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## **Problems of defining legal reality in philosophy and legal science**

The article considers the problems of determining the legal reality category in the law philosophy. The aim of the research is to generalize scientific knowledge and theories that reveal the category of legal reality. With the help of general and special research methods, analysis and generalization of scientific material is carried out, consideration of various approaches to legal reality in order to identify the main features and constituent elements of this category. The points of view and scientific positions of philosophers and legal theorists in the field of researching the legal reality problems, are analyzed and compared. The categories of «legal reality», «legal life», «legal system» as phenomena of social reality interacting with each other and constituting the broadest philosophical and legal category of «legal reality» are considered. The result of the research is the consideration of legal reality as the most general category, which includes the entire spectrum of legal phenomena occurring in social life. The legal reality research is considered to be the basic requirement of modern humanitarian science, which aims to ensure the most complete the human personality development in harmony with public interests and needs, the most important of which are mediated through law and legislation. The main determining the right reality problems are highlighted, which are due to a wide range of the phenomenon under consideration, a large constituent elements number, a different law understanding and the elements included in this category. Legal reality is a complex category, it is the real existence of legal matter as a type of social reality, which is characterized by universal existence forms of matter: space, time, movement.

*Keywords:* legal reality, social reality, legal life, existence of law, legal system, institutionalization, law sphere, problems of definition.

### *Introduction*

In modern conditions there are different schools and scientific directions in philosophy and legal science, which are trying to formulate the most general (generalizing) legal reality definition, which is designed to cover all legal life aspects. Accordingly, the concept of legal reality includes all the phenomena of legal reality that can have both subjective properties and be objective categories and phenomena. The phenomena included in the category of legal reality are considered within the framework of various scientific approaches, theories and directions of philosophical, sociological and legal research, while the category of «legal reality» is recognized to show the main trends in the development and improvement of basic social and legal institutions, showing the social and legal relationships complexity in modern society. Being the broadest category, legal reality includes not only positive, but also negative aspects of legal relations (crimes and misconduct), positive manifestations of lawful behavior (socially active behavior), as well as neutral behavior in society, which is expressed through the categories of «inaction» or «conformist behavior», «lawful behavior». Legal reality covers all social life aspects, including the historical aspect. Modernity is understood not only as a chronological concept, but also as an ideological one, that is, something that opposes the worldview of traditional society.

Legal reality covers the categories of things and what should be in the field of law, legal policy, legal anthropology, legal culture and other areas designed to reveal the trends in the improvement of legal institutions, legal categories, legal culture and other elements of legal reality.

Legal reality as a complex philosophical, sociological, legal category is designed to show and unite all the variety of legal relationships and legal phenomena in modern science. It should be noted that the materialistic understanding of legal reality combines objective and subjective reality, while in the cognizing legal reality process, it is necessary to link the ideal and the material together. All human life is associated with the rights and obligations implementation, which are determined by a variety of social and legal ties that generate abstract and concrete legal ties that are intertwined with abstract and concrete social relations that determine the existence and functioning of the individual as a social and legal relations subject. All these relations are simultaneously objective and subjective, since they exist in reality, as legal relations, and on the other

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hand, in the public consciousness and find their expression in human activities. Thus, the law (legal concepts and categories) awareness makes it real and allows us to state that it is legal consciousness that is a prerequisite and basic condition for the existence of law as an objective reality. The legal reality is closely related to the state. This is due to the fact that it is the state that legitimizes legal relations (it legitimizes previously existing ones, or establish new legal relations by creating legal norms and enshrining them in legislation), making them binding. At the same time, it should be noted that the formation of law as a phenomenon through the establishment of generally binding behavior rules can be carried out in addition to the state in the mandatory customs and traditions form, which, from the formal point of view, does not allow attributing these relations to legal relations. On the other hand, binding rules of conduct can be found in the legal realm as legitimate interests, business customs and other legal categories that include the category of «legal life». Currently, legal institutions are being modernized by the state, which is trying to analyze and generalize the modern society requirement, taking into account the assumed and projected social needs. At the same time, it should be noted that this process is not proceeding as consistently and scientifically as modern society expects. For example, T. Luckman and P. Berger, developing the topic of legal institutionalization, note that «...institutionalization is at the heart of habitualization, that is, the process of creating stable ties in society, which, in the course of constant, repeated repetition, become obligatory for everyone in general, and a specific individual, in particular». It should be noted that the socio-legal institution, formed as a mandatory standard of behavior and established in the legal culture, begins to perform the function of not only legal, but also a social regulator of social relations, including the function of controlling the behavior of a particular individual. At the same time, the obligation of this institution is ensured not only through legal sanctions, but also by moral and ethical impact measures [1; 237]. These norms form the algorithm of lawful behavior, deviation from which presupposes legal responsibility measures as a social responsibility type. The institutionalization level of law depends on the historical social relations development, legal culture and the characteristics of the legal institutions of various legal families. Developing from the initial forms of law (taboos and simple prohibitions) and reaching advanced forms (rights and obligations enshrined in legislation), legal reality reflects the level of social development (including the legal, economic, political sphere and other aspects of social reality). The category of legal reality includes the most significant and important social relations for society, which are the results of institutionalization. Institutionalization in the law field is considered in various aspects, while some authors reduce legal institutionalization to the legal education process [2; 44], despite the fact that the processes of institutionalization also take place in the field of legal relations, legal culture and philosophy of law. The formation of new social and legal institutions, the formulation of new, conceptual directions in the sphere of the existence of law necessitates a philosophical understanding of the formation of legal reality in modern conditions.

