

Transformation of Legal Awareness Through the Development and Use of Alternative Methods of Conflict Resolution

S. E. Libanova¹, V. S. Bredneva^{2,*}

¹ *Ural State Law University, 620137 Yekaterinburg, Russia*

² *Sakhalin State University, 693000 Yuzhno-Sakhalinsk, Russia*

**Corresponding author. E-mail: v-bredneva@mail.ru*

ABSTRACT

To date, the state and society are interested in transformation of legal awareness towards a positive perception of alternative methods of legal conflict resolution. For the judiciary, popularization of the alternative methods indicates a decrease in the number of cases considered, and for the society, it provides the opportunity to find a non-standard, non-typical option for settlement of a legal dispute. An attempt to develop the category of 'transformation of legal awareness' and to determine its features is a fundamentally new phenomenon in Russian science. Approaches to understanding a legal conflict are generalized. In Russian legal practice, the alternative methods of legal conflict resolution include negotiations, claim procedures (pre-trial), mediation (extrajudicial procedures), and arbitration procedures. In foreign practice, the methods include mixed forms, for example, a judge mediator. The experience of China, the Republic of Lithuania, the Netherlands, Russia, the USA, France, Croatia, Switzerland, etc. was analyzed. Legal awareness can be transformed in the educational process in schools, universities, and as part of corporate training and legal education of citizens.

Keywords: *legal awareness, deformation, transformation, legal conflict, mediation, negotiations*

which includes negotiations, mediation, arbitration procedures, and judicial procedures.

1. INTRODUCTION

In the period of complex social relations and rapid development of new technologies, the number of disputes in the field of economic activity increases. As a result, Russian courts are overloaded with cases. At the same time, entrepreneurs and the population often do not know about the alternative methods of legal dispute resolution or feel suspicious about them. The transformation of legal awareness can contribute to a change in the perception of legal reality and to a more effective application of legal means.

Understanding and perception of law, and behavior in the field of law can radically change (transform) in subjects under the impact of political, historical, economic factors and professional experience, and tasks set for the future. The modern world is changing, and legal awareness is also transforming when facing various threats and possible risks. Legal awareness is defined as a phenomenon of legal reality (with a certain set of rational-ideological, psychological, behavioral elements).

According to available scientific literature, in Russian legal practice, changes in legal awareness are negative and imply its deformation. In Russia and abroad, the judiciary employs a different set of methods for resolving legal conflicts in everyday business activities.

In Russia, the court remains the main authority to settle legal disputes. A wider spectrum of methods is used abroad,

2. METHODOLOGICAL AND EMPIRICAL BASIS

The study of legal awareness and the possibilities of its transformation by extrajudicial methods of conflict resolution is impossible without the use of the dialectical method, which is of priority in interdisciplinary research. The sociological method (expert assessments, empirical experience, analysis of legal documents) helped the authors identify the relationship between external and internal factors, and provided the opportunity to assess the feasibility of alternative methods of dispute resolution. The study presents the results of the all-Russian sociological survey conducted by the authors [1]. The generalization of the revealed patterns and problems considered in the monographic works by the authors [2] is continued in the study.

The formal-logical method was used to define the concept and features of the category 'transformation of legal awareness.'

The study employed a comparative legal method to analyze domestic and foreign practice, and legal doctrine on the example of France, Switzerland, the Netherlands, the Republic of Lithuania, Croatia, Russia, China, the United States, etc.

3. CONCEPT, BACKGROUND AND CONTENT OF THE TRANSFORMATION OF LEGAL AWARENESS

Transformation can be understood as a cardinal, significant change in the structural elements of legal awareness, which can be both positive (improvement of the qualitative state of the structural elements of legal awareness) and negative (deformation of legal awareness). The following can be distinguished as features of the transformation of legal awareness:

- the concept of law is changing, a new paradigm is being formed, a new vision of legal reality;
- the perception of law, its assessment is changing: what could have seemed wrong, unethical, and unlawful before is now considered the norm (and vice versa);
- new models of behavior in the field of law, other legal attitudes (habits) positively colored by society, either neutral or negative;
- dependence on specific historical circumstances, political regime, economic development of the state, etc. etc. ;
- dynamics in the transformation of legal awareness, which does not occur once but gradually and repeatedly over a certain period of time;
- relationship with other multidirectional personality changes, dependence on mental characteristics, can be conscious and unconscious with internal contradictions;
- a simple method of adapting an individual to an unfavorable environment;
- need for a special measurement technique;
- impact on the legal system of the state.

