

Influence of Implicit and Visible Legal Cultures on Modernisation of Judicial Systems in European Countries

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The functioning of the judicial system depends not only on the law in force, but also on its interpretation on a daily basis by both court officials and citizens, that is, the level of their legal culture. In some national law systems of European states the general direction of visible and implicit culture coincides. So the national deep level of legal values for the most part coincides with the adopted laws that are implicit and visible cultures are difficult to discern. However, if the national deep level, which corresponds to the deep context of the culture and mentality of a given society, comes into conflict with the visible culture expressed in officially adopted laws and the official state ideology, two cultures are formed: visible culture and implicit culture. Unable to influence the decision of the government, people try in every possible way to avoid direct conflict, but they follow their own rules developed by a narrower group of people, thereby strengthening the influence of implicit legal culture.

Keywords: *Legal culture; European legal culture; Judicial Systems in European Countries.*

Introduction

Judicial systems take longer to reform because of the principles and modes of organisation that have been created over several decades and even centuries. Another barrier to change is the professional bodies possessing greater legitimacy and power, confronting any modifications that might take place in their field.¹ On the one hand, this conservatism can be considered as a barrier to the democratisation and transparency of justice. On the other hand, in the context of when society is being eroded, the courts are also assigned the role of guarantor of effective human rights, meaning that they have to accept a weirdly progressive stance.²

Despite the wide interaction with representatives of different legal cultures and involvement in global world processes, European legal systems mostly remain conservative in the area of dispute resolution. They retain the restrictive framework that is associated with the Western perception of the dispute and the classical Western judicial system, which is especially expressed in its formalisation.

The majority of European judicial systems are not able to take into account the “mirrors of the distant view” and additional efforts are required to build

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¹de Sousa Santos (1995).

²Dias (2016) at 38.

bridges with current societal agendas. In societies where the majority of citizens have the opportunity to express their opinions publicly and openly, such inconsistencies come to light more quickly. However, in societies where the courts are controlled by certain groups of the population or are too dependent on external political influence, the inconsistency of the judicial system with modern realities goes unnoticed. Instead of openly expressing their dissatisfaction with judicial procedures that do not correspond to society's ideas about the law, the population prefers to find roundabout ways to achieve their goals. As a result, the courts lose their authority.

The administration of justice cannot be reformed by altering only procedural law or substantive law. Internal system changes are important.³ The level of legal culture of the bodies responsible for managing the judicatures determines the possibility of changes in behaviour necessary to open up justice to citizens in a less complex and more clear way.⁴ This article analyses the legal culture that is formed by human resources. Complex issues of the judiciary cannot be identified without an analysis of these resources because the legal culture of the population makes significant modifications to the judicial structure.

What is a Legal Culture?

The concept of legal culture has received different interpretations in different national legal schools. This variability gives the prerogative of the flexibility of using this concept for various academic purposes. However, the ambiguity of this concept can also lead to a deformation of the meaning and judgments about legal culture, if the author and the reader understand this concept in different ways.

In European countries the term 'legal culture' became widely used in the 1960s, but the form of scholarship which the term articulated has a long history which can be traced to Montesquieu's idea of the numerous aspects which impact 'the spirit of law'.⁵ Nowadays the term "legal culture" is used widely in European academic literature, but there is no stable definition of this term that would become universally recognised and convenient for use. There are several concepts of legal culture: a) anthropological (everything that is created by man in the legal sphere); b) sociological (the system of legal norms, goals, values, ideals adopted in a given society); c) philosophical (a way of being a person in legal reality).⁶ According to some researchers, when the concept of legal culture is used with deficient concreteness the delineation between all of culture and legal culture is vague, and what is the legal seems indefinite.⁷ Those who use culture as an analytic notion within a more evolved theory of social relationships and those who understand legal culture as a specific, measurable phenomenon have the most intense

³de Sousa Santos (1999).

⁴Dias (2016) at 39.

⁵Weifang (1994) at 37.

⁶Osipov (2012).