#### *Methodology and research methods*

During the research general scientific and special research methods were used. The dialectical method of cognition is used as the main method, induction and deduction, analysis and synthesis, the systemic method, the structural-functional method, and the anthropological method are used as general scientific methods. In developing the conclusions particular methods of cognition of legal phenomena were used, such as the comparative legal method, formal legal and other scientific knowledge methods.

During the research of legal reality, the method of historicism was applied, through which the historical patterns of the law development as a social phenomenon were identified. By means of comparative analysis and synthesis of the main and secondary features of the main social and legal categories, the philosophical, legal concepts correlation and categories by their volume has been revealed. Through induction and deduction, the essential purpose of the broadest legal categories of «right system», «system of law», «legal culture», «legal life» have been revealed. With the help of the systemic and structural-functional method, the categories of «social reality», «legal reality», «legal life» are considered. Through the comparative legal method and the formal legal method, the interaction and all elements of systemic category «legal reality» relationship in Kazakhstan are revealed, taking into account the understanding of the broader «legal reality» category of the modern world, which includes legal families, international law, legal policy and philosophy rights.

#### *Results*

Legal reality as the broadest legal category, which includes all legal phenomena, essentially covers all social life aspects. Since the law concept is quite broad in nature and is defined by different authors in differ-

ent ways, while highlighting different signs, then the legal reality concept can be very broad. The social development level predetermines the development degree of legal relations, which can penetrate into all public life spheres. This level reflects the results of the development the state, law, legal relations, legal consciousness, legal culture and other elements from which legal reality is formed. The legal reality reflection is the manifestation of objects in the material world, and ideal objects (ideas, theories, scientific positions and other theoretical and practical research results) that affect the behavior of an individual in society. The legal reality understanding is designed to reflect the entire legal phenomena set at the present time, while all phenomena in one way or another related to law can be attributed to legal phenomena. This understanding is offered by Y.A. Zhilina, who emphasizes that «legal reality is the law existence in the material aspect and in the ideal aspect. This being includes all existing legal phenomena». As this author notes, «... from the problem of defining legal reality, the question of its structure and its correlation with other philosophical and legal concepts and categories, such as legal ideals, legal opportunities, legal consciousness» [3; 640] and other legal phenomena covering all legal life aspects. It should be noted that all these categories are included in the concept of legal reality, since legal reality is the broadest category designed to characterize social reality in the legal sphere. Professor S.L. Slobodnyuk notes: «... the legal reality understanding is conditioned by the type of legal understanding that this or that author adheres to. At the same time, legal reality is characterized, as a rule, either from a formally defined side, or in a certain metaphysical aspect» [4]. This is due to the fact that the understanding of law in different historical epochs, as well as at the present time, in different societies is different. For example, law in the religious and traditional law family and law in the Romano-Germanic system have not only different forms of expression, but also the very idea of law as a social value and the main legal social relations regulator.

#### *Discussion*

The legal thinking peculiarities in various legal families predetermine the peculiarities of understanding legal reality. For example, O.G. Danilyan considers the legal reality category in two senses: «... A) In a broad sense, as a legal phenomena set of society, B) In a narrow sense, understanding by legal reality either legal norms, or legal relations, or legal emotions» [5; 215]. This is partly true, since, indeed, the law life can be viewed in the applied aspect as a regulator of social relations and in the theoretical aspect as a historical and cultural phenomenon reflecting the values and goals of a concrete historical society. In his research, O.V. Kret notes that: «... legal reality is an autonomous, normative, imperative, formally defined reflection of social reality, which unites all currently existing legal phenomena» [6; 9]. At the same time, legal reality in a broad sense is adequate to social reality, since all social relations can be viewed through the abstract prism of legal relations linking all legal relations subjects.

