

OBLIGATION THROUGH LEGAL CONSCIOUSNESS PRISM

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In modern legal science, there is no unity in understanding and explaining the phenomenon of legal obligation. Moreover, there are also different perceptions of this concept in the context of its relation to related concepts and phenomena: human rights, responsibility, legal consciousness, etc. Having understood the main aspects of legal obligation interpretation and its connection with related concepts, it is possible to formulate a picture of their doctrinal vision, and then to formulate your own view on the issues. The significance of the latter is to: firstly, to question the prevailing view of legal obligations as a measure of a person's required behavior; secondly, to question the purely positivist interpretation of legal obligations, based on a broad understanding of law as a phenomenon; thirdly, to link legal obligations with legal consciousness, which is currently insufficiently investigated in theoretical and legal doctrine.¹

It is worth noting that legal consciousness is "a set of subjective elements of legal regulation: ideas, theories, emotions, feelings and legal guidelines, through which legal reality is reflected, attitudes towards law and legal practice, value orientation towards legal behavior, vision of prospects and directions the legal system development are formed".²

According to L. Makarenko, legal consciousness is a property of the subject's psyche to reflect the objectively existing legal reality and legal culture through feelings, perceptions, thoughts as belonging to this reality. This phenomenon does not belong to objective reality, but it is an attribute of the subject of law, in whose actions it manifests itself as a true legal consciousness.³ As O. Barabash rightly points out, legal consciousness is the factor that directs human behavior towards compliance or non-compliance with legal norms.⁴

Ukrainian scholar Y. Kalynovskyi notes that legal consciousness at the individual level is determined by such rational components as self-control, self-

¹ Попович Т. П. Поняття обов'язку: окремі теоретико-правові зрізи. Актуальні проблеми держави і права. Збірник наукових праць. 2023. Випуск 100. С.112

² Велика українська юридична енциклопедія: у 20 т. Т. 3: Загальна теорія права / редкол.: О.В. Петришин (голова) та ін.; Нац. акад. прав. наук Укр.; Ін-т держави і права імені В.М. Корещького НАН України; Нац. юрид. ун-т імені Ярослава Мудрого. Харків: Право, 2017. С. 593.

³ Макаренко Л.О. Правосвідомість як необхідна складова частина реалізації правосуб'єктності. *Право і суспільство*. 2018. № 5. С. 25.

⁴ Барабаш О. Правосвідомість та її вплив на поведінку людини. *Вісник Національного університету «Львівська політехніка». Юридичні науки*. 2017. № 861. С. 71.

esteem, self-knowledge, self-identification in relation to the existing legal system, and determination of a person's place in it. With regard to the legal obligation itself, the scholar is convinced that it is performed not only at the individual level of legal consciousness, but also in certain social groups. And the level of its development depends on such factors as education, upbringing, religiosity, etc. This obligation is especially important for elite groups, as they establish certain social patterns through their behavior.⁵

It should also be added that in the English legal tradition, the term "sense of justice" is used to describe a person's attitude to law and its assessment. In general, this concept demonstrates the "morality" state of society, their level of legal consciousness and legal culture. In this context, A. Kuchuk states that it should be used (instead of the term "legal consciousness") because of the gradual overcoming of the positivist approach to law in Ukraine and its transition to natural law.⁶ This is what we are trying to prove, since it is not enough to fix a rule or regulation for its implementation, but instead to cultivate an appropriate level of legal awareness and education in order to properly fulfill legal obligations in the future.

The concept of British Professor J. Raz is worthy of attention. The scientist argues that a person should act in a certain way precisely because there is a reason for him or her to do so. Reasons for action, therefore, which imply obligations, are objective in nature, independent of the subjective motivation of those to whom the obligations are addressed. J. Raz is convinced that the grounds for action are contained in the very concept of duty. Such reasons may be moral. For example, a judge who applies a law that imposes a duty must either believe that there are objective reasons for compliance with the law, or at least pretend to believe that he or she does. Normative statements by a judge regarding duties in the law application become moral requirements, whether sincere or insincere.⁷ The law itself affirms the proper significance of legal requirements and sets out the conditions under which they are canceled. Thus, the obligation to obey the law implies the recognition that the reasons for obeying have significance and the consequences determined by the law. Thus, there is a need to obey in all circumstances, with the exception of considerations related to legally recognised defenses against prosecution or conviction.⁸

O. Kostenko defines that human behavior involves a mechanism of interaction between the will and consciousness. Thus, the natural laws of social life, passing through these two phenomena, are transformed into natural rights and natural duties. The coherence of the will, consciousness and natural laws forms the phenomenon of human legal culture. The latter serves as a "radical means of

⁵ Калиновський Ю. Рационально-емоційна матриця правосвідомості як підгрунтя правового регулювання. *Філософія права і загальна теорія права*. 2015. № 1-2. С. 149, 155.

⁶ Кучук А.М., Пекарчук А.В. Правосвідомість в. відчуття справедливості. *Правовий часопис Донбасу*. 2019. № 3. С. 31-32.

⁷ Hart H.L.A. *Essays on Bentham*. Oxford: Clarendon Press, 2001. P. 157.

⁸ Raz J. *The authority of law. Essays on law and morality*. Oxford: Clarendon Press, 1979. P. 236.

counteracting the violation of human rights".⁹ As N.M. Onishchenko rightly emphasizes, the specificity of legal consciousness is that it first perceives and then reproduces life realities through the criteria of truthfulness, honesty, justice, etc. Its bearers need to establish "generally binding norms of behavior, legal means to ensure human rights, freedoms and legitimate interests".¹⁰ This can be adapted to the category of obligation, which is also perceived by individuals in society and can serve as a guide to achieving significant moral, ethical, political, religious and other virtues.

Thus, in our opinion, the connection of obligation with the legal consciousness of a person is a significant basis for explaining its internal content. The leveling of this connection leads to a narrow positivist approach to the interpretation of legal obligation and is one of modern scientific approaches omissions to understanding its nature. Obligation must take the form of a certain awareness, understanding, perception and even one's own personal interpretation. It is an integrative phenomenon and a category that is much more complex than the perceptions of it formed within the framework of positivist approaches. Therefore, in general, the interpretation of legal obligations concept, in our opinion, remains incomplete today and does not reveal the true essence of this phenomenon, which deprives prospects and creates appropriate obstacles to its adequate interpretation and further effective implementation.

⁹ Костенко О.М. Концепція прав людини: сучасний стан і перспективи розвитку. *Бюлетень Міністерства юстиції України*. 2011. № 3. С. 8-9.

¹⁰ Оніщенко Н.М. Правова психологія в контексті сприйняття права. *Бюлетень Міністерства юстиції України*. 2018. № 8. С. 32.