

E.B. Abdrasulov, A.B. Saktaganova

*L.N. Gumilyov Eurasian National University, Astana, Kazakhstan
(E-mail: aermek_19@mail.ru, aridnis@mail.ru)*

Topical issues on the formation of professional legal consciousness of a judge

Abstract. *Research concerning formation of professional legal consciousness of judges occupies a vital place within modern legal systems. Studies are undertaken in this regard in order to explore processes and mechanisms underlying formation, while simultaneously analyzing their effect on quality and efficiency of judiciary services.*

This study seeks to identify, analyse and systematise factors contributing to the formation and development of professional legal consciousness among judges. Research efforts will mainly involve studying theoretical aspects of legal consciousness; reviewing existing approaches used for education and practical training of judges; as well as measuring its effect on developing professional legal consciousness over time through practice judicial examination.

Scientific and practical relevance lies within this work's significance for understanding processes that form judges' legal consciousness, essential for improving judicial system quality. Methodologies employed include comparative analysis, investigation of normative documents and court practice as well as empirical methods.

The main results of this research include identification and recommendations of key influences affecting judges' legal consciousness formation, with particular attention paid to how those factors interact with one another. Finally, its conclusions emphasize the necessity of taking an integrated approach when training and developing judges involving both theoretical and practical activities.

This study's value lies in its contribution to understanding how judges form professional legal consciousness that ultimately improves justice delivery and strengthens rule of law. Furthermore, its practical significance manifests itself by producing specific recommendations designed to increase professionalism and efficiency within judicial systems.

Keywords: *professional legal awareness of judges; legal culture, legal psychology, legal ideology; judicial decision; legal education, professional development of judges.*

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Introduction

A major reason behind our study's topic choice was due to a growing interest in issues of legal consciousness within modern legal systems. A judge's legal consciousness not only mirrors, but also shapes society's legal culture - impacting upon both its effectiveness and fairness as determined by judges themselves. While past researchers have made considerable strides toward studying legal consciousness, some aspects related to its professional formation and evolution remain uncovered, making these insights even more significant given constant legislation updates and social developments that continue to rapidly unfold.

Legal reforms - particularly judicial ones - have been continuously implemented over 30 years since independence. Judicial authority in the Republic of Kazakhstan is constantly being strengthened through ongoing reforms that aim to protect human rights while improving availability, quality and speed of justice, its efficiency speed and transparency. All legal system of the country was revised on a path leading to transition into market economy as all main

legal institutes underwent significant transformation; specific focus has also been paid towards improving judicial authority as evidenced by improvements made within its legal status of judges themselves.

In the message of the Head of State K.K. Tokayev to the people of Kazakhstan «Fair State. A united nation. Welfare society» in the fifth section «Law and order» the President noted «the need to ensure the rule of law and the quality of justice. This requires urgent renewal and improvement of the judicial corps. Judges must be highly qualified, honest and incorruptible. First of all, equal status of all judges is to be ensured, reducing their dependence on their superior colleagues. Many positions of court presidents will be transformed into judicial positions. I propose to apply elective mechanisms when judges themselves select candidates for the positions of court chairpersons and chairpersons of judicial collegiums. It is also necessary to start introducing elements of electability of judges of the Supreme Court» [1].

This study investigates a judge's legal consciousness within modern legal systems. This involves studying mechanisms and factors contributing to professional legal awareness formation as well as existing approaches used by judges themselves when developing this type of consciousness, in addition to developing effective methods for its development.

Senator Andrey Lukin presented a bill «On Proposed Amendments and Additions to the Constitutional Law of Kazakhstan «On Judicial System and Status of Judges of Republic Kazakhstan» [2], at plenary session of Chamber 2023: he explained, part of personnel issues was transferred back from Supreme Court back into Supreme Judicial Council back in 2019. Now it is being proposed to transfer matters related to training candidates for judges, advanced training for existing judges, extending age limits and suspending or terminating current judges to the Supreme Judicial Council. According to him, The Academy of Justice will also be subsumed into a Supreme Judicial Council. According to him, this new body will take full responsibility for selecting judicial personnel, further career development plans and honourable retirement [3].

