

# Legal Culture and Human Rights System in the Era of Globalization

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**Abstract** – The paper is devoted to examining the impact of globalization processes on the formation and development of legal culture and human rights systems. The global space of modernity is represented by many different legal cultures, the formation of which is determined by national, economic, social, cultural factors. The processes of globalization lead to the need to harmonize different legal cultures with the principles of the universal legal order. It is shown that the conditions of globalization create both positive and negative trends in the development of international law. On the one hand, the consolidation of uniform standards in the field of human rights in international law creates a tendency to increase the level of guarantee and protection of fundamental human rights and freedoms. On the other hand, the degree of autonomy of the functioning and development of national legal systems is reduced, which leads to unevenness and varying degrees of the willingness of individual states to implement uniform standards in the field of international law.

**Keywords** – globalization, values, legal culture, international law, legal system, legal relations

## I. INTRODUCTION

The processes of globalization have a significant impact on the formation and development of legal culture and human rights systems. The purpose of this article is to analyze the impact of globalization on the development trends of international law. Conceptual understanding of the phenomenon of globalization takes place in the works of R. Robertson [1, 2], H. Khondker [2–4], E. Giddens [5]. R. Robertson most accurately expressed the aspect of understanding globalization as an objective process of formation, organization, functioning, and development of a fundamentally new global power system, deepening

interconnection and interdependence in all areas of the international community [1, pp. 111–112]. The problems of the human rights system development in the era of globalization give rise to the need to study the contradictory trends that characterize the modern world. The study of legal culture and the human rights system in the context of globalization presupposes analyzing, first, the concepts of legal culture, legal awareness, human rights, second, the main characteristics of the interaction of different types of legal cultures in the context of globalization, and third, the development of the international legal system and human rights in a globalized world.

## II. THE CONCEPTS OF “LEGAL CULTURE” AND “LEGAL CONSCIOUSNESS”: GENERAL CHARACTERISTICS

In modern science there are many approaches to legal culture, the semantic content of which is associated with the following ideas:

- legal culture is determined by the activities of legal entities consistent with its highest achievements and standards in the field of legal regulation of social relations;
- legal culture is considered as the realization of values that are created by people in the field of law, namely, such values as law, legal consciousness, legal relations, state of law, the level of perfection of lawmaking, law enforcement, and other legal activities;
- legal culture is considered as a system of legal values based on the achievements of the global legal culture.

The category of “legal culture” is necessary to characterize the entire legal system. The analysis of the legal culture of society involves the attention of researchers to the following aspects: first, to study the level of development of legal phenomena in general, secondly, to describe and explain legal values and ideals, achievements in the legal sphere, which reflect the scope of human rights and freedoms, the degree of its security in a given society.

Legal culture determines the awareness of the individual responsibility to society, namely, the moral and legal attitude of the individual to society, the willingness to fulfill their civic and moral duty. Duty and responsibility are prerequisites for enabling individuals to exercise their rights and freedoms. In real life, human rights are closely related to their duties, discipline and responsibility to society.

Legal culture is a link between the legal reality and the legal behavior of an individual. Legal culture coordinates public and personal goals, interests, and motives. The behavior of individuals in the legal field is determined by the interaction and conformity of social and personal principles, as well as the nature of the interests, goals, and motives of the individual, which underlie his value-normative orientation. In this sense, the legal culture serves as a regulator of a person’s legal behavior. Legal culture involves guiding the principles of legal behavior, knowledge, and understanding of the system of legal values, ideals, and legal norms. The need to form a legal culture of the individual makes demands to ensure not only legal behavior but also awareness of social necessity, the usefulness of legal norms, the belief in their justice and value.

Legal culture consists of a number of interconnected subsystems that are in a certain qualitative state. The first component of legal culture is related to

- how deeply legal phenomena have been mastered by the legal consciousness of society. The legal culture of a society largely depends on a society’s understanding of the following phenomena:
- the value of the rights and freedoms of man and citizen,
- understanding the need to find compromises in a situation of multidirectional interests;
- legal awareness; the emotional attitude of the population to the law, the court, law enforcement agencies, legal means, and procedures;
- civil installation to comply with or non-compliance with legal regulations.

