

FUNCTIONAL CAPABILITIES OF THE CONCEPTUAL MODEL OF THE LEGAL SYSTEM'S SUSTAINABLE DEVELOPMENT IN RESOLVING THE PROBLEM OF „HUMAN CAPITAL DONATION” BY THE REPUBLIC OF MOLDOVA¹

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Summary

Analyzing statistical data for the Republic of Moldova, the study draws attention to the negative trends in the processes of external migration of the population from the country, turning Moldova into a „donor” of human capital for more developed countries and creating a serious internal threat to the national security of the state in the medium and long term. It is substantiated that the studied conceptual model of the legal system’s sustainable development, the features of which were present in the development of Western European legal systems during the post-war integration processes in Europe, is capable of creating favorable legal conditions for the use of the potential of the human capital of its own population within the country, which can become one of the aspects of a constructive solution to the problem of „human capital donation” existing in Moldova. The study examines the functional potential of the conceptual model of a sustainably development legal system in addressing this problem. The methodological basis of the study is a combination of theoretical legal modeling, systemic-structural, and functional analysis.

Key words: *human capital donation, legal system, sustainable development, european model, functions, national security.*

Introduction

An analysis of statistics on migration processes in the Republic of Moldova in recent years [1, 2, 3] indicates that a special place among the country’s contemporary problems in the field of migration is occupied by the scale and bias of external migration of its own population from the country, which, given all the other demographic problems of the republic [4], further aggravates the demographic crisis in Moldova, creating an extremely serious threat to the national security of the state and its so-

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cial foundation. At the same time, taking into account the aggravated problems of national security in modern geopolitical conditions [5], aggravated by the crisis state of demographic indicators, we consider it important to pay attention to the range of issues that form the problem of the so-called „donation of human capital”, which is a serious internal threat to the national security of modern Moldova.

What is the essence of the process of „human capital donation” and when does this process become a national problem?

In addition to the fact that the content of the process of „donation of human capital” is the emigration of human resources necessary for the development of the donor country of human capital, an equally important feature of this process, which turns it into a problem of national security of the state, is not only the scale, but also the tendentiousness of this process over fairly long periods of time, which makes it extremely difficult to „curtail” this process in the long term and only under the condition of urgent and significant changes in the state policy of the donor country, since, according to international experts [6: p. 46], large-scale and sustainable emigration, apparently, creates long-term negative effects in donor countries.

Public policy measures aimed at solving the problem of human capital donor countries cannot but take into account the experience of successful migration policies implemented by „recipient countries” („acceptor countries”) of human capital, since, as the World Bank noted in its report on the economy of the Europe and Central Asia region „Migration and Brain Drain” [7], such a policy is particularly relevant for European countries that are both donor countries and countries receiving such migrants [6: p. 39]. Such measures, analyzed by the World Bank, include: improving the quality of public administration and strengthening institutions in donor countries [6: p. 54]; long-term guarantees of access to educational and other public services; favorable tax regimes (especially important for highly skilled workers); the quality of higher education, which is „an important entry point into the labor market” [6: p. 44], and especially (given the specific nature of the modern economic) the quality of higher education in specialized technical fields and areas oriented towards the application of scientific research [6: p. 45]; stimulating private sector development and job creation; investing in higher education; improving employment opportunities for women; strengthening connectivity by reducing transport and communication costs [6: p. 54].

However, the effectiveness of all the above-mentioned public policy measures in the area of attracting human capital to the country’s economy largely depends on the legal conditions that accompany their implementation into the country’s current public policy, since *the country’s implementation of any such measures takes the form of legal reform, that is, the form (and, in many ways, the logic) of the legal process.*

In legal science in the post-Soviet space, attempts have been made to study the patterns of the process of legal reform as a relatively independent legal process [8]. However, given the complex internal organization and integrity of the legal system

of society, in our opinion, it should be recognized that the effectiveness of legal reform, and, consequently, the effectiveness of the implementation by the state of measures aimed at attracting human capital to the country's economy, does not depend on any one process, the functioning of which affects only the organizational and normative components of the legal system, but on a whole complex of legal processes, institutions and phenomena of a different nature (including phenomena of an ideal nature affecting the area of legal consciousness), relating to all components of the legal system of society, the „systemic effect” of the functioning of which is capable of influencing both the social and economic systems of the country, as well as other spheres of life of the population.

