

IMPLEMENTATION OF HUMAN CAPITAL IN SUSTAINABLE DEVELOPMENT OF THE INSTITUTIONAL COMPONENT OF THE LEGAL SYSTEM OF THE REPUBLIC OF MOLDOVA⁴⁶

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Summary

The sustainable development of the institutional component of the legal system of Moldova is considered in the article as a strategic task of improving the legal institutions of the republic, conditioned by the most acute social demands of the country's population, which simultaneously needs both «development» and «stability» of all spheres of society. The subject of analysis in the article are the most general and universal patterns of implementation of human capital in the work of the institutional component of the legal system of society, which are equally valid for the legal system of Moldova and for the legal system of any other state. Based on the theoretical analysis presented in the work, the author establishes the place of the concept of human capital in the system of related categories of legal science; defines implementation as a necessary condition for the effective use of human capital in the work of the internal mechanism of the legal system; identifies the forms and most general principles of the implementation of human capital in the sustainable development of the institutional component of the legal system.

Keywords: sustainable development, legal system, institutional component, human capital, implementation, Republic of Moldova.

Introduction

Sustainable development of the legal system is one of the strategically important goals of improving the legal institutions of any state striving to ensure its national interests. Sustainable development of the legal system of the Republic of Moldova presupposes a thoughtful, consistent and gradual change in the work of the institutions that make up this system, ensuring the satisfaction of the social needs of the country's population, which are a comprehensive expression of the national interests of the state. Throughout the modern history of the republic, which began with the collapse of the USSR, the most acute social demand of the population of Moldova consists of two priority needs: the need for «development» and the need for «stability», which make the «vector of sustainable development» the most desirable model of changes in the legal system of the country. In this study we draw attention to the most general patterns of sustainable development of the legal system of society, applicable to the analysis and assessment of the state of the legal system of the Republic of Moldova. We base this study on the hypothesis that being the most important «internal resource» of the legal system of society, human capital nevertheless does not «start working automatically» and requires the creation of certain conditions in order to «adjust» the internal mechanism of the legal system of society to the perception of the functional potential of this «resource». At the same time the search for the necessary conditions for the implementation of human capital in the work of the internal mechanism of the legal system of society seems to us to be a research task of great practical importance, since the ability of the legal institutions of society to ensure the satisfaction of the urgent social needs of the country's population and to bring the legal system of the state onto the «route of sustainable development» depends on the quality and level of implementation of this strategic resource in the work of the legal system.

The concept of «human capital» in the discussion on increasing the efficiency of functioning and progressive development of the institutions of the legal system of society.

The concept of human capital entered scientific circulation in the middle of the last century thanks to works in the field of economic theory [1; 13], but today this term has become widely used in almost all social and humanitarian sciences [2; 3].

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When introducing the concept of human capital into a discussion that touches upon any legal issues and aspects, it should be taken into account that legal science has already developed concepts that are quite close in meaning to this economic term. In this regard it is necessary to make some clarifications to identify the concept of human capital in the system of already existing legal categories, establishing their fundamental differences.

In order to define the range of concepts of legal theory related to the category of human capital, it is necessary to determine what constitutes the «semantic core» of this scientific category. Since the term «human capital» is economic in origin, it is appropriate to refer to its definition within the economic context. According to the World Bank definition [15], human capital includes primarily «knowledge» and «skills». Based on the works of Simon Kuznets [9], Gary Becker and Theodore Schultz, the theory of human capital has been formed in modern economic science. Within the framework of this theory human capital is considered as a kind of «resource» of the economic system, capable of exerting a much greater influence on the efficiency of this system than «physical» or «natural» capital. At the same time, the constant context accompanying economists' discussions around the concept of human capital is the discussion of the «benefits» and «positive impact» that human capital can have on the economic system, ensuring an increase in the efficiency of economic institutions and other progressive changes. In addition, in modern economics it is customary to distinguish between individual, corporate and national human capital.

Extrapolating these most general moments of economic theory for understanding the category of human capital to ideas about the general patterns of functioning and development of the legal system of society, we can propose the following definition: *human capital in the legal system of society is a complex of legal knowledge and skills formed within the legal system, constituting the «intellectual potential» of this system, which makes it possible to increase the efficiency of the functioning of the legal system of society and its entry into a qualitatively new level of development.* The proposed definition is certainly debatable, not excluding alternative definitions, and is introduced by us with the sole purpose of bringing greater certainty to the subject of theoretical analysis of our research. Let us also note that if we speak about the influence of human capital on any institutional formation, similar to the economic or legal system of society, then the most optimal and adequate to such a «scale» of conversation about human capital seem to us to be the categories of corporate and national human capital, within the framework of which intellectual human resources are accumulated in social institutions corresponding to the corporate and national level of the structure of society. The most important of such social institutions should be recognized as science and education.