The understanding legal reality issue is determined by the goals and its corresponding concrete historical society principles, which should be considered as an obligatory relationship between the development level of social and legal relations. S.I. Maksimov considers legal reality through the prism of legal relations as: «... a multilevel legal phenomena system», «... an autonomous metasocial reality, the semantic expression of which is mutual obligation in the subject's interaction» [7; 45]. This approach characterizes what is due in law, as a legal standard of behavior in modern society. At the same time, many authors, proceeding from the integration approach, offer a synthesized understanding of legal reality. For example, G.I. Ikonnikova defines the legal reality essence by highlighting three main approaches: «A) the phenomenological approach; B) elemental approach; C) a systematic approach. The first approach allows us to consider «legal reality» as «... the society interaction, the systemic world and everyday reality» [8; 120]. Other approaches are designed to show the consistency of «legal reality» by generalizing all the constituent elements, and analyzing their characteristics separately. A.K. Rozhkova, proceeding from the general phenomenological traditions, focuses on the perception of the law existence as being, that is, a phenomenon that does not depend on the will and the subject desires. In her opinion, «... reality can be objective or subjective, while the most important thing is that the legal relations subject cannot ignore this (legal) reality, he takes it for granted, that is, as an obvious phenomenon that exists a priori» [9]. Another approach to understanding legal reality emphasizes this category relationship of with public consciousness and legal society culture, considering legal reality as a superstructure, which includes legal consciousness, legal relations and other factors derived from the free will of people [10; 122]. This approach, which is characterized as positivist, was the main one in Soviet legal science, today it is actually rejected by the scientific community, since it largely deprives the legal reality of its content, ignoring its ideal side [3; 640]. All these approaches reflect a philosophical legal reality understanding, which exists as an independent and separate entity from other phenomena, which reflects law in its

relationship with the state and other social phenomena of a legal nature (that is, one way or another involved in law).

On the other hand, there is a large number of legal scholars who consider legal reality from the law standpoint as a phenomenon that has a regulatory impact on social relations, which is necessary for modern society as the main interests and needs regulator of the various subjects of legal relations. Often, legal scholars include in the concept of legal system an unreasonably large number of elements related to law, «identifying legal reality» and «legal system». For example, N.I. Matuzov, who adheres to this approach, defines «... the legal system as a category that reflects all legal phenomena and all legal reality existing in society» [11; 19]. A.V. Malko claims that «... the legal system includes all legal phenomena and, accordingly, expresses a comprehensive assessment of the legal sphere of life of a particular society» [12; 244], the same approach is followed by S.V. Polenina [13; 4]. One cannot agree with such an approach to the legal reality consideration, since the inclusion of all legal phenomena in the concept of «legal system» unjustifiably expands this category. When considering the relationship between the categories of «legal reality» and «legal system», it should be noted that legal reality is broader than legal system. Legal reality includes the legal system, but besides this, other elements reflecting the existence of law are also included. According to E.V. Popov, «... the authors desire in a cases number to include in the legal system the maximum possible heterogeneous elements number, leads to the loss of the scientific and practical value legal system concept, as well as the erasure of distinctions between the categories ‘legal system’ and ‘legal reality’» [14; 69]. We must agree with the opinion of T.V. Kukharuk, who notes that «the legal system of society exists in legal reality (‘legal reality’, ‘legal life’), the legal system does not cover in general all legal phenomena that are characteristic of a given society» [15; 69]. The legal system more characterizes the law system in conjunction with the legislation system, which is considered as content and form, while an important role is given to the implementing legal norms practice. Professor O.F. Skakun defines the concept of the legal system as: «... an interrelated and coordinated complex of means that are designed to regulate social relations, as well as a legal phenomena set that have arisen as a legal regulation result. These are: legal norms; legal principles; legal consciousness; legal relations; legal institutions; legal technique; legal culture; the legality and its deformation state; the rule of law and other phenomena considered as elements of the legal system» [16; 87]. All these elements are considered through the prism of the effectiveness of the regulatory impact of legal norms on public relations. As V.A. Karpichkov correctly notes: «In the legal literature, such categories as ‘legal system’ and ‘legal reality’ are often identified. However, when studying the legal system, researchers often focus on such fundamental legal reality elements, such as objective law, legal ideology and legal practice. At the same time, negative legal phenomena, offenses, do not belong to the elements of the legal system, but are included in the legal reality». We can agree with this author’s opinion, who argues that legal reality is a complex phenomenon of social reality, which is a unity of the subjective (internal) and objective (external) aspects of the law existence, while the legal system determines only the objective (external) aspect of the legal life of society [17]. In our opinion, the external aspect is reflected in legislation and law enforcement practice, while the internal aspect shows the subjective (subjective) perception of law and its reflection in public and individual consciousness. At the same time, the understanding of law as a value (axiological) category often conflicts with the perception of law as the main regulator of social relations. Considering various approaches to the institutionalization of law and the formation of legal reality, Y.A. Zhilina notes «the integration of subjective and objective, material and spiritual processes. The institutionalization of law makes it possible to single out two sides of legal reality, the border between which is the opposition ‘material-spiritual’, ‘objective-subjective’, ‘primary-secondary’. The social subject, being also the subject of legal reality, considers the norm, the law to be the ‘primary’ legal reality, and considers their implementation in social forms as ‘secondary’ reality. However, this is an illusion. ‘Primary’ reality does not arise and cannot be understood from itself or from the ‘human spirit’; in fact, it is ‘secondary’ and is a reflection and fixation of material relations» [3; 642]. O.T. Abbasov, considering the diversity of views on the concept of legal system, and carrying out a comparative analysis of various legal categories, comes to the conclusion that «... legal reality is a law category, designed to reflect the completeness of the world of legal phenomena, to present the law existence in a ‘pure’ form in a specific historical time and space. Legal reality characterizes the real existence of legal matter, the existing reality of all legal phenomena existing in space and time, both of a material and an ideal order, since both thought and matter are real (that is, they exist). That is, legal reality is the totality of all legal phenomena in a specific period of time and in a specific political and legal space» [18; 121]. Thus, in contrast to the legal system, which includes a fairly large number of legal phenomena that characterize the legal system and the system of legislation in their dynamics of development and implemen-