Therefore, a more important aspect of the study of the legal conditions for the successful implementation by the state of measures aimed at attracting and rationally using human capital in the country's economy, we believe, is the study not of individual legal processes, but of *holistic theoretical models of the national legal system's dynamics, in which the functioning of all its components can have a positive impact on the dynamics of other spheres of public life, including positive changes in the dynamics of demographic migration processes in the social sphere and positive changes in the dynamics of economic processes associated with satisfying the needs of the national economy for human capital.*

For these reasons, the necessary and sought-after theoretical model of the dynamics of the national legal system can be defined as *a socially oriented model aimed at satisfying the social demand of the country's population for the creation of competitive conditions for attracting and developing human capital within the country.* Moreover, as can be seen, the above-mentioned public policy measures recommended by the World Bank are intended, on the one hand, to stimulate *the development* of human capital resources in the country (including in the area of increasing the availability and quality of education), and, on the other hand, to ensure *stable conditions* for these resources within the country (including stable access to necessary public services, stable development of public institutions and infrastructure). In this regard, the nature of the dynamics of the theoretical model of the legal system, oriented towards satisfying existing social demand, should, on the one hand, create legal conditions for the development of human capital resources in the country, and, on the other hand, create legal conditions for ensuring stable conditions for these resources within the country. The embodiment of such a combination of the conditions of „development” and „stability” is *the concept of „sustainable development”* [9], which can be used to denote the nature of the dynamics of the sought-after theoretical model of the legal system.

Thus, *a theoretical model of the dynamics of the national legal system, capable of having a positive influence on the dynamics of demographic migration processes in the social sphere and the dynamics of economic processes associated with satisfying the needs of the national economy for human capital, can be defined as a conceptual model of the legal system's sustainable development.*

We also note that, the legal conditions created by such a model, capable of stimulating a constructive approach to addressing the problem of „human capital donation” experienced by contemporary Moldova, are formed through the functioning of all components of its national legal system. Therefore, we will further analyze the functional capabilities of each component of the conceptual model of the legal system’s sustainable development in addressing this problem.

Theoretical and methodological background of the research.

The entire complex of legal conditions necessary for the effective implementation by the Republic of Moldova of state policy measures aimed at solving the problem of „human capital donation” can be systematized by using *the method of theoretical legal modeling* [10], the object of which is the sustainable development of the legal system of society, which, for the reasons stated above, is the most positive type of dynamics of the legal system, under the conditions of which the task of satisfying the social demand of the country’s population for the „development” of human capital and „stable conditions” for the realization of its potential can be successfully solved.

In creating a conceptual model for the sustainable development of the legal system, this study summarized the developmental features of legal systems in the European region that are civilizationally close to the Moldovan legal system, belonging to the Romano-Germanic legal family and managing to preserve their cultural identity and adherence to the traditions of continental law. By analyzing the dynamics of Western European legal systems, we discovered that in the post-war period of the second half of the 20th century, a number of common features emerged in their development, which not only created the legal conditions for the socioeconomic recovery of these countries but also accompanied the deepening and expansion of integration processes in Europe [11]. These features include: a reflection of the legal values of European society, which during this period were legally enshrined in both national and international law; democratization of public institutions; expansion of the range of rights and freedoms and their legal guarantees, including the work of the European Court of Human Rights; activation of the human rights movement; as well as the expansion of other opportunities to meet the social needs of the population through participation in the legal life of society. Considering that the reunification of the national legal system of Moldova with its European roots has become an important trend in its development since its independence and considering the particular importance of this trend in the context of the process of European integration of Moldova, we believe that the implementation of the studied conceptual model, embodying the common features of the development of legal systems in the European region, which laid the legal foundation for deepening and expanding their regional integration, is a necessary step towards the sustainable development of the national legal system of Moldova in the European region and its harmonious integration into the European political and legal space.