This research projects that in order for judges to effectively build professional legal consciousness, an all-inclusive approach must be used that includes both theoretical training and practical activities. Thus, its significance lies in offering recommendations designed to increase legal consciousness formation of judges which contributes to improving both judicial system quality as well as to increasing rule of law strength.

Material and methods of research

This study draws upon an array of materials, from normative legal acts and academic publications in law, psychology and sociology to questionnaire results and interviews with judges at different levels. Qualitative analysis involves studying information gleaned from academic papers as well as personal interviews to isolate key components informing legal consciousness formation in professionals.

This study utilizes an integrative approach, employing methods such as document analysis, comparative/qualitative analysis, expert interviews and other approaches.

Regulatory document analysis is one of the primary techniques, consisting in studying and interpreting legislation, regulations and court decisions to understand how judges develop legal consciousness in different legal systems, while simultaneously comparing data across systems to identify universal and specific factors in its formation.

Qualitative analysis involves employing methods of substantive and discourse analysis of scientific works, legislative acts and judicial practice texts, while qualitative research uses statistical tools such as correlation/regression analyses for processing questionnaire results. Conducting structured interviews with judges and jurists in order to obtain an in-depth knowledge of issues is an integral part of legal research.

Researchers developed novel approaches for studying legal consciousness, including using modern software tools for processing large volumes of data (e.g. textual analysis programs and statistical modelling programs) which allowed for more in-depth examination of judges' legal consciousness encompassing formal legal aspects as well as sociopsychological considerations.

Triangulation and cross-validation methods are employed to enhance the reliability of research findings, while systematic literature review methods help validate or invalidate hypotheses submitted based on existing evidence. Together these approaches enhance overall reliability while making findings more convincing.

Results and discussion

In the opinion of the co-chair of the public association «Retired Judge of the Supreme Court» candidate of legal sciences R.N. Mamyrbayev, since independence was declared for the Republic, issues pertaining to legal reform and justice system reform have always been high on the agenda for both country's leadership, legislative branch of government, legal community and judiciary itself. The Constitution adopted on 30 August 1995 established a third branch of government: Judicial. Ultimately, its courts were separated from executive power. Constitutional Law on Courts and Status of Judges was adopted, along with establishing Qualification Collegium and Supreme Judicial Council which enabled selection of qualified lawyers for judicial positions. Specialised courts were introduced with a view toward increasing both judges' professionalism and legal qualifications, as well as to assist with court activity problems that currently or would likely arise later on. At each judicial congress held, current or potential future problems of court activity were identified and prioritized accordingly. At the same time, both substantive and procedural legislation was revised and refined. Furthermore, studying advanced countries' experiences allowed Kazakhstan's judiciary system to incorporate some provisions from them.

Issues surrounding violations of law, participant rights in judicial processes and unjust acts issued by judges remain of great importance in today's society, along with increasing trust between citizens and the judiciary at all times [4].

This study has demonstrated the significance of legal consciousness to judges' professional activities. Through interviews and questionnaires with judges, an analysis revealed that those with more developed multidimensional legal consciousness are more inclined to make fair and justified decisions; key influencing factors for developing legal consciousness included educational programs, practical experience and interaction between peers as well as public opinion.

Analysis revealed a direct relationship between judges' legal awareness levels and quality judicial decisions. Judges who demonstrate an awareness of both legislative and ethical aspects of justice tend to reach judgements which satisfy both legal and moral criteria more frequently, supporting our hypothesis that cultivating comprehensive legal consciousness can improve quality judicial services.

Comparative analyses in this area indicate that most works on judicial education focused on its legal aspect; our work contrasts this trend by emphasizing its holistic nature encompassing ethical and sociological dimensions of legal consciousness education. Furthermore, it expands existing research by offering novel methodological approaches and empirical evidence.