tation of legal norms, as well as other legal phenomena, legal reality should be considered as the broadest category. Legal reality covers all legal phenomena that exist at the present time, including antisocial manifestations (crimes, offenses), which, as a rule, are not included in the concept of a legal system and are not considered as its characterizing factors. In the modern world the understanding of law depends on which legal family this or that legal system belongs to. It should be noted that, unlike other legal systems, the national system of law of the Republic of Kazakhstan belongs to the Romano-Germanic legal family, which determines a certain type of legal thinking, due to the reception of Roman law, codification and sector division of law.

### Conclusions

The scientific category «legal reality» reflects the essential life of law (its being) at the present time, taking into account the legal previous historical development experience in a concrete historical period in a concrete historical society. The category of «legal reality» includes essential law aspects, its systemic relationships, ideal and material legal phenomena aspects, subjective and objective essence, dynamic and static characteristics of law, as well as other aspects of the existence of legal phenomena. Right reality reflects one of the forms of motion of matter: a social form, which is inherent in the universal properties of matter: eternal motion and change, self-development, transformation of one state of matter into another, determinism, causality, reflection and its highest form — thinking. Accordingly, legal reality, being a part of a broader category of social reality, reflects the essence of social everyday life associated with law — legal everyday life. At the same time, the legal life of the whole society, various social groups, as well as individual individuals is included in the category of legal everyday life. Accordingly, the basic categories of legal reality are the law idea, legal system, legal reality, legal everyday life, legal matter, legal life of society and also other legal phenomena that characterize the existence of law. Based on the conducted research, it is possible to identify the main problems of determining the legal reality:

- A large number of different points of view based on various criteria and fundamental phenomenon under research principles, which allows us to characterize the «legal reality» category as a scientific category in development.
- The consideration of legal reality as the broadest philosophical and legal category, which includes all legal phenomena that require systematization and generalization.
- The selection by the wide range authors of phenomena related to legal phenomena, with a different law understanding as a legal, social, philosophical, economic phenomenon.
- The legal reality consideration as part of a broader category of social reality, consideration, on the other hand, legal reality as a legal form of social reality existence.
- Different understanding of law in countries belonging to different legal systems, which in turn belong to different legal families.

