Professional competence of a lawyer in educational process

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Abstract. This article is devoted to the methodology of the interdisciplinary problem of "lawyer's professional competence". The authors proceed from the importance of finding scientific and practical approaches to the formation of a new quality of an essential part of professional legal culture, professional competence of a lawyer both by the Teacher in the system of educational process coordinates and by the student himself in the mode of self-reflection. Key words: new normality, practical jurisprudence, goals and method, lawyer, professional competences and educational process, professional self-reflection, motivation and personality, teacher-student nexus.

1 Introduction

1.1 Relevance of the study

The relevance of the topic of this study is due to the fact that, regrettably, science does not have time to comprehend and rethink the rapidly changing real world. Scientific prognosis, scientific intuition often do not work, "old" knowledge does not work. As a consequence, jurisprudence still does not have a full-fledged real opportunity to provide scientific support for socioeconomic and legal processes in the country. The legal formula "worldview - ideology - theory - laws - practice" that ensures the stability and self-regulation of the system of legal relations, once again experiences a historical and civilizational, political and legal crisis.

In modern conditions of real life, it is difficult to overestimate the value of lawyer's professional competences. Professional legal work is included in the subject of scientific research, but unfortunately, in many cases at the level of information-descriptive research and without using subject analysis and potential of interdisciplinary knowledge.

In this situation, the formulation of a mission statement, the statement of a stated scientific problem, and the search for approaches become the first stage of scientific research, a necessary prerequisite for the future work of researchers in this direction.

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1.2 Literature review

The analysis from 1991 to the present day of publications, numerous conferences, as well as meetings on discussion platforms with prominent lawyers (N.S. Bondar, L.A. Voskobitova, V.V. V. A. Voskobitova, V.A. Ershov, M.V. Syrykh, V.V. Doroshkov, N.A. Kolokolov and many others), by whose textbooks and monographs we study and will study for a long time to come, show that science on this issue is still in an intellectual crisis and the prospects are not obvious.

The work of N.S. Bondar, "Russian legal education as a constitutional value: national traditions and cosmopolitan illusions". Series "Library of Russian Constitutionalism". Vol. 3. 2nd ed. ext. - M., publishing house Jurist. 2014. p.72 has been chosen as a basic work.

1.3 Problem justification

Launching the new development of a sovereign Russia is still in limbo. The variability of scientific forecasts exceeds all reasonable limits. Unfortunately, in a number of cases, for some researchers this activity of making forecasts is already becoming an end in itself, which is unacceptable. Probably, a critical comprehension of what is happening, a deep search for the "tree of goals" (a nationwide idea, state ideology, etc.) based on the principles of scientific activity is the stage we should not skip so hastily...

In the new Russia, the classical, in the Western European sense, professional competences of a lawyer in the value and content sense are no longer in demand. As it turned out, their West-European transit has not stood the test of time and it is not only about the events of 2022. We should probably recall the scholarly discussions about the relationship between legality and justice, about the relationship between morality and law, about the search for law in the work of judges back in the Russian Empire.

N.N. Chernogor, A.S. Emelyanov therefore fairly point out that: "For those lawyers whose professional development took place in the last century, the mono-architectural institutional basis of the rule of law seemed natural, suggesting that only the state should be considered as such a basis... nowadays, a new model is emerging - a polyarchical one, suggesting a multilevel regulation" [1].

1.4 Aims and objectives of the study

In this sense, in the new emerged normality, it is vitally necessary to raise the question of professional legal culture of lawyers of a new type, the formation of a new quality of its essential part - professional competence.

It seems that this circumstance expresses our objective need to comprehend and develop some approaches to the development of a model for the formation of professional competence of a lawyer, understandable and accessible to many. It is no coincidence that practical philosophy is actively developing in modern philosophy [2], and one of the country's leading law schools has set up a Department of Practical Jurisprudence O.E. Kutafin Moscow State Law University (Moscow State Law Academy)) [3].

In this sense, the present publication is an attempt to explore some basic approaches (methodology) to this complex research problem.

In the logical chain of "de facto and de jure", "fact and consequently attitude towards fact", our assessment (attitude) towards fact, including at the professional level, is manifested at all levels of the legal regulation mechanism. This circumstance, indeed, is the point of application of our research efforts.

Professional behaviour towards a legal fact ensures the "triggering" and socially valuable functioning of the mechanism of legal regulation only when it is based on common sense, on
a stable and developing tradition of law, which manifests itself in our knowledge and skills and not only. Nor should we forget life experience, worldly wisdom, professional intuition, emotions [4]. The legal sense and values of the formula "worldview - ideology - theory - laws - practice".