The following categories of legal science seem to us to be closest to the aspects reflected in the definition of human capital we have proposed: «legal consciousness», «legal ideology» and «legal culture». The criterion for comparing the above categories with the concept of human capital in this case will be the degree of their «adequacy» and «relevance» in the discussion of the issue that is the subject of our research, namely, in resolving the issue of the ability of the phenomena described by these concepts to establish a direct and most close connection with the process of functioning of the institutions of the legal system of society, influencing the increase in the efficiency of this process and facilitating the legal system's exit to a qualitatively different level of development.

Comparing the concepts of «legal consciousness» and «human capital», in our opinion, it can be established that the first of these concepts is much more abstract and detached, since it is oriented to a greater extent toward reflecting the laws of the ideal order, rather than reflecting the laws of the functioning of any structures of the «material world». In this regard, it is quite difficult to assume the establishment of specific patterns indicating a direct connection between «legal consciousness» and «the effectiveness of the legal system of society», since the category of legal consciousness is too far removed from this kind of practical problems, which requires the introduction into the discussion of some «intermediate» scientific categories that more closely link intellectual human resources with the practical problems of the functioning of the legal system. In addition, the category of legal consciousness is so broad that the intellectual potential of human resources reflects only part of its content. At the same time, no less in volume is the part of the «semantic core» of the category of legal consciousness made up of questions of legal psychology, connected mainly with emotional, rather than rational components of human resources.

If we try to narrow the concept of legal consciousness to its intellectual component, then it seems necessary to compare the concept of human capital with the concept of legal ideology, which is commonly used to designate the structural element of legal consciousness, which includes knowledge, ideas and other rational components. The comparison shows that the concept of legal ideology, although it is a narrower concept (compared to the concept of legal consciousness), still does not allow one to speak freely about the direct connection between this element of legal consciousness and the effectiveness of the legal system of society. The concept of legal ideology cannot completely replace the definition of human capital proposed above, since,

without including practical skills in its content, it describes exclusively ideal formations of human consciousness (knowledge, ideas, views, etc.). Therefore, legal ideology can be considered only as a prerequisite for the formation of human capital, which reveals only an indirect connection between legal ideology and the problem of increasing the efficiency of functioning and progressive development of the institutions of the legal system of society.

Comparing the concept of human capital with the concept of legal culture, we can come to the conclusion that, unlike the concepts of «legal consciousness» and «legal ideology», the concept of legal culture is closer in meaning to the concept of human capital, since it includes in its content more pragmatic aspects of the humanistic component of the legal system, including: the level of legal education and science achieved in society, as well as manifestations of the material culture [5] of society in the field of human activity related to law. However, despite its greater «pragmatism», it should be recognized that the concept of legal culture can be used in the discussion of the effectiveness of legal institutions of society only to a limited extent, since the effectiveness of the functioning of the legal system is determined not by the cultural uniqueness of the legal life of society, but by the qualitative level of this life. At the same time, a comparison of the efficiency of the functioning of the institutions of the legal system of society, made dependent on the characteristics of the legal culture, unique to each individual political and legal space, is, in our opinion, not entirely correct. Legal culture is a historical and civilizational phenomenon, while the establishment of patterns of effective functioning of the legal system of society is a purely pragmatic issue and requires more «impersonal» (culturally non-personalized), but at the same time «functional» scientific categories that allow us to see in the humanistic component of the legal system of society more of a «working tool» than a «cultural phenomenon».

The comparison of the concept of human capital with related categories of legal science leads us to the conclusion that in the discussion of the ability of the humanistic component of the legal system of society to have a direct impact on increasing the efficiency of the functioning of its legal institutions, the economic in origin concept of «human capital» is more appropriate than all the other categories we have considered. In this study, we introduce the concept of human capital to denote the qualitative potential of the humanistic component of the legal system of society, which not only «sets this system in motion», but turns this system into a highly functional mechanism capable of effectively performing the tasks facing it and reaching a fundamentally different level of development.

«Implementation» as a necessary condition for the transformation of human capital into the energy of sustainable development of the legal system of society.