Legal reality is a complex category that includes all legal phenomena, it is the currently existing real existence of legal matter as an objective, social reality, which is characterized by universal forms of the existence of matter: space, time, movement. At the same time, there are various approaches to the definition of legal reality, depending on the understanding of law, the range of phenomena included in this category and other factors that determine this phenomenon in philosophy.

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В.А. Турлаев, Б.И. Карипбаев

### Философия мен заң ғылымдарындағы құқықтық шындықты анықтау мәселелері

Мақалада құқық философиясындағы құқықтық шындық санатын анықтау мәселелері қарастырылды. Зерттеудің мақсаты — құқықтық шындық санатын ашатын ғылыми білім мен теорияларды жалпылау болып табылады. Зерттеудің жалпы және арнайы әдістерінің көмегімен ғылыми материалды талдау және жалпылау, осы санаттың негізгі белгілері мен құрамдас элементтерін анықтау үшін құқықтық шындықты әртүрлі тәсілдермен қарастыру жүзеге асырылды. Философ-ғалымдар мен заңгер-теоретиктердің құқықтық шындық мәселелерін зерттеу саласындағы көзқарастары мен ғылыми ұстанымдары талқыланды және салыстырылды. «Құқықтық шындық», «құқықтық өмір», «құқықтық жүйе» санаттары бір-бірімен өзара әрекеттесетін және «құқықтық шындықтың» анағұрлым кең философиялық-құқықтық санатын құрайтын әлеуметтік шындық құбылыстары ретінде сараланған. Зерттеудің нәтижесі құқықтық шындықты әлеуметтік өмірде кездесетін құқықтық құбылыстардың барлық спектрін қамтитын ең жалпылама санат ретінде қарастыру болып табылады. Құқықтық шындықты зерттеу қазіргі заманғы гуманитарлық ғылымның негізгі қажеттілігі ретінде зерттелген, ол адамның жеке басының неғұрлым толық дамуын қоғамдық мүдделер мен қажеттіліктерге сәйкес қамтамасыз етуге бағытталған, олардың ішіндегі ең маңыздылары құқық пен заңнама арқылы делдал болады. Кең спектрлі қарастырылып отырған құбылысқа, көптеген құрамдас элементтерге, осы санатқа кіретін құқықтар мен элементтерді әртүрлі түсінуге байланысты, құқықтық шындықты анықтаудың негізгі мәселелері ерекшеленеді. Құқықтық шындық бұл құқықтық материя болмысы әлеуметтік шындықтың түрі ретінде, материя болмысының жалпылама нысаны: кеңістік, уақыт, қозғалыс ретінде сипатталатын кешенді санаты.

*Кілт сөздер:* құқықтық шындық, әлеуметтік шындық, құқықтық өмір, құқықтық болмыс, құқықтық жүйе, институттандыру, құқық саласы, айқындау мәселелері, кешенді санат.

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### Проблемы определения правовой реальности в философии и юридической науке

В статье рассмотрены проблемы определения категории «правовая реальность» в философии права. Целью исследования является обобщение научных знаний и теорий, раскрывающих категорию «правовая реальность». При помощи общих и специальных методов исследования осуществлены анализ и обобщение научного материала, рассмотрение различных подходов к правовой реальности с целью выявления основных признаков и составляющих элементов этой категории. Проанализированы и сравнены точки зрения и научные положения ученых-философов и теоретиков-правоведов в сфере исследования проблем правовой реальности. Авторами изучены категории «правовая реальность», «пра-

вовая жизнь», «правовая система» как явления социальной реальности, взаимодействующие друг с другом и составляющие наиболее широкую философско-правовую категорию «правовая реальность». Результатом исследования явилось рассмотрение правовой реальности как наиболее общей категории, которая включает в себя весь спектр правовых явлений, встречающихся в социальной жизни. Исследование правовой реальности определено в качестве базовой потребности современной гуманитарной науки, имеющей своей целью обеспечить наиболее полное развитие человеческой личности в гармонии с общественными интересами и потребностями, наиболее важные из которых опосредуются посредством права и законодательства. Выделены основные проблемы правовой реальности, которые обусловлены широким спектром рассматриваемого явления, большим количеством составляющих элементов, различным пониманием права и элементов, включаемых в эту категорию. Правовая реальность комплексной категории — это реальное бытие правовой материи как вида социальной реальности, которая характеризуется всеобщими формами бытия материи: пространством, временем, движением.

*Ключевые слова:* правовая реальность, социальная реальность, правовая жизнь, бытие права, правовая система, институализация, сфера права, проблемы определения, комплексная категория.

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