Only in this case, the legal meanings and values of the formula "worldview - ideology - theory - laws - practice" objectively get a chance for a historical perspective and stop being an abstractly contemplative construction.

It should also be noted that the definition of criteria and content of professional competences of a lawyer (the research field of the problem) cannot and should not be limited to the purely legal framework of the subject of jurisprudence.

2 Methods

The authors used a set of scientific methods such as the general scientific method of empirical and theoretical analysis, special scientific methods such as legal forecasting, comparative legal method and the method of processing the results of work on the present study.

3 Discussion

In real life, a lawyer's competence manifests itself in the professional qualification of a specific legal situation. This work involves singling out from the set of facts only those circumstances that are legally relevant and subject to legal regulation. But since Law is applied to a Fact (follows a fact), it is in principle impossible to distinguish legal facts and assess them without knowledge of a related nature. Perhaps this is why teachers of law majors in higher law schools note the particular quality of the theses of master's students who have a basic higher education of a non-legal nature.

It seems that disregarding knowledge of a related nature in Law contradicts the logic of forming professional competences of a lawyer. Otherwise we observe only formal application of legal norms and arbitrary assessment of legal situation evidence, which is unacceptable in professional work [5].

Practicing lawyer (judge) O.A. Kapustin reasonably believes that professional competences in the legal sphere are certainly interdisciplinary and integrative in nature. For example, this author suggests that in order to organise legal work in a digital environment, digital competences as a combination of information technology skills, cognitive and socio-behavioural skills should be taken into account [6]. The model of digital competences of a lawyer presented by him certainly deserves a special study.

In this regard, of interest is the Collective Legal Opinion prepared by E.G. Streltsova, D.A. Tumanov with the participation of S.V. Moiseev, on the draft law of the Supreme Court of the Russian Federation. This document notes that at present, acting without the assistance of a professional lawyer, a party can still rely on a judgment in its favour as it is entitled to be assisted by any legally capable person who may be more knowledgeable on legal matters than the litigant [7].

However, we must face the obvious: litigation is becoming increasingly complex and legal knowledge alone may not be enough to win a lawsuit. Success may lie in knowledge and skills from other areas of expertise.

For example, when considering a case in court for compensation of damages as a result of a road accident the representative of the party to the case must, often, not only know the norms of Art. 15, 1064 of the Civil Code of the Russian Federation, but also basic information about the peculiarities and purposes of automobile, automobile technical, automobile trace
examinations, as well as the provisions of The Federal Law on State Forensic Activity in the Russian Federation [8].

It is already recognised by legal practitioners, legal administrators and managers that professional competence is expanding to cover areas of knowledge related to the law [9].

Moreover, the professional competences of a lawyer include philosophy as the basis of all humanitarian knowledge, as a prerequisite for its progressive development. The diminution of the role and importance of philosophical heritage in the formation of a lawyer's competence leads to its flawed, limited nature. It seems that without searching for and mastering philosophical wisdom, any competence will face a dead end in its development. In this regard, we may recall an example when, at the beginning and at the end of the course, under the discipline of "civil proceedings", master's students wrote an essay entitled "Civil proceedings as a living matter". In the course of the academic discussion on this topic, they drew conclusions that turned out to be staggering and unexpected for themselves.

The professional competences of a lawyer are not a set of knowledge and skills, not a set of them, but a system, the elements of which in interaction with each other "produce" an integrative result. This result manifests itself both in the process of forming legal values and in the "product" of their implementation, when the professional level of competence, at least, is not reduced.

In this reasoning logic it is important to pay attention to the fact that competence is not only what I am able to do now but also what I will be able to do in the future.

A parable is of interest in this regard.

Meeting a man carrying a large stone, a wise man asked him, "What are you doing?" "Can't you see? I am carrying stones."

When he met another man carrying a stone, the wise man asked him, "What are you doing?" - "Making money," he replied. The third man carrying the stone, to the same question, replied, "I am building a temple."

Probably, in this sense, professional competences arise when a lawyer masters the technique of "carrying stones" and understands what he "builds", i.e. gets answers to the questions: "why?", "what?" and "how?".

It should be recognised that competence building is a never-ending process and in this situation a good professional always remains an apprentice. In this context, it is worth recalling that Socrates is credited with the aphorism: "The more I learn, the more I realise that I know nothing".