It should also be noted that the use of a theoretical model of sustainable legal system development in the study of the legal conditions for Moldova’s decision to

address practice-oriented issues, including the problem of „human capital donation”, presupposes a combination of theoretical and legal modeling with *systemic-structural and functional analysis*. This „methodological combination” allows us to discern the connection between the sought-after legal conditions and the functioning of the organizational, normative, institutional, and spiritual-cultural components of society’s legal system, while highlighting the functional capabilities conditioned by both the basic functional purpose of these components within *the structure* of this model and the functional *systemic effects* („external effects”) that arise in the context of the actual dynamics of the legal system as it interacts with the external environment (economic, social, political, and other spheres of public life).

Functional capabilities of the organizational component of a sustainably developing legal system.

Within the conceptual model of sustainable development of the legal system, the organizational component is perhaps the most „sensitive indicator” of the objective need for changes aimed at satisfying the social demands of society, as the numerous legal interactions that comprise this component are themselves highly dynamic. However, in the context of a systemic-structural approach and an analysis of the functions performed by the organizational component, it becomes clear that the vast array of various legal interactions does not constitute „legal chaos”, but rather has its own internal logic of development, through which the organizational component interacts with other components of the legal system, serving as part of a complexly organized legal system of society.

The basic functional purpose of the organizational component, which constitutes the core content of its internal function and establishes a direct link between this component and the normative component, is *the organization of legal interactions*. This is achieved by establishing feedback between their participants, thereby elevating disparate acts of legal interaction to a qualitatively new level – *the level of legal communication*. It is through the „feedback mechanism” that organizes legal communication that, during the functioning of the organizational component, acts of full-fledged legal communication are formed, and, consequently, a legal space is created for the search for specific legal means chosen by participants in legal communication aimed at satisfying the social needs of the population, including the social demand for creating conditions for the stable development of human capital within the country.

However, the functional capabilities of the organizational component of the conceptual model under consideration are not limited to its internal function, as this component, being part of the legal system as a more complex entity closely interconnected with its external environment (political institutions, economic system, etc.), generates a certain „external effect” during its functioning. Thus, acts of legal communication formed during the organizational component’s performance of its internal function inevitably become part of the overall space of social communications, extending beyond the legal framework. This draws other interested participants in social communications into the „discussion” surrounding the population’s social

demand for the creation of conditions for the stable development of human capital within the country, which becomes the subject of legal communication. These participants are also drawn into the feedback mechanism, enabling *a dialogic engagement* within social communications around the search for a solution to the existing problem of „human capital donation”. This, in turn, allows for feedback from the widest possible range of stakeholders, both from the state and from civil society, thereby facilitating *a legally based dialogue* between the latter. In this way, the organizational component fulfills its *external function of dialogizing the space of social communications*, forming additional opportunities to satisfy the social demand of the population for the creation of conditions for the sustainable development of human capital within the country, and therefore for the successful solution of the problem of „donation of human capital” facing the country.

Functional capabilities of the normative component of a sustainably developing legal system.