In the modern world, subjects systematically process huge amounts of information that come from various sources and represent unstructured data. Human awareness, based on natural language and subjective logic, aims to differentiate these sources into reliable and unreliable, useful and useless, as well as to structure and transform them into a more comprehensible form [3]. In the process of such mental activity, legal information may be distorted, which poses risks of misunderstanding and ineffective legal activity.

The development of legal awareness, which presupposes knowledge of constitutional rights and obligations by every individual, will accelerate the formation of a developed civil society that corresponds with the state governed by the rule of law.

Foreign scientific experiments conducted on representatives of the animal world have shown: if a behavioral decision is made on the basis of unreliable knowledge, then habits and character are of great importance in making a decision. In a similar way, for humans, as biosocial beings, reliable information is crucial for their evolution and adaptability to the environment [4]. Information passes through the personal assessment system to form a certain attitude that under the impact of various factors may be inadequate.

Conscientious behavior should be formed during the educational process in schools and universities. Academic honesty is a fundamental value, but even foreign surveys

show that students are quite tolerant of dishonesty and admit professional success without these qualities (for example, the Republic of Lithuania) [5]. It is important to popularize the idea of interaction based on respect for the dignity of another person, starting with the general education school [6].

Behavior based on habits, traditions, customs allows subjects to reduce the time spent on learning the surrounding legal reality, simplifies the choice of a behavior option from possible alternatives, and makes decisions made more predictable.

The state is interested in spreading positive habits, traditions, customs (for example, following the rules of the road, paying taxes). However, in practice, subjects may have multidirectional habits due to personal values and goals (for example, delay in litigation in the case of obvious loss). Modeling habits, traditions, customs is a way of the subject adaptation to the current law order, while their impact may be different for various strategies of behavior. Legal science has the potential to forecast the transformation of legal awareness of society according to certain features (indicators), which include: the amount of time to solve a legal problem; the percentage of citizens who positively/negatively assess the result of commercial or public service; the qualification of executors of law; increasing or decreasing number of complaints, etc.

Modern morality is part of the conviction that the protection of natural human rights is possible not only through judicial procedures but also through the use of alternative (extrajudicial) methods. In addition, the law should not only resolve a legal conflict but also contribute to the development of legal relations.

4. LEGAL CONFLICT

In the process of legal awareness transformation, the concept of a legal conflict can change. In domestic and foreign science, a legal conflict is understood in different ways. In a broad sense, it is defined as: 1) opposition between subjects; 2) contradiction between the norms, procedures, regulations (synonym for the term 'collision'), 3) defects in legal activity. In a narrow sense, it is defined only as the opposition between subjects with different interests.

Typology occupies an important place in the foundation of legal science. Similar to any other science, it is based on assumptions about the need to streamline the phenomena of the surrounding reality, rational perception of the emerging order by subjects, and substantiation of the current state of knowledge. Legal conflicts can be classified on a variety of grounds.

Legal conflicts can be distinguished by subjects – intrapersonal, interpersonal, group; by emotional coloring – neutral, colored; by industry – in the field of civil, criminal, family, etc. rights. It is also possible to distinguish the stages of a legal conflict: pre-conflict, conflict, post-conflict.

In domestic science, the legal conflict is studied less intensively, less attention is paid to it in the framework of school and university education. Among foreign scientists,

K. Yu. Boulding, A. W. Gouldner, R. G. Dahrendorf, L. Coser, D. E. Mayo, R. K. Merton, and T. Parsons made a significant contribution to the development of conflict management [7–13].

The more developed the legal awareness, the earlier it is possible to recognize the growing legal conflict and choose the method for its resolution. Scientists recognize that human behavior can change depending on the benefit and how he personal evaluation of the counterparty [14].

5. ALTERNATIVE METHODS OF CONFLICT RESOLUTION AND LEGAL AWARENESS

As previously noted, alternative methods of legal conflict resolution are not common in Russia. In Switzerland, by contrast, each trial must be preceded by conciliation procedures according to the unified Swiss Code of Civil Procedure. [15]

The list of such methods and their perception in legal awareness of citizens differ in different countries. In Russia, the following alternative methods of legal conflict resolution can be distinguished: negotiations, claims procedure (pre-trial), mediation (out-of-court procedure), arbitration procedures.

In Russian universities, schools, as part of corporate advanced legal training, the art of negotiation is not sufficiently taught. Meanwhile, training in negotiation can change the perception of a legal conflict and the possibilities of its elimination, and transform legal awareness towards its qualitative improvement.

The educational process in Russia is more focused on studying the texts of normative acts, the ability to apply the rule of law in practice, rather than on mastering the procedures and techniques in the field of psychology and conflictology that ensure negotiations.