The results of the study demonstrate the significance of developing professional legal consciousness among judges as an essential means to enhance both efficiency and fairness in the judiciary system. To do so successfully requires not only legal education, but also continuous professional development with ethical/social training modules included as part of legal education curriculums; introduction of comprehensive educational programmes focused on increasing legal consciousness can contribute significantly towards reformation/improvement efforts within judiciaries.

In our opinion, the theoretical approaches justifying the identity of the professional legal consciousness of judges and lawyers do not stand up to serious criticism, since there are enough works in the scientific literature that characterize the specifics and features of the legal consciousness of various subjects of legal activity. Thus, O. Habs and O. Kobets describe the peculiarities of the legal consciousness of lawyers, emphasizing that the reflecting and regulatory spheres of the psyche are connected in the professional consciousness of the lawyer's personality. The psychological mechanism of interaction of the reflexive (theoretical) sphere of professional

consciousness with its regulatory sphere is extremely complex, but it is revealed by methods of system analysis. One example of the use of system-activity analysis is the theory of the gradual formation of mental activity related to the human rights sphere [5, p. 27].

Professional legal awareness is directly connected, according to some law schools, with the adoption of judicial decisions. For example, the judicial guess as a result of the action of legal psychology, which is a structural part of the legal consciousness, according to D. Frank, is a complex reaction to a variety of stimuli created by other participants in the trial. They are confronted with the judge's prejudices, his stereotypes, opinions, positions and similar phenomena characteristic of the legal consciousness. This internal reaction or «guess» that judges face forms the basis for a court decision by creating an emotional impulse as an element of legal awareness [6].

We see a similar approach in the actions of Chinese judges who take into account traditional cultural values when applying the law on contractual damages. On the one hand, in this process, the appeal to cultural values does not change the understanding of Chinese judges of the requirements of the law, on the other hand, judges find a compromise between legal requirements and cultural traditions, using the freedom of action granted to them or recommending mediation. Taking into account cultural values and addressing them is the result not only of personal preferences of judges, but also of the need for judges to seek social approval, which is possible only with a relatively high level of legal awareness [7].

Russian researchers also write about such phenomena in law enforcement practice, using the concept of judicial discretion and emphasizing that being one of the criteria of judicial professionalism in appointing a fair decision, legal awareness, in turn, is influenced by other elements of regulatory regulation. However, the increase in the level of professional legal awareness and legal culture largely depends on the subjects of law enforcement activity themselves, which forms the professional characteristics of their discretion [8, p. 187].

And last and most importantly, judges have their own special professional sense of justice, since they have formed into a specific professional group with their own worldview, status, traditions, skills and abilities.

If we characterize the concept of professional legal awareness of judges, then it will proceed from the basic definitions of the category of professional legal awareness. The professional legal consciousness of judges is one of the forms of individual and collective legal consciousness, mediated by a system of specialized legal knowledge, a complex of legal beliefs, knowledge, stereotypes and traditions that are formed in the judicial system, united by the tasks and goals of judicial activity and justice.

The concept of a judge's professional legal consciousness includes many factors and characteristics, which include: professional competence (legal and general humanitarian knowledge, skills, skills, professional experience), socio-psychological readiness to perform judicial functions (social maturity, responsibility, analytical thinking, ability to concentrate attention, efficiency, neuropsychic stability, managerial and communicative abilities, self-control, intuition, observation, the desire to learn new things, general erudition) [9, p. 19].

This system of legal and general humanitarian knowledge, mental properties and characteristics is actively influenced by external factors that can form both positive and negative aspects in the field of professional legal awareness of judges.

The content of the professional legal consciousness of judges is determined through its structure, which can be based on several models. According to the information model, the content of judges' professional legal consciousness consists of many specific elements: cognitive, evaluative, volitional, behavioral, socio-psychological, etc. [10, p. 27].

Some researchers consider the content of the professional legal consciousness of judges as a set of mutually dependent substantive characteristics combined into certain blocks. In this classification, an emotional-figurative block, a logical-normative block, a fundamentally volitional block, etc. are distinguished [11, p. 237].