⁷Blankenburg (1994a).

discussions and continuous divide.⁸ Presumably, the term "legal culture" does not stop evolving, and its modern concept cannot be exclusively legal and must be comprehended through an interdisciplinary approach. Legal culture is a very significant characteristic intrinsic in the life of society. In essence, it should be conceived as a capacious and high form of legal consciousness.⁹

The importation of the notion of legal culture into legal scholarship conceals unfortunate ambiguity. The meaning of the word "culture" is tenuous per se, theoretically and empirically; adding "legal" to "culture" only aggravates the conceptual embarrassment. Some puzzling stems from interweaving two notions of culture. One meaning names a certain world of beliefs and practices related to a particular group. The second meaning is more analytic than empirical, in regard to the output of social analysis an abstracted system of symbols and notions, both the context and product of social action.¹⁰

A holistic analysis of the legal system as a whole and legal practice is necessary to analyse the legal culture of society. The interaction of written laws and academic thought, traditions of law enforcement and structural features of the system gives a more convex and plausible picture of what is happening, while system and practice are complementary concepts, so one includes the other, although complex practices are neither homogeneous, nor logical, nor fixed, nor autonomous.¹¹

Many lawyers and scholars refer to Friedman's definition of legal culture. Although Friedman never comprehensively theorised the conception of legal culture even as he modified it several times in different texts, he persisted in his understanding that the concept was suitable as a way of grouping a number of phenomena into a more wide and general category.¹² Friedman chose the term "legal culture" to name the subject of this social study of law, the "social forces constantly at work on the law," "those parts of general culture - customs, opinions, ways of doing and thinking that bend social forces toward or away from the law".¹³ As the values, attitudes, ideas, and expectations regarding law per se and legal institutions, which some society or some part of the society holds, legal culture is supposed to contain phenomena that, in essence, are able to be measured.¹⁴ As an analytic term, legal culture emphasised the role of taken-for-granted and tacit actions that operated on and within the interactions of the legal system and its environment. As a descriptive term, it identified a number of related phenomena such as public knowledge of and attitudes toward the legal system as well as patterns of citizen behaviour with respect to the legal system. These included judgments about the law's fairness, legitimacy, and utility.¹⁵

Since legal culture is a versatile and multifaceted phenomenon, there are different points of view on whether the law is part of the legal culture. In contrast

⁸Blankenburg (1994a).

⁹Byalt & Demirov (2018).

¹⁰Silbey (2010).

¹¹Silbey (2010).

¹²Friedman (1997) at 33.

¹³Friedman (1975) at 15.

¹⁴Friedman (1997) at 34.

¹⁵Friedman (1975) at 194.

to Friedman's point of view, Byalt and Demidov claim that law itself is an element of legal culture which is an element of culture in general. Legal culture is reflected in law, legal practice, has become a basic element of civil society, including the legal culture of both the population and state authorities and their officials, and, accordingly, the legal culture of the entire state as a whole.¹⁶

Multilayeredness of legal culture is underlined by Blankenburg. He proposes to understand legal culture neither in terms of codified law nor as the mentality of legal actors. This approach involves studying the interrelationship between such different levels (of analysis) as legal norms/law in the books; the characteristics and behaviour of legal institutions; legal consciousness amongst legal professionals and the public, and their behaviour in creating, using and not using law. On the one hand, he is critical of Lawrence Friedman's influential approach to legal culture which focuses on social attitudes and the way social interests are translated into law because it allegedly gives too much importance to the 'demand' side in shaping the behaviour of legal institutions. However, Blankenburg does not support the idea that law creates its environment by regenerating its own elements,¹⁷ such as understanding law as an autopoietic system as put forward by Teuber and Luhmann. Blankenburg does not have intention to describe how the law 'thinks',¹⁸ but rather is eager to show how the supply of legal institutions moulds the social environment of demand for their services and argues that this conception of legal culture is the most suitable for comparative study. On the other hand, Friedman's notion of legal culture might be more beneficial for researching the legal culture as a phenomenon within a particular society.