In introducing the concept of human capital into the discussion of increasing the efficiency of functioning and progressive development of the institutions of the legal system of society, it should be recognized that the inclusion of this strategic resource in the work of any institutional formations (including the legal system of society) does not occur «automatically» or «by itself». If the procedures and other activities carried out within the framework of the relevant institutional formations are carried out by people, this does not mean that the very fact of a person's participation in the work of any institutions is sufficient to assert the use of human capital resources in the work of this institution. In this case, we should not confuse «human capital» with «human factor». And just as sunlight does not transform «by itself» into electrical energy, human capital also does not transform «by itself» into the energy necessary for the development of the legal system of society.

In order for human capital to be «involved in the work» of any institutional formation, it is necessary to provide a «place» for it in the corresponding system of institutions, create the necessary conditions and provide possible «ways» for using its potential in the work of this system. In relation to our discussion of the legal system of society, this means that even if a country has qualified personnel in the field of legal theory and practice, but these personnel do not remain to work within the country, or for some reason do not have the opportunity to implement their knowledge, experience and skills in the work of the institutions of the legal system, the existing human capital is actually not in demand and cannot have any real impact on the functioning and development of the legal system. This creates an extremely negative situation where the legal system and its human capital develop «in parallel» and «in isolation», without establishing any real connections between them.

If we draw an analogy with physical processes, we can compare human capital with the energy that is necessary for the operation of a certain system, but in order for this energy to be able to «set in motion» an effective algorithm for the functioning of this system, it is necessary to extract this «energy» from the «energy potential» inherent in human capital, create the necessary «storage facilities» («accumulators» of human capital energy) to store the extracted energy, and install a kind of «wires» through which this energy can enter the system at the right time, thus ensuring the «connection» of human capital to the operation of this system.

To designate the specified process of «connecting» the energy of human capital to the work of the institutional component of the legal system of society, we propose to introduce the term «implementation», which has become widely used today to describe the process of «introducing something into real use» not only

in the field of computer technology, but also in areas that are the subject of study of the social and humanitarian sciences [8].

The «storage-accumulators» of human capital energy in the legal system of society are legal education and science, considered as full-fledged social institutions capable of accumulating high-quality energy potential, which, provided it is implemented in the work of the institutional component of the legal system, can have a real impact on increasing the efficiency of the functioning of this system and ensure a well-thought-out, consistent and gradual transition of the legal system to a qualitatively new level of development.

In turn, speaking about establishing «wires» through which the «energy» extracted from human capital enters the institutions of the legal system of society, we can consider as such «wires» – «forms» of implementing human capital into the work of the internal mechanism of the legal system of society, which must be introduced into the work of the corresponding institutions of the legal system of society in compliance with certain «principles» of implementation, which we will consider below.

It should be noted that human capital is «connected» to the work of the legal system of society through its implementation in the institutional components of this system, represented by law-making, law enforcement and other institutions of the legal system of society. This is explained by the fact that *human capital itself can only be formed within the framework of institutional formations, which include social institutions of legal education and legal science, which allows us to speak about the process of implementing human capital in the work of the legal system of society as a kind of «cooperation» of the said social institutions with law-making, law enforcement and other institutions of the legal system.*

At the same time, the entire complex of social «institutions-accumulators» of human capital energy involved in the implementation process, as well as the «forms» and «principles» inherent in this process, ultimately allow «transforming» human capital into the energy of sustainable development of the legal system of society, which makes the process of implementing human capital a necessary condition for the sustainable development of not only the institutional component, but also the entire legal system as a whole.

Forms of implementation of human capital in the activities of institutions of the legal system of society.

The forms of implementation of human capital in the work of the institutional component of the legal system of society can be defined as *ways of introducing knowledge, skills and other intellectual resources of human capital into the process of functioning of law-making, law enforcement and other institutions of the legal system of society.* These forms organize the process of implementing human capital, «directing» and «distributing» the intellectual resources of human capital according to the corresponding types of activities of the institutions of the legal system of society, which allows for the optimization and rationalization of these types of activities.

An analysis of scientific literature devoted to the issues of using qualified human resources in the activities of various institutions of the legal system of society (including specialists from the field of not only legal science, but also from other sciences) allows us to classify the following as the forms of implementation under consideration:

- *scientific expertise of draft regulatory legal acts* [6, p. 12], the purpose of which is to develop scientifically based recommendations aimed at improving the drafts of relevant legal documents, which should ensure a more effective and efficient impact of the regulatory provisions provided for in them on the regulated social relations. Examples of this type of expertise include: legal expertise, economic expertise, financial expertise, linguistic expertise, environmental expertise and other types of scientific expertise, including all possible types of complex (combined) expertise carried out with the involvement of specialists from different fields of science;