The second element of the structure of legal culture is the level of development of legal activity. The level of development of legal consciousness can be fixed in real legal activity, in legal behavior. The legal activity consists of:

- theoretical productive activities of legal scholars, reproductive activities related to citizens obtaining a legal education and their legal education,
- practical activity, namely, with law-making and law-realizing, law-enforcement activities.

The legal culture of a society depends on the level of development and the quality of law-making activity on creating a legislative basis for the life of a society. Legally competent persons should be involved in lawmaking, observing democratic and legal procedures and principles.

The legal culture of a society is also influenced by law enforcement. Law enforcement is an area of power activities of state bodies that carry out individual regulation of public relations on the basis of the law. The factors of the quality of law enforcement are, firstly, the institutional factor reflected in the structure of the state apparatus and the interaction of its bodies, secondly, the functional factor reflected in the professionalism of government employees and the culture of the law enforcer.

The third element of the legal culture of a society is the level of development of the entire system of legal acts, legal texts, texts that enshrine the right of a given society. The basis of the legislation is the constitution of the state. Any regulatory action must be legal, corresponding to the prevailing notions of justice, equality, freedom.

Requirements for a regulatory act:

- perfect form
- consistency
- brevity,
- clarity,
- clarity of definition of terms and concepts,
- certainty of the mechanism for its implementation.

Selection of structural elements of legal culture is rather arbitrary since there is no legal activity carried out separately from legal consciousness. On the other hand, legal awareness can manifest itself only in legal activity and its results, namely, in legal acts. All the constituent parts of the legal culture cannot exist without its bearer, which is a person and the whole society. Thus, the legal culture of the society is expressed in the level of legal development of individuals, various social and professional groups. On this basis, the legal culture of the population as a whole, the legal culture of groups, the legal culture of the individual are distinguished.

The concept of legal culture implies an assessment of the quality of the legal life of a society in comparison with its ideals, values and the most developed legal models where these values and ideals are realized [6–11]. The most important criterion for assessing the level of legal culture is the level of human and civil rights and freedoms in a given society [12–15]. What matters are the questions about the range of these rights and freedoms, what are the guarantees of their observance, how effective are the mechanisms and procedures for their enforcement and protection.

In determining the quality of the legal life of society, the state of individual legal acts, firstly, of law-enforcement documents, for example, decisions and sentences of courts, orders of investigators, and acts of prosecutors, documents in the administrative and managerial sphere should be taken into

account. Secondly, the implementation documents, for example, contracts in economic circulation.

The analysis of legal acts makes it possible to judge the level of development not only of the legal culture of society but of the culture as a whole and the socio-economic life of society. The legal acts find the consolidation of the form of government and property, the structure of the administrative apparatus, the legal status of a person, the level of guarantee of his rights and freedoms.

### III. LEGAL CULTURE AND HUMAN RIGHTS

The legal culture of the individual is the knowledge, understanding, and awareness of the need to fulfill the requirements of the law in everyday human activities. Legal culture of the person is characterized by the following indicators:

- legal education of a person
- knowledge of current legislation,
- the presence of minimal practical skills and the ability to use this knowledge in a specific life situation,
- conscious compliance with and compliance with legal requirements,
- the legal activity of the individual.

Legal culture and human rights are the qualitative state of the legal life of a society, conditioned by the spiritual, socio-political and economic structure of society [12]. The qualitative status of the legal life of society is expressed in the achieved level of development of legal consciousness, legal activity, legal acts, in the level of legal development of a person, various social groups, society, as well as in the degree of state and civil society's guarantee of human rights and freedoms.

Human rights and freedoms reflect the social aspirations of the individual to certain conditions that ensure both the existence of a person and the normal conditions of his life activity. Human rights are largely determined by the nature of the economic and political system, the level of culture of society. Human rights are those opportunities through which a person is included in the economic, political and spiritual spheres of society. The lines of human behavior in society are determined by the level of his legal culture, which depends on how much a person knows, interprets and evaluates his rights, freedoms, duties, how he implements them in practice.

