

LAW AND LEGAL AWARENESS

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Abstract

„Laws are our groundwork and mother”, Dimitrie Cantemir said, underlining by it law’s position in a civilized society. Legal awareness is a sum total of ideas, conceptions and images regarding law and legal relationships. We may say that, before being a normative reality, law is a state of consciousness, namely that the changing needs of the society must pass through the legislator’s consciousness first.

Key Words: Law, legal consciousness, normative reality, legislator

Dimitrie Cantemir underlining law’s position in a civilized society, like a nucleus of social order and a condition of good development of human relationships said – „Laws are our groundwork and mother”.

Approaching the social dimensions of law implies the analysis of the place law has in society as well as the legal relationships. At the same time, the system of its relationships with other social realities is also part of the analysis mentioned above.¹

Legal reality is a dimension of social reality within established historical conditions and cannot be detached from other aspects of society.

Being named sometimes legal system² or legal superstructure, legal reality has a rich content and includes the following constituent parts: legal consciousness, law and legal relationships (legal order).

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¹ N. Popa, *Teoria generală a dreptului*, Actami Publishing House, Bucharest, 1998, p. 60 și urm.

² Jean Carbonnier says that the legal system is the spatial and temporal field where legal phenomena take place (*Sociologie juridique*, A. Colin, Paris, 1977, p. 142).

Before being normative reality, law is a state of consciousness, namely that the changing needs of society must pass through the legislator's consciousness first. It has to follow an estimation and a final evaluation process by means of the rules of law.

The act of law making, the way of finding the best legislative solutions as an answer to social needs, greatly depend on the legislator's level of legal awareness. At the same time, the people's legal awareness as a whole has an impact upon the fulfilment of edicted legal commandments.³

It is both a social and psychological phenomenon with a complex structure, that includes elements of a rational, affective and volitive nature.

We may understand the social role played by legal awareness only taking into consideration these three elements in their complexity.

Underlining the complexity legal awareness has, we do not decrease the role of the rational element (of ideas and images). This is the law ideology, nucleus of *legal awareness* – the most important element. The rational element is the basic source by means of which knowledge is achieved. It has impact both upon the affective and volitive element.

An important part within legal awareness is played by determinations, valuable appreciations regarding a certain subject or group of subjects.

At the same time, volitions, the desire and will to act in a certain way are the resultant of the first two elements.

Ideas, feelings and volitions within legal awareness have as major object law, thought of as a sum total of legal norms.

Law – the second constituent part of legal awareness represents the institutional part, the system of legal norms and institutions, being the core of the juridical and expresses the requirements of social structures for a better organization of human relationships and for imposing some official behavioral standards.

³ M. Bădescu, *Teoria generală a dreptului*, Universul Juridic Publishing House, Bucharest, 2004, p. 45.

The specific feature of law as against some other phenomena of the superstructure, is the fact that we deal with a social normative phenomenon meant to influence human behavior. Law does not describe certain facts or circumstances, but shows what is to happen; it is a requirement; it shows how people should behave under certain circumstances.

From this viewpoint, law may be considered as a way of life of public order,⁴ a real means of calming down conflicts and keeping within limits of order the conflicts of interests⁵.

A human being acts in a social environment, has various relationships with his fellow beings, and these relationships constitute the true ontological ground of law.

It results that law, as a system of norms and institutions, has a narrower sphere of activity than the juridical, as a competent part of social reality. But, in its turn, law also belongs to this reality and has qualitative determinations as parts of social essence.

It is influenced by components of the surrounding physical environment and by components of the social system (economy, politics, manners etc.). As a whole, these elements of influence are named: *factors of law of configuration*.⁶

There is a close relationship among social relationships, legal awareness and law. In this particular case, legal awareness plays the role of a mediator between economic relationships and law. Law is objectively determined by social relationships, but is achieved through legal awareness.⁷

⁴ Also see Lon L. Fuller, *The Morality of Law*, Yale University Press, 1964, p. 118.