5.1. Negotiations

Scientists still argue about how many solution alternatives should be proposed during negotiations – an excessive number of options can complicate and lengthen negotiations [16], and insufficient number of solutions may not have an option suitable for both parties. The duration and quality of negotiations depend on the level of legal awareness. In foreign literature, the concept of the best and worst alternative is used [17, 18].

Three key indicators affect negotiations: interests and priorities of the participants, social interaction strategy and results [19]. Transformation of legal awareness in the educational process can change the motivation of behavior, the culture of negotiation, and the awareness of a clear desired legal result (new rights and obligations).

5.2. Claim procedure

In Russia, the claim procedure is not always distinguished as an independent form of an alternative method of legal dispute resolution. Unlike negotiations, which are free in form and duration, the claim procedure is regulated as a mandatory procedure in cases specified by law. This procedure must be carried out before the trial and officially recorded.

Foreign authors compare the effectiveness of the mandatory claims procedure and free negotiations. On the example of France, the study has shown that the former, as a coercive measure, is more effective and results in more egalitarian agreements [20]. It was recommended to take this fact into account when developing state policy and expand the scope of legal relations in which the parties are obliged to agree.

The study revealed interesting patterns: coercion can put the preferred side at a disadvantage; women are less favored than men in a privileged bargaining position. At the same time, any compulsion in legal awareness is perceived as an undesirable event.

5.3. Mediation

Mediation in Russian legislation is defined as a way of dispute resolution assisted by a mediator on the basis of a voluntary consent of the parties in order to achieve a mutually acceptable solution [21]. In Russia, this method is not common, citizens either do not know about this method of legal dispute resolution or feel suspicious about it. A wary attitude towards mediation can be observed in the United States, since the legal responsibility of mediators is poorly defined [22].

As noted by American scientists, it is the parties involved in mediation who are responsible for making the final decision in resolving the conflict, since they act as consumers to choose the option of behavior developed by the mediator. At the same time, it is important to avoid deformation of legal awareness of mediators themselves, so that the mediators do not impose their attitude to the problem but allow the parties to find the solution [23].

5.4. Arbitration court (arbitration)

The system of state courts does not include arbitration court (arbitration). Russia exhibits an insufficient level of confidence in this method of legal conflict resolution due to the impossibility to contest it in practice. On the example of maritime disputes that took place in 2008–2018, scientists of Croatia argue that arbitration is a faster, more creative and cost-effective way of dispute resolution than conventional litigation [24].

5.5. *Mixed forms*

In foreign literature (the Netherlands, China), mixed forms of legal conflict resolution are distinguished, for example, a judge mediator. However, the perception of this method in legal awareness of the population is ambiguous.

The surveyed Chinese citizens tend to be less positive about the role of judges in mediation and litigation than the Dutch. In contrast to Dutch mediation, Chinese mediation is more flexible and does not follow a specific model. Article 94 of the Chinese Civil Procedure Law states that judges have the right to mediate. In China, no specific regulation defines what judges can or cannot do in mediation [25].

6. CONCLUSION

Public confidence and the legitimacy of conciliation procedures, as well as a positive transformation of legal awareness, are the key factors for successful resolution of legal conflicts by alternative methods. A qualitative change in the structural elements of legal awareness can be achieved in the educational process in schools, universities, and as part of extended education.

Legal experience is different in different countries: effective arbitration in Croatia is poorly applicable in Russia; confidence in mixed forms in the Netherlands is higher than in China, etc. The alternative methods of legal conflict resolution enable flexible adaptation of the structure of various educational programs, which is dictated by the need to effectively solve complex problems under changing conditions.