In the structure of the conceptual model of sustainable development of the legal system, the normative component establishes a direct „incoming” connection with the organizational component, since its functioning brings the legal communications „accumulated” by the organizational component to a higher level. By ensuring the further development of legal communication around the satisfaction of a certain social demand of the population, the functioning of the normative component leads, as a result of the accumulation of experience in legal communications arising in connection with the solution of the corresponding problem, to the formation of certain *general norms of legal communication* in this area, which receive legal registration. This is how the basic internal function of the normative component of the model under consideration, consisting in *the standardization of legal communications*, manifests itself. Thanks to this function, the legal system, through the normative component, clothes legal communications on the issue of the most favorable conditions for the stable development of human capital within the country in the legal form of legal guarantees, legal principles, legal incentives, privileges, benefits, legal prohibitions, legal security structures and other legal formulas [12, 13, 14, 15: p. 215-228], and can also form legal customs that serve as normative elements of alternative forms and levels of legal regulation (including the norms of „shadow law”, which become particularly relevant in the face of ineffectiveness and the obvious discrepancy between state-adopted legal norms and social expectations, introducing dissonance into the cycle of sustainable development of the legal system). Thus, *the functioning of the normative component effectively becomes a means of legally supporting specific public policy measures aimed at addressing the problem of „human capital donation”*, through the implementation of legal guarantees, benefits, and other specific legal means.

However, we should note that in examining the normative component within our conceptual model, we do not limit its functioning to the lawmaking of the state. Rather, we trace its close connection with all participants in society’s legal communication. Their participation in dialogue with the state regarding the satisfaction

of social demand for the creation of conditions for the sustainable development of human capital within the country presupposes their participation in the formation of a common *conventional position* on this issue. Therefore, the functioning of the normative component does not „automatically” cease upon the adoption of a legal act on this issue by the state. It should be remembered that the functioning of the normative component occurs within the process of legal communication, which is characterized by legal dialogue. If the introduction of any public policy measures in this area occurs outside of legal dialogue, this means that the functioning of the normative component of the legal system is replaced by political, ideological, or forceful mechanisms that have no communicative legal basis, which constitutes a deviation from the course of sustainable development of the legal system of society.

Moreover, just like the functioning of the organizational component, the functioning of the normative component of the legal system model under consideration has its own „external effect”, manifested through the interaction of the legal system with the external environment. This „external effect” is *the external function of legitimizing social regulation* performed by the normative component. This function consists in the fact that the conventional position of participants in legal communication on the issue of necessary public policy measures to stimulate the sustainable development of human capital within the country, formed during the process of the normative component’s implementation of its internal function, effectively forms a certain general framework for the approval or disapproval of measures taken by the state by society. That is, it determines *the conscious legitimacy* (i.e., legitimacy realized through the process of active communication and fundamentally different from the legitimacy formed in public legal consciousness under the influence of aggressive political advertising, ideology, or other manipulative mechanisms) of these measures in the eyes of public opinion, which, in the secular culture of modern society, as a rule, appeals to „legal” criteria. Thus, by fulfilling its external function, *the normative component of a sustainably developing legal system establishes an additional „legitimacy barrier” for state policy measures aimed at satisfying the social demands formed by society*, which creates additional legal conditions for the development of a constructive political course for the country to solve the problem of „donation of human capital”.

Functional capabilities of the institutional component of a sustainably developing legal system.

In the conceptual model of sustainable development of the legal system, the functioning of the institutional component forms the next link in the cycle of sustainable development of the legal system of society, following the functioning of the normative component. For this link, the norms of legal communication formed by the preceding component become the basis for the process of institutionalization of legal communications. In fact, *the institutionalization of legal communications* is the basic internal function of the institutional component of the model under consideration. In this regard, the functional capabilities of the institutional component in solving the problem of „human capital donation” are determined by the fact that,

during the functioning of this component, participants in legal communications on the issue of creating conditions for the stable development of human capital within the country form (if they did not previously have one) or adjust (an existing one) their own „representation” in the legal dialogue between society and state. This representation becomes the legal institutions of society, which may include specially created or already existing human rights organizations that receive additional competence, organizations for the resolution of legal disputes and conflicts, judicial institutions, and other institutions of society engaged in legal activities aimed at the implementation of the law. Thus, *the functioning of the institutional component of a sustainably developing legal system creates legal conditions for addressing the problem of „human capital donation” at a qualitatively different level – the institutional level.* This presupposes not only the specification of the legal personality of participants in legal communication arising from the issue of satisfying the population’s social demand for conditions for the stable development of human capital within the country, but also a transition from spontaneous legal communication to regular legal activity.

