions of a legal norm can make this norm invalid, that is, fiction, and the legal regulation itself will become powerless, that is, fictitious. A law norm without application of its sanctions will be similar to moral, aesthetic norm and etc. and lose its specificity expressed in peculiarity established therein and the sanction applicable by governmental and

other authorized bodies and persons – measure of state coercion (legal responsibility). Without application of measures of legal responsibility legal regulation is incomplete, imperfect and, ultimately, is not itself, does not fit its intended purpose especially in today's significantly negative condition of human society (terrorism, corruption, greed, etc.) that (condition) hinders the achievement of a common goal of human society – its preservation and sustainable optimal development.

Legal regulation can be also defined as the unity of the directing and enshrining lawmaking, law-exercising and law-protective activity of the state with involvement of society. At that, it should be noted that this unity is a legal expression of the unity of public authority, including in the state of law, the modern concept of which among its main features includes, along with the principle of separation of powers, also its supplementary (with certain correcting) principle of unity of state power [9, 194]. Thus, legal regulation – is an activity of the State and society, carried out in the process of preparation and adoption of law norms, their implementation in specific relations and application of state coercion to offenders in order to achieve a stable rule of law in the society [10, 153].

Therefore, legal regulation is inextricably associated with law-exercising activity, and it is highly convincing, because without the “introduction” of legal norms in social life we cannot speak about governing impact of law.

Regulation of public relations – the main function of law, its main feature in action, in motion, in implementation of its possibilities. Therefore, the mechanism of legal regulation allows us to understand how happens the transformation of the requirements of law norms, legal rules into lawful conduct of subjects, what stages constitute this process, at which stages occur failures, appear obstacles for exercising of a right and how we can eliminate these obstacles.

Administrative law is a branch of the Russian legal system, which is designed to regulate a special group of public relations. Their main peculiarity is that they arise, develop and are terminated in the field of public administration, that is, in connection with the organization and functioning of the system of executive power.

Enshrining appropriate rules of conduct in public administration, administrative law gives to managerial public relations the nature of legal relations [2, 24]. This discloses relevant features of the administrative-legal regulation, which are expressed in the mechanism of administrative-legal regulation. The mechanism of administrative-legal regulation can be defined as a system of administrative-legal means, by which administrative-legal impact on social relations is provided.

Administrative-legal regulation, its mechanism is the form of legal mediation of relations, in which one party acts as a manager, and the other as a managed

entity. This kind of relations always implies known subordination of managed objects to the will of managerial subjects, the mouthpiece of which is a subject of executive power. The specificity of administrative-legal regulation is that it is intended mainly for such public relations, which exclude legal equality of the parties.

Administrative-legal regulation, accordingly, has its specific mechanism that allows implementation of the impact of administrative-legal norms on public relations.

Legal scholars include the following elements in the structure of administrative-legal regulation mechanism:

1. Administrative-legal norms as primary elements of administrative and regulative impact on public relations

2. Application of norms of administrative law by the subjects of law. In the application of norms of administrative law arise difficulties, ambiguities, conflicts, that is why both law enforcer and other entities are engaged in the interpretation of norms of administrative law.

3. Administrative-legal relations, which arise as a result of the action and application of norms of administrative law. Legal relations finalize the forming of this system, and the establishment of legitimate managerial (administrative) relations is, in fact, the main goal of administrative-legal regulation. This is gained by both established law norms and their practical application to specific relations. Administrative-legal relations contain the respective rights, obligations and responsibility of the parties of relations [8, 397-398].

Thus, we see that either in the theory of law or in administrative-legal science the mechanism of legal regulation includes law-exercising stages, but does not focus on the role of entities engaged in implementation of law-exercising process. The problems associated with the level of legal consciousness and legal culture of officials engaged in the application of legal norms, as well as the possibility of including in the mechanism of legal regulation of such categories as legal consciousness and legal culture are not considered.

However, in our opinion, we should take a closer look at the role of legal consciousness and legal culture in the mechanism of legal regulation of public relations, especially this concerns officials of state structures, who in the course of enforcement embody legal norms from abstract concepts into real life. Because without fair law-exercising activity the law is "dead", and law-enforcement activity of officials with the perverse vision of law is dangerous both for society and the state. Therefore, we believe, researches in this area can be highly relevant, especially evidence-based recommendations of scientists on the method of formation

high-level of legal consciousness and legal culture among officials involved in enforcement activity.

In this context, the views of scholars on the concept of legal consciousness and legal culture are very interesting and important.