Hence, the debate over Friedman's definition continues. Cotterrell emphasises the complication of testing Friedman's concept systematically and proposes to study "legal ideology". He refers to ideas related to the doctrine of law and the use of doctrine by various groups of legal professionals. However, Cotterrell's approach is not more structured or clearer than Friedman's. One of the benefits of Friedman's conception is that it is not confined to 'insiders' or 'outsiders', because both attitudes towards law are valuable.

One of the areas of comprehensive personal development is the presence of a developed legal culture with an appropriate level of legal awareness. Nowadays, the ability of a person not only to know and understand the legislation, but also to act according to its requirements is important. This behaviour of the subject is formed under the influence of special legal education and educational measures, which are the result of communication with other people, and participation in various spheres of activity. In this aspect, it is important that the legislation meets the modern requirements of society, is effective and efficient.¹⁹

In a number of countries of the post-Soviet space, the idea of legal culture as a sphere controlled by the state dominates. Aspects of its change are also considered from these positions and changes in legal culture are considered. According to Ukrainian researchers, legal culture is a system of legal values that

¹⁶Byalt & Demidov (2018) at 19.

¹⁷Blankenburg (1994b).

¹⁸Teubner (1989).

¹⁹Pilgun (2022).

conform the level of legal progress reached in society and demonstrate in a legal form the state of individual freedom, and other social values. It shows the level of evolution of the legal system of law, legislation, legal science as well as legal consciousness in society. Moreover, legal culture also encompasses the unity of all legal values which exist in the legal field. One of the important features of civil society and the rule of law is a high level of legal culture of society, which is based on the principles of legality, respect for fundamental human rights and freedoms. Therefore, legal culture and legal consciousness are closely interconnected.²⁰

Legal culture reflects both legal practice and legal science. The level of evolution of legal culture ascertains conscious support of people. That is why for all states the issue of forming the legal culture of the individual and society through the implementation of the functions of law is considered a strategic task of a state.²¹ The legal culture guarantees conscious support of the state from the population. Thus, states often look for ways to influence legal culture. However, the concept of "legal culture" has many planes and shades that include the culture of the operation of the law itself, compliance with the legal standards of humanism, the rule of law, internal traditions and customs.²²

There is an issue of agreeing on a provisional definition that is as broad as possible that can unite social science specialists around research issues. Some authors prefer "legal cultures" in the plural and not in the singular to better reflect their relativity in time and space revealed by the plurality and extreme diversity of legal cultures in the world in general. Secondly, legal culture can be given a broader meaning of legal consciousness, which can be both widespread and academic, determining the place and role of law and the legal system in a given society. Understood in this way, legal culture is inseparable from the legal traditions that develop within the different legal families.²³

Legal culture is a kind of language for conceiving both legal structures and processes as well as the behaviour of the subjects of the legal system. For giving a definition of "legal culture" it is necessary to understand the term "culture", which is also quite ambiguous and undergoes modifications due to globalisation. One of the most used meanings of "culture" is a concept of a compound system of assertions about how to understand the world and act on it. Variations regarding its meaning and use of these symbols and resources are likely and expected because of its core. Another complexity of studying culture lies in the fact that many cultural resources are discrete and intended for specific objectives, although human interactions and formal organisational features share cognitive as well as symbolic resources. However, it is possible to observe general models so that we are able to observe culture, or cultural systems, at specified scales and levels of social organisation.

Modifications in legal culture are one of the conditions for reforms in the law enforcement and judicial system, improvement of legislation, ensuring its effectiveness. Law and legal consciousness exert a regulatory influence on society.

²⁰Tatsiy & Danilyan (2019) at 124.

²¹Pilgun (2022).

²²Slavova (2020).

²³Otis, Cissé & Deckker (2010).