- *analytical research (reviews)* [7, p. 169-197] in those areas of legal regulation where various kinds of problems and difficulties are discovered, including legal conflicts, «gaps» in legal regulation or «non-working» legal norms that, for one reason or another, are not implemented in practice, remaining «empty declarations». In this form, both legal research and research in the field of economics, finance, sociology, political science, ecology, energy, agriculture and other fields of science can be implemented. The implementation of this form in the work of the institutional component of the legal system is especially important and in demand at the preparatory stages of the law-making process, when the issue of the necessity and expediency of legal regulation in a specific situation is decided and the optimal level and methods of legal regulation for a given situation are determined;

- *comparative studies* [10] that analyze the advantages and disadvantages, positive and negative experience of legal regulation in foreign countries, as well as the possibilities and methods of adapting foreign legal experience to the specifics of the corresponding stage in the development of the national legal system, which becomes especially relevant during the period of integration processes affecting the legal system of the

state to ensure the harmonization of legal regulation within the country with legal regulation at the level of the integration structure;

– *historical research* [7, p. 198-229], which can be considered both as an independent form of implementation and as a component of other research (analytical or comparative) in order to establish, on the basis of historical examples, analogies and other patterns, national characteristics of legal regulation and select optimal algorithms for adapting foreign legal institutions, to give an objective assessment of the possibility or impossibility of implementing specific methods of legal regulation, taking into account historical experience in the development of legal institutions of the state;

– *inclusion of qualified scientific specialists in the composition of working groups for the development and discussion of draft legal acts* [6, p. 11-12], allowing for the possibility of assigning research institutions (from the same or different fields of science) the independent development of draft legal acts. One of the most striking examples of the use of this form in Moldova is the involvement of representatives of the country's scientific community in the development of the draft Constitution of the Republic of Moldova [14]⁴⁷, adopted in 1991, taking into account the changes made during discussions in parliament;

– *mediation of legal clinics, created on the basis of law universities and faculties* [11], *between the population of the country and the institutions of the legal system* (judicial bodies, police, etc.). As a rule, such legal clinics are created to provide free legal assistance to low-income categories of the population. The implementation of human capital in the specified form can be carried out in the interaction of the legal education system with scientific institutes and research centers. This form of implementation of human capital in the activities of the legal system institutions performs the function of a kind of «bridge» between civil society and the state, which is necessary in the legal system of any state oriented towards the democratic path of sustainable development;

– *various types of consultations, which can be either individual or public* [12], depending on the nature of the relevant type of legal activity and the purposes for which such consultations are organized. Public types of such consultations may include: participation of qualified specialists in public hearings and other forms of discussion of draft regulatory legal acts; public lectures; as well as round tables and scientific and practical conferences that allow for the organization of a substantive discussion on a specific problem arising in the activities of law-making, law enforcement or other institutions of the legal system of the state.

It should be noted that at the current stage of the integration process of the Republic of Moldova into the European Union, the legal system of Moldova needs the active use of all the above-mentioned forms of implementation of human capital in the work of the institutional component of its legal system, since all these forms are necessary to ensure not a formal, but a qualified, scientifically sound and democratic approach to the harmonization of legal regulation within the country with legal regulation within the European Union [4]. The use of the entire spectrum of the listed forms of implementation of human capital in the functioning of the legal system of Moldova can have a positive effect on the necessary preparation of the country's legal institutions to perceive the approaches to legal regulation, legal standardization, legal sanctioning and interpretation of law that are characteristic of the European Union.

It should also be noted that the implementation of human capital in the activities of the institutional component of the legal system of society is possible not only in the forms of a kind of «cooperation» of the institutions of the legal system with the social institutions of legal education and science that we have indicated, but also in other ways, including the attraction of highly qualified legal personnel to work in the relevant government bodies and other institutions of the legal system through free access to personnel selection based on a competition for a vacant position and the principle of professionalism. However, other forms of human capital implementation are either part of the personnel policy of the relevant institutions of the legal system, or to a lesser extent allow for consistency and consistency in their implementation.

Principles of implementation of human capital in sustainable development of the institutional component of the legal system of society.

The above-considered *forms of implementation of human capital in the work of the institutional component of the legal system of society can ensure the sustainable development of legal institutions and the entire legal system as a whole only if certain principles are observed*. These principles take into account universal, regional and national patterns of functioning of the institutions of the legal system of society. Among the most universal principles, in our opinion, it is necessary to note: the principle of combining professionalism and scientific approach; the principle of combining regularity and expediency; the principle of economic efficiency.