Legal culture serves to satisfy the social needs of a person, contributes to the realization of his rights and freedoms, affects the socio-legal reality, depending on creative activity, legal knowledge, and finally, the intelligence of an individual.

High legal culture of the individual leads to intolerance to any violations of law and order in general, including the violation of human rights. Thus, a decrease in the level of crime implies an increase in the level of legal culture, respect for social norms and values. Thus, legal culture performs the function of accumulation and inheritance of legal values and acts as an important regulator of social relations.

Legal consciousness is a form of consciousness that forms and contains ideas about law, the central component of the legal culture in which they are born, are shaped and through which all legal provisions and, in general, the law itself is realized. In legal consciousness, opinions are formed that

- what should be the rules of law, how can they be understood and interpreted,
- what constitutes the rule of law, how to treat law enforcement agencies and the legal laws in force in the state,
- what can be done in concrete conditions to a person and what is not allowed.

Like self-consciousness, legal consciousness has a complex structure and includes individual consciousness, social consciousness, everyday consciousness, and professional consciousness.

The basis of legal consciousness is the idea of justice, which largely determines the law itself and is its goal. Consciousness is the most important category of the humanities and social sciences. Legal consciousness is consistent with the idea of justice.

In modern philosophy, there are many approaches to understanding the phenomenon of consciousness and, consequently, the sense of justice.

From the standpoint of phenomenology, consciousness is some kind of intellectual structure, allowing streamlining the whole experience. Thus, legal conscience can be viewed as a structure constituting the whole experience associated with an awareness of the phenomenon of law. If we consider consciousness as a reflection, then legal consciousness plays a passive role in the organization of law, is only a reflection of the existing positive law.

Legal consciousness is ambivalent in relation to the law: on the one hand, legal consciousness is spoken of a reflection by the mind of the individual of existing norms of law, on the other hand, the phenomenon of legal consciousness has the power to create.

### IV. INTERACTION OF LEGAL CULTURES OF DIFFERENT TYPES IN THE CONTEXT OF GLOBALIZATION

The global space of modernity is represented by many different legal cultures, formed under the influence of global, national, economic, social, cultural and other factors [16–19]. The processes of globalization create difficult conditions for modern legal systems when elements of different legal cultures penetrate each other. As a result of the integration processes, new forms of legal cultures or polyphony of different legal cultures arise. One of the questions which are relevant for the modern theory of law is the question of whether the canon of normative legal materials is enough for good legal work [20, p. 158].

To understand the difficulties arising in the framework of the interaction of legal cultures in the context of globalization, it is necessary to decide, first, what types of cultures we are talking about, secondly, by what criteria can we distinguish

types of legal cultures and, third, for which types problems may arise when interacting with other types of legal cultures.

The most common criterion for distinguishing legal culture is the criterion of the culture carrier. The main question here is the following questions: who broadcasts the culture? In whose legal behavior and sense of justice is culture manifested? Within the framework of this criterion, the legal culture of the individual, the legal culture of certain social groups and the legal culture of society as a whole are distinguished.

Another way of distinguishing legal cultures is to single out types of legal culture with a focus on the features of the national legal system within the framework of classifying the system to a particular legal family. Here, legal culture is considered as special, determined by a number of the following features of the national legal system:

- 1) features of historical development and the formation of national statehood;
- 2) forms (sources) of law;
- 3) structural elements of law (industries, institutions);
- 4) the characteristic features of legal implementation;
- 5) the role of legal science in lawmaking and law enforcement;
- 6) the level of legal culture;
- 7) the role of religion in the legal regulation of social relations.

In accordance with these criteria, the following legal cultures are distinguished: Anglo-Saxon, Roman-Germanic, religious-legal or Muslim, and other legal cultures.