The essence of the influence of legal consciousness is that it is a subjective phenomenon that functions on the basis of people's attitude to law, expressed in legal ideology and legal psychology, awareness of the value of law.²⁴ Blankenburg uses the concept of legal culture to mean where, why and when people use legal institutions, and how those institutions differ in societies. He considers using of legal institutions as a principal element of legal culture. Legrand focuses on the specific role of legal professionals and their mindset ("mentalité") to give definition for legal culture.²⁵

Accordingly, there are two opposing points of view in the definition of legal culture: the notion of legal culture, indistinguishable from other forms of normative ordering or social control, and the too simplistic notion of state law. Recognition of the influence of culture on law and rights on culture, as well as limiting the recognition of the identity of legal forms and doctrines, is a kind of golden mean in the social and legal controversy that affects the very concept of culture. Some authors prefer to use the term "legal culture" in the plural to emphasise their relativity in time and space, the extreme diversity of legal cultures in the world as a whole. Therefore, legal culture is a kind of language for understanding both legal structures and processes, and the behaviour of the subjects of the legal system.

Implicit and Visible Legal Cultures as Types of Legal Culture

Some researchers argue that legal culture is that which is generated and studied most efficiently among legal professionals, while others claim that such a narrow term belies the theoretical usefulness of the approach to legal culture as a way of mapping the relationships between everyday life and law.²⁶ To the extent that models of behaviours and attitudes are detectable within a society and vary from one group or state to another, it is possible to speak of the legal culture(s) of groups as well as organisations or states. As an example of deviations within legal cultures, Friedman distinguishes the internal legal culture of professionals working in the system from the external legal culture of citizens interacting with the system.²⁷ Many authors have come to the conclusion that there are differences in legal culture between different social groups in society. The more authoritarian and patriarchal/ traditional people are, the more they are inclined towards rejecting the rule of law; the higher their wellbeing, the higher they value the rule of law. However, education and age demonstrated statistical importance in the model.²⁸

In the field of legal study, it is common to place a strong focus on paying close attention to authoritative sources, such as court declarations in public forums and established legal theories. However, this commitment usually engenders a disconcerting disjuncture for graduates of legal university, as they grapple with a

²⁴Pilgum (2022) at 50.

²⁵Arold (2007) at 10.

²⁶Friedman (2006).

²⁷Friedman (1975) at 194.

²⁸Vuković & Slobodan (2013) at 70.

discernible dissonance between the doctrinal exposition within academic confines and the nuanced application thereof within the diverse echelons of legal practice. A similar dilemma arises for the layperson who, armed with a limited understanding of the law obtained through formal channels, primarily consisting of publicly available legislative enactments, official allocutions, and documented decrees, finds themselves an uninvited observer within the court's or judicial precincts. Within this vantage, they are privy to an ostensible duality: a certain duality in the conception of the law, one that is officially proclaimed and the other that is put into action. Given this dynamic, attempts to understand legal culture solely through approved sources run the risk of distorting the true fabric of social legal consciousness. Consequently, it becomes incumbent to delineate and discriminate between the visible and implicit legal cultures, a dichotomy asserted by the author of the present discourse.

Visible legal culture encompasses generally accepted laws, court decisions, official interpretations of laws and these decisions by authorised state bodies, public interviews and public speeches by government officials and lawyers, sometimes academics and academic articles. This culture is announced publicly and one of its purposes is to present the official position of the state regarding the legal system. Its importance for the development of law cannot be underestimated. It is within the framework of this culture that state propaganda, training in universities and other state institutions and interaction with foreign states at the international level is carried out.

However, the influence of the legal culture of both an individual and society is significant, and in some cases the main influence is implicit legal culture. This culture is not open to the general public and rarely finds expression in official documents, it represents unwritten rules that correct the daily behaviour of both lawyers of different levels and other subjects of law. The expression of this culture can be traced in anonymous interviews and in documents related to the investigation of certain offences.