Great importance in determining the content of the professional legal consciousness of judges is given today to the issues of its moral foundations. There is no doubt that the work

of a judge in modern conditions must necessarily be based on the principles of humanism and justice, which follow from the moral foundations of humanity [12, p. 87].

In judicial acts on specific cases, in their motivational part, judges, defending the humanistic principles of law, directly or indirectly address the issues of the inadmissibility of violating not only legal regulations, but also violations of their moral aspects, i.e. the need to curb immoral and antisocial behavior that harm both an individual and the whole society and the state.

In the moral component of the professional legal consciousness of judges, an important place is given to the principle of justice. In the legal literature, it is correctly noted that justice encompasses not only formal equality (the same attitude to such cases), but also substantial equality based on the equal dignity of each person, which requires that each person be given his «due», which is his right of claim. At the same time, the content of justice is not precisely defined in any legislative act of our country. The adherence of a judge, as a subject of the application of law, to the principle of justice is described in the legislation of the Republic of Kazakhstan, on the one hand, as ensuring equal opportunities and conditions for the realization by participants in the judicial process of the right to a comprehensive and complete investigation of the circumstances of the case. On the other hand, the principle of justice is considered as a criterion for resolving relevant issues by the court (APPC RK, June 29, 2020). In general, recognizing the correctness of this approach of the legislator to the content of the principle of justice, researchers believe that the essence of the principle is not fully disclosed. The rule on the application of the principle of justice is accompanied by the need to follow the criteria of reasonableness, objectivity and impartiality, which themselves require disclosure of their content due to the evaluative nature of these concepts. Moreover, the principle of justice is expressed more in the procedural aspect, and, as is known, the norms of substantive law applied by the court are reflected in a multiple system of normative legal acts, in which there is no mention of the principle of justice at all. And this situation takes place, despite the fact that the essence of any legal proceedings ultimately lies in a lawful and fair decision of the case on the merits, and not in formal compliance with the procedural requirement of the principle of justice.

In this regard, the gap due to the lack of a substantially disclosed principle of justice in the texts of the system of material norms regulating various social relations could be filled in procedural legislation with the establishment of a more precise requirement that the judge applying the norms of substantive law be guided by the principle of justice.

However, it should be noted that judges in our country become on the basis of obtaining legal education both in specialized educational institutions (the Academy of Justice under the Supreme Court, from July 1, 2024, the Academy of Justice is transferred to the jurisdiction of the Supreme Judicial Council of the Republic of Kazakhstan, universities under the Ministry of Internal Affairs of the Republic of Kazakhstan, etc.), and in general systems of higher education in institutions, academies and universities. The content and focus of educational programs may differ significantly from each other. In this regard, we consider the opinion that the professional legal consciousness of judges is formed as a result of obtaining only a legal education to be incorrect.

Some researchers believe that professional legal awareness is formed only in the process of professional activity. Thus, A.A. Pivovarova believes that «the justice consciousness of a judge is a kind of professional justice consciousness formed in connection with and in the process of justice» [13, p. 7]. This position is also not entirely correct, since it does not take into account many other factors that contributed to the formation of professional legal awareness: obtaining legal education, self-education, education at school and at home, the impact of the external information environment, family traditions, innate positive mental properties, etc.

There is also such a position that the formation of professional legal awareness not only of judges, but also of workers in other fields, is in no way connected with professional activity. This opinion is justified by the fact that the basic legal knowledge acquired once is fixed and cannot change throughout a person's life, even under the influence of professional activity [14, p. 48].

However, we believe that obtaining a legal education in the university and postgraduate system is only an important stage in the process of forming the professional legal consciousness

of a judge. The main stage of the formation and strengthening of the professional legal awareness of judges is professional activity, the process of judicial work. At this stage, not only purely professional work in the context of law enforcement activity leads to the strengthening of the legal awareness of acting judges, but also the system of additional education.