The „external effect” of the interaction of a steadily developing legal system with the external environment, arising during the functioning of its institutional component, becomes the latter’s *external function, which we can define as the democratization of societal institutions, a logical outcome of legal communication that has progressed from isolated legal interactions through the „feedback mechanism” and legal dialogue between society and the state, to changes in the normative structure of law and the institutions that ensure the implementation of law.* Since this „path” in the context of the sustainable development of the legal system is a „bottom-up” one, that is, a path beginning with individual legal interactions among a wide range of participants in the legal life of society involved in the relevant problem, who need to satisfy a common social demand, we have sufficient grounds to believe that *this „legal path” to solving the problem of „human capital donation” initially lays a democratic foundation for the search for the necessary solution* and most fully manifests its „democratic potential” at the level of external interaction between society’s legal institutions and other spheres of public life.

Since the problem of „human capital donation” is inherently a problem concerning the social foundations of the state, a democratic approach to overcoming this problem, developed in the process of functioning of a sustainably developing system and initially based on the social demand of the country’s population, is, in our opinion, the most adequate and constructive way to legal ensure the country’s successful exit from the status of „human capital donor”. Furthermore, it is the functional potential of the institutional component, consisting of the democratization of social institutions (including public authorities), that creates the legal conditions for the donor country to implement the measures recommended by the World Bank to improve the quality of public administration and strengthen institutions in donor countries [6: p. 54].

Functional capabilities of the spiritual-cultural component of a sustainably developing legal system.

In the structure of the conceptual model of the legal system's sustainable development, the functioning of the spiritual-cultural component, as it were, „closes” the internal cycle of the legal system's sustainable development and, at the same time, provides an „impulse” for a new round of development, which ensures *the continuity* of development of the legal system, which is important from the point of view of the sustainability criterion, and, therefore, the continuity of its influence on the external environment, which is capable of, as it were, „retransmitting” to this environment (including the social and economic spheres) the sustainable nature of development by inertia. The simultaneous combination of the role of the „closing link” and „impulse for a new round of development” in the functioning of the spiritual-cultural component of the model under consideration does not allow us to make an unambiguous conclusion about whether the functioning of this component is the end or the beginning of the internal cycle of the legal system's sustainable development, formed by the interrelation of its components, which, being a reflection of the continuity of the dynamics of sustainable development in the model of the legal system under consideration, allows us to discern in this dynamics the features of a natural process and to use variable philosophical approaches and methodological algorithms for the interpretation of the functional capabilities of this model, on which the place of the spiritual-cultural component in the sequence of „links” of the internal cycle of the legal system's sustainable development may depend. In solving practice-oriented research problems, in particular, in the study of the legal conditions for solving the problem of „donation of human capital”, such a theoretical question fades into the background, compared with the definition of the specific functional potential that this component possesses, concentrating in its structure various phenomena of an ideal nature, most closely connected with the area of legal consciousness of society (legal attitudes of society, legal mentality, legal psychology, etc.).

The basic internal function of the spiritual-cultural component of a sustainably developing legal system is *the identification of legal intentions*, formed within the legal consciousness of the population through the assessment of the activities of society's legal institutions, resulting from the institutionalization of legal communications arising from the satisfaction of the population's existing social demand. Through this function, the spiritual-cultural component enables public legal consciousness to formulate legal assessments of the sufficiency, insufficiency, or the need for other public policy measures aimed at satisfying the population's social demand for the stable development of human capital within the country. These „legal assessments” acquire, through the functioning of the spiritual-cultural component, the form of „intentions” of legal consciousness, which express certain „communicative intentions” that either generate a new social demand of the population (if the previous demand has been satisfied from the perspective of public legal consciousness) or sharpen and re-actualize a previously formed social demand. However, as the analysis of the public policy measures recom-