No one has the innate knowledge and skills required to become a lawyer. The intellectual quality of a professional and an individual is an acquired and always enrichable one. Otherwise competences are not "born" and even if they are, they may be "frozen".

In this sense, we can assume that professional competences are always a dynamic quantity that lives and develops according to its own laws.

The aim of training is not only to "learn to know" (acquiring knowledge) but also to "learn to be able" (acquiring practical skills). The lawyer often finds that when he was a student, he had good theoretical knowledge, but when he becomes a practicing lawyer, he suddenly realises that he has not learned, and/or he has not been taught how to apply this knowledge in his professional work.

Is a law student ready for such intellectual work? The authors of the publication think that Yes!

Will the student be able to learn professional self-reflection (identify his/her real desires in the profession) by himself/herself, being actively aware of its deficit?

The authors of the publication think that within the general rule - No! Although, according to the fair opinion of the specialists of the Ministry of Education and Science of Russia: "...the process of reflection allows: to control thinking; to evaluate the validity and logicality of actions, to analyze thoughts; to transform hidden skills into effective tools for development;
to get rid of indecision and make choices; to clear consciousness from unnecessary thoughts; to identify behavioral patterns and to correct them" [10].

In any case, the process of acquiring professional competences should always be a guided process, not just in form, but also in content. In this progressive movement, the role of the Teacher is invaluable!

Otherwise we will never get rid of so many people with law degrees who have nothing to do with jurisprudence.

Let us explain this statement with an example.

At the beginning of the teaching of the discipline of "civil procedure" in solving the practical problem of "drawing up a claim in a concrete life situation" (for example, flooding of a flat and damage compensation), as a rule, the average student limits his intellectual efforts only to downloading a text from the Internet. Then, having studied some abstract knowledge and taking into consideration the cost of a lawyer to draw up a claim (approximately from 5 000 rubles and higher in the region), the student begins to understand that knowledge can and should be translated into skills. As a consequence, by the end of training such a student is able not only to draw up a claim in a civil case, but to take an active part in the role-playing game "consideration and resolution of a civil case in court", showing direct interest not only in the expert assessments of the teacher, but also of other students.

At the department of "Procedural law" of DSTU, the teaching staff has been applying such a methodology for several years and not without success and is trying to implement the formula "student and teacher are colleagues, where both parties learn at the same time".

The practices developed allow us to conclude that it is the organisation of the learning process of the Student and the personality of the Teacher that provides a real opportunity for the student to know himself or herself in the profession, to think creatively and to act in complex legal situations.

It turns out that initiating (triggering) in the learning process a single formula "to know and be able" is a professional task of the teacher not only in relation to the student, but also in terms of his/her personal professional growth.

Is the teacher ready not only "to know" but also "to be able"?

A teacher is always, without exception, a "hand-assembly", just as a student is if getting a diploma is not an end in itself for him/her.

A teacher is not an "intermediary" passing on knowledge. A professional duty to teach a student is also a duty to teach the student to reflect, with an ethical and professional right to do so, a dignified and real professional competence.

In acknowledging the permissibility of such assertions, it is appropriate to recall the statement by Seymour Peypert, one of the pioneers of introducing computers into education: "All people are equally capable of mastering any field of knowledge. It's not a matter of ability, it's a matter of the learning process organization" [11].

However, no matter how many potentially useful discourses on this topic may be, they are only a "tool on the shelf" that either "gather dust on the shelf in the closet" of a lawyer or are actively used by this carrier of competences.

The competences of a teacher of legal disciplines are always an opportunity for a student, a way (tool), a "container filled with knowledge and skills", the quality of which is assessed quite differently, but this is a topic for another separate discussion.

Opportunity itself, without realisation, is in principle of no use to anyone. It lives and develops only when there is a real, measurable and therefore evaluable interest in it.

It is the personal, specifically defined interest that lies at the heart of the formation and development of professional competences.

Self-awareness is always a quest for answers to the questions: what do I want in my profession? What do I need to know? What should I be able to do?
It should be admitted that these questions are relevant to the reflection of any lawyer. Eventually, the awareness of real inner need for personal and professional growth (self-reflexion) is always a stimulus to action, always a motive to work on competence (self-motivation).

Therefore, when the intrinsic need for professional growth is active, the "tool on the shelf" is more than in demand. Without the Learner's personal interest, the opportunities provided by the Teacher to acquire knowledge and skills in the field of law are just information that is not much needed right now.

This raises the question: Who should shape the learner's personal interest in working on professional competences?