In some national law systems of European states the general direction of visible and implicit culture aligns. So the national deep level of legal values for the most part coincides with the adopted laws that are implicit and visible cultures are difficult to discern. However, if the national deep level, which corresponds to the deep context of the culture and mentality of a given society, comes into conflict with the visible culture expressed in officially adopted laws and the official state ideology, two cultures are formed: visible culture and implicit culture. It is not always possible to find common ground between these two cultures and ways for their merging. The proportions of visible and implicit cultures are not always the same. A particularly serious difference can be observed in the countries of Eastern and Southern Europe, where one can observe significant discrepancy between social groups in society and there are restrictions on freedom of speech.

Not being able to express their point of view publicly, some people cease to associate themselves with the visible legal culture, do not set themselves the task of changing it in any way, and the implicit legal culture develops more autonomously. It can also happen when introducing institutions and legal values at the state level, for which the population is not yet ready. Unable to influence the

decision of the government, people try in every possible way to avoid direct conflict, but they follow their own rules developed by a narrower group of people, thereby strengthening the influence of implicit legal culture.

The illustrations of judicial reform attempts are a good example of the importance of legal culture and understanding of its aspects. For example, one can observe changes at the legislative level that did not lead to significant changes in the work of the courts when trying to reform the Portuguese judicial system.²⁹ Changes at the legislative level are not capable of providing unilateral changes in the work of the judicial system. The functioning of the judicial system depends not only on the law in force, but also on its interpretation on a daily basis by both court officials and citizens, that is, the level of their legal culture. Hence, a radical break with the structures that were formed within the legal culture of a given society is not possible without equally radical changes in the legal culture of citizens and court staff. This demonstrates the multilayeredness of legal culture and its deep interactions with other aspects of society. Thus, legal culture is a fairly complex independent system and is not amenable to unilateral control from the top.

The existence of such components of culture as visible and implicit culture explains the difference between the spirit of the law and the everyday practices of the judicial system and its professionals which remained considerable, and is still obvious today, apparently translating into a distinction between law in books and law in action. According to Boaventura de Sousa Santos, this situation simply represented something that was apparent on a much wider scope in Portuguese society. The state strengthened itself at the level of its judicial-institutional matrix and redoubled its ways of action, expanding the apparatus and respective bureaucratic services. The state officialised and formalised enormous realms of social life, although in relation to effective and factual state practice, the combination of its omissions and actions in flowing social regulation, official actions by the state are waning and it looks like have lost the power and stimulus to mobilise the remedies formally available to it.³⁰ However, this did not demonstrate a drastic rupture with the structures and, primarily, the legal cultures and court practices succeeded from the *Estado Novo* regime. As several studies have approved, passing new legislation is not enough to modify the court culture of its actors who are first and foremost liable for enhancing performance within the realm of justice.³¹

Therefore, legal culture consists of visible culture and implicit culture. And both of its components have an impact on the development of the legal system. At the same time, the legal culture of society, a group of persons, or a person is the elements of the legal system, representing a social phenomenon that reflects, generates, and models, respectively, the legal life of society, a group of persons, or a person in all its diversity.³²

²⁹Dias (2016) at 24.

³⁰Dias (2016).

³¹Dias (2016) at 26.

³²Osipov (2012).

Ways to Study Legal Culture

Modification of the right to a fair trial is certainly a matter of legal science. However, relying solely on black-letter law is not enough to study the context and modern challenges of this issue. As Hoebel noted, law which is taken out of its cultural matrix loses its meaning³³. In order to understand what a legal concept actually means, legal cultural factors should be taken into account.³⁴ This concept of cultural pluralism is not compatible with natural law theory (especially the postulate of eternal and unchangeable legal principles) and emphasizes the differences of different societies in the regulation of legal relations.³⁵ In the legal cultural view, law is intrinsically related to its human environment and cannot be considered autonomously³⁶ Therefore, formally recognised legal sources such as legislative texts or judicial precedents make it impossible to understand the true meaning of a legal concept, unless the researcher has the same worldview as members of the society in whose legal system the concept exists. Therefore, this aspect is most evident in comparative legal studies³⁷. However, even when studying the legal issues of one's own legal system, the researcher should be careful when using sources to interpret legal meanings, since most legal concepts undergo significant changes after being introduced into one legal system from another, but retain their original names or literal translations.