mended by the World Bank shows, for the successful overcoming of the problem of „human capital donation” even in the long term, *the time factor* is an extremely important factor, that is, the urgency and urgency of taking appropriate measures. Therefore, a prolonged aggravation of the social demand of the population significantly reduces the chances of the country-donor of human capital for a successful solution to this problem, the aggravation of which in the long term creates not a potential, but a real internal threat to the national security of the state, while simultaneously making the state more vulnerable to potential external threats.

The „external effect” of the functioning of the spiritual-cultural component of a sustainably developing legal system in its interaction with the external environment is *a reflection of public consciousness*, stimulated by intentions formed by legal consciousness. For this reflection, the communicative intentions formed by legal consciousness become the basis for *actualizing society’s critical self-awareness*, orienting society to „fight for the rights”. This „fight” becomes the content of legal interactions, which, during the functioning of the organizational component, are transformed into legal communications, thereby providing impetus for a new cycle of sustainable development of the legal system. In fact, *as a result of the reflection of public consciousness stimulated by the spiritual-cultural component of the legal system, we observe nothing less than the formation of a constructive social demand, which orients the legal system to create the legal conditions for its satisfaction*. In this regard, the analysis of public opinion and other forms of public reaction on the issue of the most promising ways to solve the problem of „human capital donation” is an important indicator of this initial social demand of the country’s population that becomes a prerequisite for the formation of legal grounds for solving this problem in a socially oriented conceptual model of sustainable development of the legal system.

Conclusion

The implementation of any public policy measures by the Republic of Moldova aimed at addressing the country’s problem of „human capital donation” takes the form of legal reform, guided by the logic of the functioning of the legal system of society. Therefore, a scientifically grounded approach to solving this problem must take into account the functional interrelationships of the components of the legal system of society. The functional potential of the legal system’s components in addressing this problem, as well as other issues rooted in the unmet social demands of the country’s population, is most fully realized through their sustainable development. This allows us to consider the conceptual model of sustainable development of the legal system as the most suitable for addressing such practice-oriented tasks.

The internal functions performed by the organizational, normative, institutional and spiritual-cultural components of this socially-oriented model contribute to the formation of favorable legal conditions for satisfying the social demand of the population of Moldova for the stable development of human capital within the coun-

try, ensuring: 1) a legal interpretation of the social demand of the population for the stable development of human capital within the country in the process of legal communication; 2) standardization of legal communications, accompanied by the formation of a conventional legal position on the existing problem of „donation of human capital”; 3) bringing the solution of this problem to the institutional level of legal communication; 4) a legal assessment of the sufficiency or insufficiency of public policy measures aimed at solving the problem of „donation of human capital” caused by dissatisfaction with the corresponding social demand.

The additional functional capabilities of the components of this conceptual model in solving the problem of „human capital donation” in Moldova are determined by the „external effects” generated by their functioning: 1) the dialogization of the space of social communications regarding the existing social demand of the population for the stable development of human capital within the country; 2) the establishment of additional „barriers to the legitimacy” of public policy measures in the area of solving the problem of „human capital donation”; 3) the democratization of social institutions involved in legal communication around this problem; 4) the actualization of the critical self-awareness of society, encouraging it to use legal means to fight for its right to better conditions for the development of human capital within the country in a legal dialogue with state.

Thus, the functional capabilities of all components of the conceptual model under study demonstrate the ability of a sustainably developing legal system to exert a positive influence on the dynamics of migration processes in the social sphere and the dynamics of economic processes associated with satisfying the national economy’s need for human capital, imparting „stability” to these spheres and stimulating their „development”, which also contributes to a more harmonious integration of Moldova into the European economic space.

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