Legal cultures are quite diverse. For example, a product of Anglo-Saxon case law is the Anglo-Saxon legal culture is focused on the authority of a lawyer who represents a client whose interests are defended in court proceedings by virtue of the principle of adversary proceedings. A number of researchers believe that a legal culture focused on the authority of lawyers is more likely than other cultures:

- 1) sensitive to the needs and problems that can be satisfied by legal means;
- 2) initiate services that facilitate public access to the law;
- 3) encourage real changes in legislation.

The lack of attorneys of similar status and authority in other legal cultures affects the legal behavior of representatives of culture, their sense of justice.

Another possible way of identifying types of legal culture is based on the depth of knowledge of the subjects of legal behavior of legal phenomena. In this vein, researchers talk about every day, professional and theoretical legal culture. For example, ordinary legal culture is manifested in the daily life of a person, at the level of automatism. The influence of everyday culture on human behavior is not realized by him, because a person chooses a certain type of action, without thinking about what comes under the influence of some legal value. Substantially ordinary legal culture is determined by traditional

values, social stereotypes, social attitudes, customs, and habits, formed over a long time under the influence of various socio-cultural factors. This type of culture operates at the level of the subconscious or even unconsciously; it manifests itself both in the behavior of an individual person and in the behavior of groups and groups where a person enters.

Here the opportunity to discuss the formation of legal culture at different levels will be significant. Accordingly, the problems of interaction between different legal cultures are diverse and arise at different levels. Interaction levels of culture include both the level of everyday interaction of any person as a representative of legal culture, as well as the level of professional interaction of a specialist of a particular area as a representative of a specific professional area, professional community.

Given the content of legal culture, the presence of predominantly professional or non-professional elements, it is possible to talk about such types as professional legal culture and non-professional legal culture. For example, professional legal culture can include special legal knowledge, professional abilities, practical skills, professional skills, habits, norms, standards, professional skills related to a particular profession in the field of jurisprudence.

Depending on the sphere of public life in which legal values are used, for example, one can identify a legal culture in the field of education, health care, and other types of cultures [21–24]. From the point of view of this criterion, legal culture in the field of education becomes relevant, since it is in this sphere that the processes of globalization are almost tangible.

The education system is determined by various global trends and processes [25, 26]. The universalization of the content and quality of education is faced here with multi-ethnicity and diversity of cultures as a result of increased migration flows. It is education that can become the social institution where the synthesis of different legal cultures takes place and where the foundations are laid for the tolerant interpenetration of elements of different cultures, including legal. The education system is the social institution in which the principles and values of respect for another culture are formed [27–29]. In other words, education can become a base for the prevention of conflicts and contradictions, including in the collision of different legal cultures.

#### V. INTERNATIONAL LAW AS A CULTURAL PHENOMENON OF THE ERA OF GLOBALIZATION

The processes of interaction of different legal cultures lead to contradictions and problems in those countries where the universal principles of international human rights law do not coincide with national legal principles and national legal culture [30]. In other words, where there is a certain regional specificity, it is problematic to form some kind of global legal order. For example, at the ordinary level of legal culture, the interaction will proceed differently than at the professional or theoretical levels of legal culture.

The Universal Declaration of Human Rights, as a basic document for a global legal culture, proclaims an important right for everyone to a social and international order in which human rights and freedoms can and should be realized. In other

words, the Universal Declaration offers a universal view on the concept of human rights, which in the context of globalization is gradually penetrating the legal systems of different countries. This universal view is least of all focused on the regional specifics of a particular legal system and legal culture. The universalization of legal principles makes it problematic to take into account regional specifics at the level of a country's economic, social, cultural or religious characteristics.

The discrepancy between the national legal culture and the universal legal principles of international human rights law can lead to human rights violations in a particular situation. Moreover, the substantive legal culture of a particular state, the level of its development and distribution can either contribute to the realization of human rights, or vice versa, allow for violations of human rights. In this situation, it becomes clear that in order to advance and "incorporate" the principles of the global/universal legal order into the legal culture of a specific territory or local community, the joint efforts of the state, society and the individual are required.