Legal culture can solely be efficiently considered through its numerous and diversified means of expression which recognizes around the legal order or the legal system.³⁸ Most researchers use a broad interpretation for the expressions of legal culture. This approach to legal culture requires that the law should inevitably be grasped from the multiple viewpoint of its nature, its sources, its function, its aims and its implementation. The legal culture can then be understood through both written and customary norms, the institutions, practices and values of a particular community. This, implies considering ways of seeing, thinking, feeling social phenomena as well as economic, political, cultural, social aspects and ways of secreting state responses, etc.³⁹

He Weifang offers an even broader approach to the interpretation of law. He considers it necessary to consider law not just as an object of legal culture, but as an object of culture in general. Insisting on the difference in the study of legal culture and the history of the written law and of legal theory, he suggests that legal culture concerns not only the ideas of eminent jurists or philosophers, but also the study of the ideas of different classes of society regarding law. As a result, there is a need to study both "formal histories" and drama, novels, poetry, notes, diaries and popular verse, and hence recourse to methods of such disciplines as folklore, cultural anthropology and sociology. The need for such a broad interpretation is explained by the fact that the achievement of practical results in the field of law

³³Hoebel (1954) at 357.

³⁴Husa (2016).

³⁵Husa, (2016) at 213.

³⁶Baaij (2012) at 205-207.

³⁷Husa (2016) at 213.

³⁸Otis, Cissé & De Deckker (2010) at 294-295.

³⁹Otis, Cissé & De Deckker (2010) at 295-295.

can only be achieved by understanding the mood of society and studying the administration of justice.⁴⁰ This approach makes it possible to see a very large and detailed picture of a particular legal issue, however, it is difficult to achieve from a practical point of view. The application of methods of several disciplines and the processing of a huge amount of information of different levels requires a large amount of time and human resources.

Another important factor to pay attention to when studying legal culture is paying attention to countercultures and subcultures, as well as their interaction with the dominant culture⁴¹. Although their impact on the legal system and society is less visible and more difficult to study, it is the understanding of these types of culture that can clarify some aspects that seem illogical from the point of view of the dominant culture.

There is also a narrower approach to studying legal issues through the prism of legal culture. Čapeta proposes to distinguish of three components (legal culture, particularly valid legal sources, legal interpretation and court argumentation).⁴² Another approach is the conception offered by Hoecke and Warrington. It includes six components as factors in developing a paradigm for legal culture: 1) a conception of law – its definition and its connection to other social norms; 2) a theory of valid sources of law; 3) a legal methodology, including a theory of interpretation; 4) a theory of argumentation; 5) a theory of legitimisation; 6) a common fundamental ideology (a common fundamental world view and common fundamental values). According to Čapeta, this is suitable for comparing legal cultures of different levels of similarity (both those that differ from each other and those that are similar). At the same time, to identify differences, it is enough to analyse several elements from the list.

When studying legal culture, one should take into account that the ways in which legal languages are used are different. Features of legal culture can be observed by analysing the fundamental values, common beliefs, ways of thinking and interests of lawyers, legislators, judges, scientists, as well as individuals and enterprises.⁴³ Searching and analysing legal phenomena and legal terms that have no analogues in other legal systems and cannot be translated is one of approaches for researching legal culture. For example, we can note the "innere sicherheit" as a key concept of German understanding of law, comparison of 'trust' and fiducia in noting the similarity or dissimilarity between criminal justice in Italy and the United Kingdom. We can also refer to the Japanese concept of law and its role as articulated through particular ideas of dispute sincerity, right, obligation, contract, harmony, consensus and consultation.⁴⁴

The study of legal culture also involves historical analysis. Historical continuity is an important characteristic of legal culture, because once formed, legal culture becomes utterly stable and persistent and it is not easily modified by

⁴⁰Weifang (1994) at 42.

⁴¹Weifang (1994) at 42.

⁴²Čapeta (2008) at 23.

⁴³Husa (2016) at 213.