⁵ More on this subject in E. M. Fodor, *Good Regulation as a Prerequisite to Happiness*, cap. XXXVI in „The European Culture for Human Rights. The Right to Happiness”, Editors Elena Zamfir, Filomena Maggino, Cambridge Scholars Publishing, Newcastle upon Tyne, 2013.

⁶ N. Popa, *op. cit.*, p. 62.

⁷ See for further information G. Boboș, C. Buzdugan, V. Rebreanu *Teoria generală a statului și dreptului*, Argonaut Publishing House, 2008, p. 252-253.

With regard to the tripartite structure of legal awareness we may also establish the functions it fulfils and which are:

a) The function of knowledge that contributes to the understanding of social life elements, understanding of social reality through some juridical activities. It is similar to the general function of knowledge done by social consciousness, but in case of legal awareness we deal with knowledge from a certain viewpoint, the legal viewpoint. First and foremost, it is achieved by means of the rational element.

b) The function of appreciation, of revaluation, by means of which a certain significance is given to human phenomena and actions. Social relationships are subject to an appreciation, establishing which needs a legal regulation, if they are in the interest of the leading class and how should they be regulated from a legal viewpoint. Here, a series of other elements appear like that of leaving to the subjects of legal relationships the judgement to act in a certain way or force them act according to the degree of social danger some facts prove to have. According to these elements legal liability is established. The fulfilment of legal norms is the effect of positive appreciations of law, while their non-observance is the effect of negative appreciations.

The function of appreciation and revaluation also has a great importance in implementing legal norms, in carrying them out.

c) The normative function, of regulating human behavior, of determining an attitude fit to legal norms. To fulfil it all elements take part, the rational element, the affective one, but the decisive importance is that of the volitive element.

Legal awareness is like a premise of law (as a normative phenomenon), its normative function being mediated by the *aspects of consciousness*, by means of which man actually becomes subject: the *cognitive*, of *action* and the *cultural-axiological* one. In a pluralistic society, where its structures are deeply interested in its essential changes, *the normative function of consciousness* is organically linked to the *predictable creative function*.⁸

⁸ N. Popa, *op. cit.*, p. 61.

Legal awareness has a certain content. However, it is very difficult to count all the ideas, feelings and volitions which are part of it because, as society develops, it's economic basis changes and, therefore, the object it refers to. The essential elements of legal awareness, such as the idea and feelings of justice of a class, the idea of lawfulness, take multiple aspects and forms. However, a generic establishment of categories of ideas is still possible.

Legal awareness includes ideas, feelings, volitions regarding law that works in a certain society, at a certain moment; how law should be in future; a person's attitude towards law; the other people's attitude towards law; measures that should be taken for those who break legal norms.

Guiding human behavior supposes a selection from among multiple social relationships, namely those which require juridical regulation. It is necessary to state precisely which of them are valuable and which are not and, therefore, should be isolated.

The process law undergoes supposes as well an initial appreciation; a positive appreciation in order to promote values or a negative appreciation against non-values.

We may also talk about individual legal awareness and legal awareness as form of social consciousness. Individual legal awareness appears as a result of conjugated influences upon the individual both by social existence and individual existence (concrete life conditions, his biological and psychical characteristic features, etc.).

The individual legal awareness is not only a produce of the human brain, but also a reflection of social existence.⁹

At the same time, knowing law, its appreciation, stating the reason for some actions with juridical implications, take place through the individual's assimilation of general structures of science, morals, law specific to the epoch he lives in. Individual consciousness overtakes them, assimilates them, transforms them from their state as objective data into data of subjective experience.

⁹ G. Boboș, C. Buzdugan, V. Rebreanu, *op. cit.*, p. 253.

Legal awareness, regarded as form of social consciousness, is a product synthetically objectified and generalized of the results of concrete individuals' knowledge. Like social awareness in general, legal awareness as well is not a sum total of individual knowledge mechanically brought together; it does not include all elements and manifestations of individual consciousnesses, but is their synthetic expression, a unity (a selective one) of elements and values correlated in a distinctive, qualitative whole.