A. B. Vengerov notes that only then law-making and law-enforcement activity become effective when in these processes, along with powerful self-organizing principles, a priority place is taken also by conscious, organizing creativity, smart work. In examining these conscious and creative processes in lawmaking and enforcement the theory of law forms the theme of legal consciousness and legal culture. Individual legal consciousness of an official, it would seem, should always be focused on the exercising of law, on the active promotion of legal requirements into life. But, alas, among officials (many officials) exist a widely common emotional vision of the law, which, in their view, like a pillar: you cannot topple it, but you can bypass it [3, 559, 565].

This is due primarily to the fact that legal consciousness of an individual is determined by a totality of visions expressing the people's attitude to law and legal phenomena in public life, it does not exist by itself, it is interconnected with other forms of consciousness of objective reality and interconnected with the moral values of the individual, its ideas of good and evil, justice.

Legal consciousness is part (kind of) of public consciousness, its content consists of those visions, beliefs, ideas, which relate to law. Law and legal consciousness – phenomena which are in inseparable link. Law is inconceivable without legal consciousness, at least a vague or ugly one. Legal consciousness is inconceivable without the law, which is its basis and the starting point. Law and legal consciousness are correlates. Relying on law and being its correlate, legal consciousness at the same time is of extremely greater significance to legislation, legality and the rule of law. Legal consciousness is a powerful factor of lawmaking, a tool of improvement of legislation, strengthening of legality and the rule of law.

The forms of expression of legal consciousness are different: recognition, respect, support of law, visions and beliefs claiming to implementation in the legislation, criticism of the current legislation, objection against its provisions, protest reaching up to its denial, to combating it, attitude to the legality and the rule of law.

Topically perceived today the words of I. A. Il'in: "If modern man is inclined to doubt the value of homeland, patriotism and nationalism, or simply rejects all these precious basics of life, it hardly recalls about its essence, its deep sources and its vital necessity. Most of what modern man thinks about – is its personal rights and privileges, namely, how better to secure them and to expand in all directions

without incurring legal troubles; but the modern man almost does not remember that the current law in the country – law, decree, powers, responsibility, ban – cannot live and be applied outside of a living legal consciousness, cannot maintain and protect neither family, nor homeland, nor order, nor the State, nor the economy, nor property” [6, 217].

Maturity of legal consciousness of a personality depends on the level of its intelligence, which, however, is not an ancestral acquirement or a closed in itself value. It represents a particular mentality and behavior, which is produced by a man itself in the process of practical activity, communication with others in the conditions of society’s life. Bright intelligence, uniqueness of its consciousness, distinctive character of thought, originality of action have been always resisting and resist dull mediocrity that is unperceptive to new, incapable of creative challenge and active creation [7, 374, 382].

Legal consciousness consists of certain visions, beliefs, ideas that reflect legal needs, the interests of personal and public development. Legal consciousness covers the knowledge of normative-legal systems of the past, assessment of the current legislation, views on its possible or necessary improvements and modifications, different legal settings related to those or other legal customs and traditions [4, 75].

Legal consciousness also plays a regulatory role in the process of law-exercising, including in resolving legal cases, adoption law enforcement acts, as well as all types of specific legal decisions. The fact that the execution of law norms by a significant part of people (different in different conditions) is deliberately implemented, by virtue of internal beliefs, exactly shows the regulatory role of legal consciousness. The higher the level of legal consciousness, the more it manifests its role of bringing behavior into compliance with the goals and the will expressed in law, the stronger legality and the rule of law.

Legal consciousness is inextricably linked with many social processes, such as rulemaking, legal practice, activity of law enforcement agencies, cultural heritage of society, the level of education in society, individual education of individuals of enforcement process, activity of state bodies, citizens and other persons concerning the implementation of law norms in specific legal relations, activities of the state and society to combat offences.

Thus, legal consciousness is a system of positive settings in the field of law, culture, history, etc., which are inherent to a personality dealing with enforcement activity and who is able to make an objective assessment of a certain legal phenomenon.

The significance individual legal consciousness is especially noticeable in applying law norms. Enforcement activity is an activity carried out for the purpose of implementation of regulatory prescriptions. It is implemented by a special apparatus in accordance with the legal consciousness of persons taking decision on the issues of application law norms. This circumstance is often emphasized in legislation. For example, the Criminal Code of the RF in assignment of punishment requires taking into account the nature and degree of the social danger of crime, identity of the perpetrator and circumstances mitigating or aggravating punishment (article 60 of the Criminal Code of the RF). Implementation of this requirement is impossible without individual legal consciousness of those who decide on the imposition of punishment.

Individual legal consciousness consists of legal views, concepts, perceptions and feelings of an individual, which determine its attitude to the current law, the rule of law, legal rules and requirements, in accordance with which people exercise subjective rights and execute legal responsibilities.