Conclusion

Formation and strengthening of professional legal consciousness among judges and employees of the judiciary system is an integral process, taking place through interaction among judicial personnel, social regulators, regulatory and organizational impact on state and society, professional activity, personal characteristics and other influences. Through such an engaging journey, judges and employees of the judiciary system create their unique behavioural image through personal thinking style, communicative interactions with colleagues as well as ideological attitudes which set them apart from legal consciousness among their fellow legal profession representatives.

Judges develop legal attitudes through training, self-education and professional activity which lead to them developing legal awareness for law enforcement purposes. One such manifestation can be observed when a judge develops legal positions of court while hearing cases and measures them against his personal beliefs, attitudes and worldview - thus assuring conformance between their assessments with legal regulations and their assessments themselves. An extremely high level of professional legal awareness cannot be overestimated in this complex process, since such awareness contributes to judges making legally sound and fair rulings. Professional legal awareness at an appropriate volume and quality enables you to comprehend many proofs with greater insight, thus understanding their qualitative features and significance when making decisions. Thirdly, it allows one to accurately evaluate the facts surrounding a case against legal regulations. Fourthly, legal consciousness provides the basis of any judge's legal position during analysis and application to regulatory legal regulations in cases. Fifthly, professional legal consciousness plays a vital role during interpretations of legal norms as part of law enforcement processes.

This study has demonstrated the vital importance of judges' legal consciousness to their professional activities. Analysis of data showed that judges with more developed and multidimensional legal consciousness tend to make fair and justified decisions more often, making their educational programs, practical experience interactions with colleagues and public opinions key factors affecting this development of legal consciousness.

Analysis revealed a direct relationship between judges' level of legal awareness and quality of decisions they render, such as judgements that satisfy both legal and moral criteria, and developing comprehensive legal consciousness as key factor to improving judiciary quality.

In this sense, a judicial decision, during the adoption of which the process of interpreting the norms of law is actively underway and the professional legal awareness of the judge is involved, must have all the necessary knowledge about the subject of the trial. Consequently, the legality, fairness and validity of judicial acts are determined by the professional legal consciousness of the judge, which must be filled with reliable legal and other knowledge, moral and universal values, determination to ensure the rule of law and constitutional order.

Comparative analyses with prior works in this area show that most have focused on legal education alone; our work emphasizes a more comprehensive approach, considering ethical and sociological dimensions of legal consciousness as well as providing novel methodological approaches and empirical data to supplement existing research efforts.

The results of the study prove that developing judges' professional legal consciousness is vital to improving efficiency and fairness within the judiciary system. To do so requires not only formal legal education but also continuous professional development encompassing ethics training as well as social training modules dedicated to increasing legal consciousness development among judges. Implementation of comprehensive educational programmes dedicated to this aim could contribute significantly to reformation efforts to strengthen and modernise it further.

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Е.Б. Әбдірасұлов, А.Б. Сактаганова

Л.Н. Гумилев атындағы Еуразия ұлттық университеті, Астана, Қазақстан

Судьяның кәсіби құқықтық санасын қалыптастырудың өзекті мәселелері

Аңдатпа. Судьялардың кәсіби құқықтық санасын қалыптастыруға қатысты зерттеулер қазіргі құқықтық жүйелерде маңызды орын алады. Бұл саладағы зерттеулер қалыптасудың артындағы процестер мен механизмдерді зерттеу және олардың сот жүйесінің сапасы мен тиімділігіне әсерін бір уақытта талдау мақсатында жүргізіледі.

Бұл зерттеу судьялардың кәсіби құқықтық санасын қалыптастыруға және дамытуға ықпал ететін факторларды анықтауға, талдауға және жүйелеуге бағытталған. Зерттеудің негізгі мақсаты – құқықтық сананың теориялық аспектілерін зерттеу, судьяларды оқыту мен практикалық

дайындаудың қолданыстағы тәсілдерін талдау және сот сараптамасы арқылы уақыт өте келе кәсіби құқықтық сананың дамуына әсерін бағалау.