⁴⁴Husa (2016) at 213.

conscious action⁴⁵. Thus, in order to study legal culture, it is necessary not only to understand the terms, concepts and views of the particular society themselves, but also their origins.

One of the key aspects of studying legal issues from the aspect of legal culture is the analysis of attitude to the rule of law. If the level of the rule of law is high, there is a strong correspondence between the written law and the real level of development of society⁴⁶. Thus, the image of legal culture at the level of official rhetoric (written law, academic articles) expresses a real understanding of law by members of society). However, the low level of the rule of law signals a situation where there is a stratification into visible culture and implicit culture, and sometimes their confrontation, as discussed in the second paragraph.

Using not only academic sources and current law to study aspects of legal culture, but also the results of anonymous interviews with representatives of the judiciary and the institution of mediation⁴⁷ to identify the power of different legal cultures. For instance, to conduct an interview of representatives of the judiciary and the institution of mediation, drawn from different legal cultures, in order to reveal the hidden moods of a certain part of society (one of the aspects of implicit culture). Moreover, gaining insight into the practical application of traditional litigation and mediation to resolve disputes will reveal such an aspect of legal culture as law enforcement.

Empirical studies of legal culture often involve looking for links between support for certain values and legal instruments. For example, Gibson and Caldeira assume that people who appreciate liberty more are more likely to support applying of the rule of law universally and are less likely to see law as a tool of social control or repression.⁴⁸ Another useful approach in empirical studies of legal culture is to find a connection between legal values and the social position of the respondents, which makes it possible to see the presence of a dominant culture, subcultures and countercultures within society.⁴⁹

Hence, the ways of researching legal culture vary depending on the goals and scope of research. Using very broad approaches requires significant resources and carries the risk of unprofessionalism, but narrow approaches reflect a very flat and limited view of the research questions posed. The application of several methods can avoid bias in the conclusions and helps to have a deeper and more open-minded understanding of legal cultural issues.

Concluding Remarks

Being a relatively new term with a rather old concept, the term 'legal culture' has received different interpretations (from social control to part of state law).

⁴⁵Weifang (1994) at 40-41.

⁴⁶Vuković & Slobodan (2013) at 56.

⁴⁷Interviewees shall be judges (or former judges) who also have experience of mediation practice

⁴⁸Vuković & Slobodan (2013) at 56.

⁴⁹See, for example, Vuković & Slobodan (2013) at 56.

Sometimes it is also used in the plural in order to highlight the characteristics of a particular society in time and space. Legal culture has many expressions from academic thought to law enforcement and serves as a kind of language for interpreting the spirit of law.

There are several types of legal culture, depending on the sample of members of society on a geographical basis, social principle, and so on. The demarcation of a legal culture into external and internal factors has not been confirmed in empirical studies. Consequently, the culture of lawyers as a separate class of society is not, by definition, a pronounced legal subculture. Based on the discrepancy between the written law and academic thought with law enforcement and unwritten laws operating within some societies, one can assume the existence of a visible culture and implicit culture.

The functions of legal culture exist only in the doctrine of the post-Soviet countries and symbolise a positivist approach with an emphasis on the supremacy of the state over law. It can be assumed that their presence indicates the secondary nature of human rights, including the right to a fair trial in relation to the tasks of the state in those countries where the concept of the functions of legal culture has been developed.

Because it has a direct impact on how a state's legal system is reformulated, it is crucial to investigate both visible and implicit legal cultures. Reforms enacted within the judicial system must be in line with the society's legal tradition in order to reflect its unique concepts of justice and be effective. Failing this congruence, people may stick to their own ideas of justice and try to avoid taking responsibility for wrongdoing or wilful contempt for some statutory measures. Furthermore, the observance of human rights serves to mitigate a substantial disjunction between implicit and visible legal cultures.

There are broad and narrow approaches to the study of legal culture. If the former contains a challenge in the search for resources and professional skills, then the latter contain the risk of a biased and limited opinion about the object of study. Balance can be achieved by a combination of several methods.

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