A few words, in our view, should be said about legal culture. Legal regime that provides an appropriate level of legality, a rigorous implementation of human rights and freedoms, the mutual responsibility of the state and an individual, is covered by the concept of legal culture. In a society with high legal culture there are created appropriate conditions for the real implementation by the State of its obligation to provide a decent life and free development of an individual, to establish law, democracy and justice. Because in such a society legal conflicts are very rare and are resolved in a civilized manner within the framework of existing legislation. Nobody can build their prosperity at the expense of impairment the rights and freedoms of others.

A high level of legal culture implies a high level of legality in the activities of public authorities and officials. Executive power takes appropriate measures for the implementation of laws and other normative legal acts in certain legal relations, excludes any facts of official red tape, bureaucratism, abuse of authority or official position. All the activities of state bodies and officials are effectively monitored by public associations and the media. Transparency and lack of censorship create conditions to ensure that any derogation of executive authorities from the law would become available to the general public and would be immediately eliminated by competent state bodies. In addition, every citizen has the right to appeal to the courts for protection of its legitimate interest violated by unlawful actions of state bodies or officials.

Such a society is usually characterized by the legal activity of its citizens,

which widely use the granted to them rights and freedoms in the economic, political and social spheres. Thanks to this activity, the citizens provide themselves and society the necessary material and spiritual benefits, create the conditions necessary for the effective operation of political and legal spheres of society. At that, each citizen has profound legal knowledge, has the possibility to receive qualified help and actively combats offences committed by other persons. Legal culture implies law knowledge of officials and citizens, skills to use laws in practical life, high degree of the respect, authority of law, law-abiding atmosphere of a personality, inner need for complying with laws and socio-legal activity [10, 144].

Legal culture is formed under influence of the spiritual, social, political, economic peculiarities of society, the state of legal views and priorities of society, the level of development of its legal institutions, as well as under the influence of the quality of legal education, the effectiveness of the human rights organizations activities.

The level of legal culture, legal education is greatly and not always positively influenced by the media.

Freedom of speech is an undoubted benefit that implements the freedom as a value. But in a society, which does not have a proper representation about the true content of values, the freedom is more associated with self-will, and the freedom of speech often becomes of manipulative nature. It is fraught with dire consequences, because the MEDIA have the strongest impact on the public consciousness. Therefore, the laws on freedom of speech and press should include not only the removal of restrictions for them, but also set limits based on a clear and responsible understanding of freedom, which does not allow its substitution by surrogates, the manipulation of consciousness and its depravity in all its forms. Freedom of speech as a condition of forming consciousness, including legal one, may not be legally used, say to humiliate a person, ethnic group, race, etc. In this regard, the relevance has not been lost by the statements of Boris Nikolaevich Chicherin, who in the late XIX century, said that poorly educated, unbridled Russian press, which is a "receptacle of undigested thoughts, vulgar passions, scandal and slander", mentally depraves society and "constitutes the sorest spot of Russian society" [5, 125-126].

Legal culture in the modern state-organized society depends in the subjective plane on: increasing of general and legal culture of individual citizens and their associations, their legal and moral consciousness, establishment of social justice, improvement of legislation; prevention of offences and, above all, crimes; strengthening of legality and the rule of law, state discipline; respect and the utmost protection of individuality rights; mass education and legal education of

the population; training of highly qualified lawyers; thoughtful conduct of a legal reform, etc. However, it seems that there is a dependence of legal culture on both material (economic) conditions of social life and constituting it groups and individuals, which may have a key significance for its increasing or vice versa reduction [9, 496].

Summing up the above, it can be stated that:

- legal consciousness and legal culture reflect legal validity and determine in the State the level of law-making, the quality of legislation at all its levels, as well as the state of law-enforcement, the rule of law, and the quality of law enforcement bodies' activity;
- legal consciousness and legal culture have a direct impact on the process of enforcement of law, at that, they may have a positive or negative impact on legal validity;
- legal consciousness and legal culture have normative-legal value for participants in social relations, they directly affect the result of their conduct;
- legal consciousness and legal culture are inherent to all the subjects of legal relations both individual and collective, for example, a personality and society as a whole;
- the low level of legal consciousness and legal culture is a negative factor that leads to legal nihilism legal infantilism, what ultimately destructively effect on legal relations.

Thus, we can conclude that the categories of legal consciousness and legal culture are an integral part of the mechanism of legal regulation, including the mechanism of administrative-legal regulation, and may be isolated in its structure, either independently or in its structural part that combines relations associated with the implementation of law norms.

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