Жұмыстың ғылыми және тәжірибелік маңыздылығы – бұл сот жүйесінің сапасын арттыру үшін қажет судьялардың құқықтық санасын қалыптастыру процестерін түсіну үшін маңызды. Жұмыста салыстырмалы талдау, нормативтік құжаттар мен сот практикасын зерттеу, сондай-ақ эмпирикалық әдістер сияқты әдіснамалар қолданылған.

Зерттеудің негізгі нәтижелері судьялардың құқықтық санасын қалыптастыруға әсер ететін негізгі факторларды анықтау бойынша ұсыныстар болып табылады, бұл факторлардың бір-бірімен өзара әрекеттесуіне ерекше назар аударылады. Соңында, зерттеу нәтижелері теориялық және практикалық әрекеттерді қамтитын судьяларды оқыту мен дамытуда кешенді тәсілдің қажеттілігін көрсетеді.

Бұл зерттеудің құндылығы судьялардың кәсіби құқықтық сананы қалай қалыптастыратынын түсінуге ықпал етеді, бұл сайып келгенде сот төрелігін жүзеге асыруды жақсартады және заңның үстемдігін нығайтады. Сонымен қатар, оның практикалық маңыздылығы сот жүйелерінің кәсібилігі мен тиімділігін арттыруға бағытталған нақты ұсыныстарды әзірлеуде көрінеді.

Түйін сөздер: судьялардың кәсіби құқықтық санасы; құқықтық мәдениет, құқықтық психология, құқықтық идеология; сот шешімі; құқықтық білім, судьялардың біліктілігін арттыру.

Е.В. Абдрасулов, А.В. Сактаганова

Евразийский национальный университет им. Л.Н. Гумилева, Астана, Казахстан

Актуальные вопросы формирования профессионального правосознания судьи

Аннотация. Исследования, касающиеся формирования профессионального правосознания судей, занимают важное место в современных правовых системах. Исследования в этой области проводятся с целью изучения процессов и механизмов, лежащих в основе формирования, и одновременного анализа их влияния на качество и эффективность работы судебной системы.

Данное исследование направлено на выявление, анализ и систематизацию факторов, способствующих формированию и развитию профессионального правосознания судей. Основная цель исследования - изучение теоретических аспектов правосознания, анализ существующих подходов к обучению и практической подготовке судей, а также оценка влияния на развитие профессионального правосознания с течением времени через практику судебной экспертизы.

Научная и практическая значимость работы заключается в том, что она имеет важное значение для понимания процессов формирования правосознания судей, что необходимо для повышения качества судебной системы. В работе использованы такие методы, как сравнительный анализ, изучение нормативных документов и судебной практики, а также эмпирические методы.

Основными результатами исследования являются выявление и рекомендации по определению ключевых факторов, влияющих на формирование правосознания судей, при этом особое внимание уделяется взаимодействию этих факторов друг с другом. Наконец, выводы исследования подчеркивают необходимость комплексного подхода при обучении и развитии судей, включающего как теоретическую, так и практическую деятельность.

Ценность данного исследования заключается в том, что оно вносит вклад в понимание того, как судьи формируют профессиональное правосознание, что в конечном итоге улучшает отправление правосудия и укрепляет верховенство закона. Кроме того, его практическая значимость проявляется в разработке конкретных рекомендаций, направленных на повышение профессионализма и эффективности работы судебных систем.

Ключевые слова: профессиональное правосознание судей; правовая культура, юридическая психология, правовая идеология; судебное решение; правовое образование, повышение квалификации судей.

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Information about authors:

Abdrasulov E.B. – Doctor of Law, Professor, L.N. Gumilyov Eurasian National University, Astana, Kazakhstan.

Saktaganova A.B. – PhD student, L.N. Gumilyov Eurasian National University, Astana, Kazakhstan.

Әбдірасұлов Е.Б. – заң ғылымдарының докторы, профессор, Л.Н. Гумилев атындағы Еуразия ұлттық университеті, Астана, Қазақстан.

Сактаганова А.Б. – докторант, Л.Н. Гумилев атындағы Еуразия ұлттық университеті, Астана, Қазақстан.