⁴⁷ See for example: State University of Moldova: The overview of the conference «30 years after the adoption of the constitution of the republic of Moldova. The survival of the constitutional tradition in the patterns of European constitutionalism» [online]: <https://usm.md/?p=29399&lang=en> (accessed: 01.09.2024).

The principle of combining professionalism and scientific approach. Since professionalism and scientificity are inextricably linked with each other, then without interaction with the academic structures of the scientific community, the activities of professional corporations of lawyers in solving current issues of the functioning of the legal system turns into a primitive «system of acquaintances and connections» within the professional community. In turn, the academic environment formed by representatives of the scientific community of lawyers cannot direct its potential to solving practical issues of the functioning of the legal system, finding itself «isolated» from the work of law-making, law enforcement and other institutions, which is why the results of scientific activity do not receive real implementation in legal practice. At the same time, effective interaction between the professional and scientific community of lawyers is achieved only at the institutional level. This means that such interaction is effective only if it is organized between the relevant corporate communities of lawyers, since fragmentary cases of such interaction cannot ensure the stable «systemic effect» necessary for constant and qualitative changes in the development of the legal system.

The principle of combining regularity and expediency. This principle indicates that, on the one hand, the implementation of human capital in the work of the institutional component of legal systems will bring the maximum positive effect provided that it is regular, allowing the above-mentioned forms of implementation of human capital to constantly «accompany» the activities of law-making, law enforcement and other institutions of the legal system. On the other hand, the introduction of these forms into the activities of any institutions of the legal system should be appropriate, so as not to turn the implementation of human capital into a formal procedure necessary for some kind of «reporting», but not having a real impact on the work of these institutions. To ensure the sustainable development of the legal system, the «implementation» of the indicated forms in the activities of its institutional component should not turn into their «merger» with the bureaucratic apparatus of the state. This means that the forms of implementation of human capital that we have considered should be introduced into the activities of the relevant institutions of the legal system, while maintaining the ability of members of the legal scientific community and representatives of the legal education system to freely and independently give an objective critical assessment of any specific case.

The principle of economic efficiency. The economics of any kind of human activity points to a general pattern: it is impossible to obtain a positive effect («profit») from this activity without making any investments. It should be understood that the above-mentioned forms of human capital implementation can have a real impact on increasing the efficiency of the functioning of the institutions of the legal system of society only if they are carried out within the framework of full-fledged types of activity with a pre-defined «incoming request» (a kind of «technical assignment»), for the realization of which the required amount of time and resources are allocated. At the same time, it should be understood that the activities of social institutions of legal science and legal education carried out within the framework of these forms are not their main activities and therefore it is impossible to expect a serious positive result from the use of human capital concentrated in these social institutions without the necessary investments of time, finance and other resources. It is impossible to mix the main activities of legal education and science institutions with their activities within the framework of the implementation process under study, since such mixing can have a negative impact on the general state and quality of human capital, the accumulation of which is the basic purpose of these social institutions. One of the most optimal options for investing in the relevant forms of human capital implementation, in our opinion, could be the organization by interested institutions of the legal system of society of «orders» for the conduct of relevant research and other types of activities, for the implementation of which the «customer» must provide time and allocate the necessary resources.

Key findings:

1) given the interdisciplinary nature of the concept of human capital, it seems possible to use this concept in legal science, recognizing that it is most appropriate in the discussion of increasing the efficiency of the functioning of the legal system of society;

2) being an important humanistic component of the legal system of society, which sets this system in motion and turns it into an effective «working mechanism», human capital performs the function of a kind of «energy accumulator» in the legal system of society for the sustainable development of the legal system of society;

3) a necessary condition for the use of the «energy potential» of human capital in the work of the internal mechanism of the legal system of society is its «implementation» in the activities of the institutional component of the legal system, which can provide a sustainable positive effect only if certain principles are observed, taking into account the above-mentioned and other objective patterns in the development and functioning of the legal system;

4) since human capital can be formed only in the process of functioning of social institutions of legal education and legal science, the effectiveness of the use by the legal system of the «energy potential» inherent

in the human capital directly depends on how fully the aforementioned social institutions can perform their basic functions;

5) considering sustainable development as a «general regional trend» in the dynamics of legal systems in the European region and taking into account the steps taken by the Republic of Moldova towards integrating the legal system of Moldova into the legal space of the European Union, it seems necessary to pay attention to the positive experience of implementing the forms of implementation of human capital in the activities of legal institutions of the EU member states considered in our study and to analyze the mistakes made in this regard.

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