It is obvious that the Learner himself is the cause of his successes and failures in the profession, while the capabilities of the Teacher are only a factor that influences this process. Thus, from the point of view of the subject matter of psychological science "akmeology" (scientific specialty 19.00.13) the following stages are distinguished in the process of personal professional development:

1) formation of professional intentions, choice of profession;
2) professional training;
3) professional adaptation;
4) professionalism;
5) proficiency [12].

4 Conclusions

The authors of this study believe that the formation of professional competencies of a lawyer is the goal of the educational process, which is based on national education and training, where knowledge without skills and without practical exposure is meaningless.

A concretely defined goal statement formulated jointly by the Student and the Teacher for the future professional personality of a lawyer is a necessary condition of competence, its individual modelling.

An example comes to mind in this context. A young man played professional football, got injured, and out of despair decided to study law. Self-reflection, for a number of subjective reasons, did not help him answer the questions: what do I want in the profession? In the process of communicating with the teacher, it turned out that the roadmap "specialisation in sports law, sports lawyer or sports agent or professional manager" was what he needed already now - "to look beyond the horizon"...

Interest, as real desires in the profession, is always the driving force behind the Learner's professional growth, always the primary point of application of effort, the Teacher's capabilities.

It seems that it is the value and content attributes and attributes that characterise the degree of proper professional competence of a lawyer.

Formal circumstances (diplomas, certificates, attestations, etc.), as well as legal experience, legal position, etc.) do not in themselves indicate competence. It is the formal aspect of a lawyer's professional competence which, in some cases, is necessary but clearly insufficient for successful legal work. For example, we are talking about the formal right to apply for a position in the legal profession, about the formal right to be a representative in administrative court proceedings (part 1 of Article 55 of APC RF [13]), etc.

Many readers will agree that there is a clear and long-standing lack of genuine lawyers in our professional community. Moreover, it turns out that high salaries (remuneration) per se do not lead to a renewal of competences but often have a significant impact on their preservation and the preservation of the achieved level of skills, experience and knowledge.
In this sense, the formal and substantive sides of the lawyer's competences are two sides of "one medal", a necessary and sufficient condition for the development of the lawyer's professional competences.

This means that the efforts of the educational process should be focused not only on the substantive development of lawyer's competences, which we (teachers) are able to handle with a "satisfactory" grade, but still....

The teacher needs both to master and to teach, at the same level of competence, the student's professional self-reflection (to determine one's real desires in the profession). If the teacher still sets this task for himself and constantly solves it creatively, then he is capable of teaching it to the student.

The educational process should be organised so that professional self-reflection by the teacher and student in the field of law is one of the basic criteria of professional competence.

The reasons for professional growth lie in the cognition of oneself as a professional person in the world around us. This is the individual work of each of us. At the same time, the successes achieved in the profession are not only the cause of the lawyer's personal growth, but also a factor that changes the circumstances that are external to the lawyer.

Consequently, when we talk about professional education and training, it is always the acquisition of professional competence.

Traditionally, the phenomenon of competence has been a subject of the sciences of "pedagogy" and "psychology". Such authors as T.Y. Bazarov, B.S. Gershunsky, S.A. Druzhilov, J. Raven, E.V. Rapacevich, M.A. Dmitriev, E.F. Seeer, and many others have been engaged in their research on competence.

Acknowledging the admissibility of judgments presented in this publication, taking into account the concept of "competence" generally accepted in humanitarian science, to start the discussion on this subject in relation to the subject - lawyer, the concept of "professional competence of a lawyer" can be proposed in the following formulation:

Professional competences of a lawyer are a system of legal and interdisciplinary knowledge, theoretical and practical qualities of professional personality, providing in the mode of interaction of legal values the effective solution of tasks in the legal sphere both in the conditions of current and foreseeable reality.

Investigating the purpose and method, we will be able, probably, to build some matrix of lawyer's professional competence as an instrument of educational process. In this case, we should focus on such qualities of professional personality as axiological (the issue of moral content of a lawyer's personality); gnostic or cognitive (the issue of professional knowledge); regulatory (the issue of professional understanding and application of law) and some others.

In conclusion, we would like to note that the methodological component of the problem (how to approach its solution for the individual use of the results and for the organization of the management of the educational process?) turns out to be much more important than the theory of the question itself.

The scientific problem posed is complex and multidimensional. Its solution requires a substantive discussion and serious efforts from many researchers.

The current challenges of the new legal normal force us to continue searching for like-minded people among our readers.

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