The authors note one of the trends of the modern world, as westernization: "Westernization as a term is not equivalent to globalization. Nevertheless, westernization can be seen as an aspect of globalization. Certain institutional features and cultural traits that originated in the West were put in place in many other geographical regions, lock, stock, and barrel, under the framework of global interconnections and diffusion or forced implantation under colonialism. Yet over time, these institutions and practices mutated and assumed new meanings. Therefore, westernization can be seen as the beginning of the process." [16, pp. 8-9]

The collision of legal cultures of different types also occurs in a situation of increasing migration flows. The migrant is a representative of the national legal culture. However, the migrant resides in the territory of another state, where he falls into the space of another legal system. The behavior of the migrant will be determined by the legal culture in which he grew up and was raised. Based on the norms of "his" legal culture, the migrant will assess the legal behavior of the host community, his behavior and the behavior of other migrants.

The processes of integration cause a discrepancy between the legal culture, its principles, and values among representatives of different cultures. This situation can lead to serious consequences that will be felt not only for migrants but also for the host communities. Therefore, in European countries a system of various social institutions has been formed, whose work is aimed at the social adaptation of the migrant, his informing, including about the peculiarities of legal regulation of various spheres of life in the country.

The global goal of this system is to prevent conflicts, including at the level of legal culture. In the context of globalization, the interaction of representatives of secular and religious cultures is inevitable. The greatest difficulties may arise in the interaction of legal cultures, determined by secular and religious values [28, 31], for example, in the interaction of the Romano-Germanic legal culture and the Muslim legal culture. Contradictions between cultures and the lack of proper attention to this interaction from the state and society can lead

to increased nationalism, religious fundamentalism, and extremism.

One of the most problematic phenomena of our time is the maintenance and development of the rule of law. Legal culture is the most important prerequisite and condition for the formation and development of a legal state [32, 33]. However, the problem of the interaction of legal cultures of different types cast doubt on the further development of a unified rule of law. In other words, the interaction of different legal cultures carries risks for the formation and existence of a single legal field.

In the context of globalization there are also legal traditions that create the specifics of a particular legal culture in the risk zone. The global/universal legal order does not imply the existence of something specific, especially if the order of traditional societies does not coincide with the principles of the universal legal order. In other words, the problem is the preservation and development of legal values and traditions characteristic of a particular legal culture. Most of the traditions are assimilated into a universal legal culture, some elements of which are fixed in international law.

In the context of globalization, the international legal culture, formed under the influence of international law, is of particular importance. At the core of international law are the values of tolerance, respect for the rights and dignity of the individual, but legal principles have a global and universal impact on national legal systems.

## VI. CONCLUSIONS

International law in the era of globalization acquires a different tone, having the dual nature of functioning and development. Firstly, it is important to single out the supranational/supranational elements of international law, which are the names of transnational law. This is a legal culture based on international treaties when participants in an international organization are bound by membership and are obliged to comply with the norms and requirements, take into account the priority of supranational acts over domestic ones. Examples of such organizations: the International Monetary Fund, the United Nations Security Council, the World Trade Organization, the European Union, the Eurasian Economic Union. The different levels of these organizations are reflected in the different directions of their influence, which covers regional integration to the formation of a universal international legal system.

Secondly, it is the development and expansion of transnational law. Historically, transnational law was formed by different subjects for the internal regulation of activities, for example, in the banking sector. The norms of transnational law attract attention due to globalization, the media, and publicity. Individual states are struggling with manifestations of transnational law, for example, in the field of "offshore activities" and "transfer prices".

It is important to take into account the process of the impact of globalization on international law. Uniform standards in the field of human rights are consolidated as a positive trend in the development of law through interfacing the exchange of legal experience, increasing the level of guarantee and protection of

fundamental rights and freedoms. There is an opposite tendency since it is also clear that there is a decrease in the degree of independence in the functioning and development of national legal systems, which is affected by the unevenness and varying degrees of readiness of individual states to implement uniform standards in the field of international law. And this is a negative trend in the development of international law.

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