REFERENCES

- [1] V.S. Bredneva, Deformation of professional legal awareness of lawyers and technologies of its overcoming: monograph, Sakhalin State University, Yuzhno-Sahalinsk, 2019, 196 p.
- [2] S.E. Libanova, Democracy: monograph, Kurgan State University, Kurgan, 2014, 318 p.
- [3] S. Arunkumar, M. Sensoy, M. Srivatsa, M. Rajarajan, Reasoning with streamed uncertain information from unreliable sources, *Expert Systems with Applications* 42(2) (2015) 8381–8392.
- [4] A.J. Carter, H.H. Marshall, R. Heinsohn, R.G. Cowlshaw, Personality predicts decision making only when information is unreliable, *Animal Behaviour* 86(3) (2013) 633–639.
- [5] J. Bieliauskaitė, On the way to professionalism – the promotion of law students' academic integrity, *Procedia – Social and Behavioral Sciences* 116 (2014) 4229–4234. doi.org/10.1016/j.sbspro.2014.01.922
- [6] J. Bieliauskaite, V. Slapkauskas, The content of the education of legal awareness in a comprehensive school: Lithuania's experience, *Procedia – Social and Behavioral Sciences* 197 (2015) 148–155. doi.org/10.1016/j.sbspro.2015.07.071
- [7] T. Parsons, Some considerations on the theory of social change, *Rural Sociology*, September (1961) 219–239.
- [8] A.W. Gouldner, Romanticism and classicism: deep structures in social science, *Diogenes* 21(82) (1973) 88–107. doi.org/10.1177/039219217302108205
- [9] M.A. Griffin, F.J. Landy, L. Mayocchi, Australian influences on Elton Mayo: the construct of revery in industrial society, *History of Psychology* 5(4) (2002) 356–375. dx.doi.org/10.1037/1093-4510.5.4.356
- [10] R.K. Merton, Social structure and anomie, *American Sociological Review* 3(5) (1938) 672–682. Retrieved from: faculty.washington.edu/matsueda/courses/517/Readings/Merton%201938.pdf.
- [11] L.A. Coser, Social conflict and the theory of social change, *The British Journal of Sociology* 8(3) (1957) 197–207.
- [12] R. Dahrendorf, Toward a theory of social conflict, *The Journal of Conflict Resolution* 2(2) (1958) 170–183. Retrieved from: csun.edu/~snk1966/Ralph%20Dahrendorf%20Toward%20a%20Theory%20of%20Social%20Conflict.pdf
- [13] K.E. Boulding, National images and international systems, *Journal of Conflict Resolution* 3(2) (1959) 120–131. doi.org/10.1177/002200275900300204
- [14] R.H. Kilmann, K.W. Thomas, Developing a Forced-Choice Measure of conflict-handling behavior: the MODE Instrument, *Educational and Psychological Measurement* 37(2) (1977) 309–325. Retrieved from: kilmanndiagnostics.com/developing-forced-choice-measure-conflict-handling-behavior-mode-instrument.
- [15] C. Schwenkel, Confidence in alternative dispute resolution: experience from Switzerland, *International Journal for Court Administration* 6(1) (2014) Retrieved from: ssrn.com/abstract=2894157
- [16] M. Schaerer, D.D. Loschelder, R.I. Swaab, Bargaining zone distortion in negotiations: the elusive power of multiple alternatives, *Organizational Behavior and Human Decision Processes* 137 (2016) 156–171. doi.org/10.1016/j.obhdp.2016.09.001

- [17] R.L. Pinkley, D.E. Conlon, J.E. Sawyer, D.J. Slesman, D. Vandewalle, M. Kuenzi, The power of phantom alternatives in negotiation: how what could be haunts what is, *Organizational Behavior and Human Decision Processes* 151 (2019) 34–48. doi.org/10.1016/j.obhdp.2018.12.008
- [18] F. Andrade, P. Novais, D. Carneiro, J. Zeleznikow, J. Neves, Using BATNAs and WATNAs in online dispute resolution, *New Frontiers in Artificial Intelligence* 6284 (2010) 5–18. DOI: 10.1007/978-3-642-14888-0_2
- [19] J. Brett, L. Thompson, Negotiation, *organizational behavior and human decision processes* 136 (2016) 68–79. doi.org/10.1016/j.obhdp.2016.06.003
- [20] E.-A. Lambert, E. Peterle, J.-C. Tisserand, Pretrial settlement and coercion: an experiment, *International Review of Law and Economics* 60 (2019) DOI: <https://doi.org/10.1016/j.irl.2019.06.002>
- [21] Federal Law No. 193-FZ of July 27, 2010 (as amended on July 26, 2019) On an alternative procedure of dispute resolution with the participation of a mediator (mediation procedure). Reference legal system Consultant Plus. Retrieved from: consultant.ru/document/cons_doc_LAW_103038/c5051782233acca771e9adb35b47d3fb82c9ff1c/
- [22] M. L. Moffitt, The four ways to assure mediator quality (and why none of them work), April 7, 2008. DOI: dx.doi.org/10.2139/ssrn.1117765
- [23] N. Welsh, The thinning vision of self-determination in court-connected mediation: the inevitable price of institutionalization? *Harvard Negotiation Law Review* 6, Spring (2001) Retrieved from: <https://ssrn.com/abstract=1724967>
- [24] V. Viducic, D. Pivcevic, Quantification of variables of the information model for resolving maritime disputes through arbitration, *Procedia Engineering* 69 (2014) 241–246. doi.org/10.1016/j.proeng.2014.02.228
- [25] Y. Li, R. Verschoof, Mediating judges in China and the Netherlands: an empirical comparison, *International Journal for Court Administration*, 9(1) December (2017) 21–32. doi.org/10.18352/ijca.235