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**FACTORS ASSISTING TO THE FORMATION OF THE DEFECTIVE  
LEGAL AWARENESS IN THE SOCIETIES OF TRANSITIONAL TYPE**

Reformation of legal systems of transitional societies requires a deep rethinking of the role and importance of sense of justice in the modern legal processes. Because the efficiency of the legal system as a whole depends on the quality of the sense of justice of various subjects of law and its perfection. Even the best elaborated and processed laws will not be fully implemented if the level of sense of justice is low [1, p.54].

The sense of justice of a transitional society of any bearers, not only of the representatives of the elite circles, is quite heterogeneous, contradictory and unstable. The law has not occupied its rightful place in the individual and collective motivation sphere [2, p.6].

These and other provisions determine the relevance of the research topic.

Sense of justice as a part of the legal culture and legal system as a whole is an important component that significantly affects all spheres of life of law - law-making, law-implementation, law-enforcement, interpretation of law, etc. But justice, in turn, is exposed to many objective and subjective factors, which do not always result in a positive effect on her. Some phenomena give rise to distortion of legal consciousness, and therefore hindering its formation in individual subjects of law and develop their own positive legal position. The varieties distorted sense of justice should include legal nihilism, idealism legal, legal amateurism, legal demagoguery, legal and other infantilism its negative form.

They manifest most clearly in transitional societies, for which the inherent legal uncertainty, diversity of conflicting legal process, opposition and other political forces, the lack of clear or blurred social and legal guidelines, the immaturity of civil society and the political elite and more.

The legal consciousness of transitional societies, as well as their legal system, are also emerging, fragile, vulnerable, not fully formed. As rightly observes American historian rights GJ Berman, there is a certain alienation of modern societies from the right, resulting in an unprecedented crisis of legal values and legal thought, the crisis, which called into question the entire legal tradition [3, p.46].

Therefore, factors that cause deformation of the legal consciousness of the

most common and dangerous forms, are the goals and objectives of this study, which include the following:

- Identification and analysis of objective factors that cause the formation of defective justice in transitional societies;
- Defining the types of distorted sense of justice caused by the following factors;
- Identification and analysis of subjective factors that cause deformation of the legal consciousness of subjects of type societies in transition;
- focusing on specific kinds of defective consciousness, formed by the action of human factors, and others.

Research problems of justice, its content, the nature, role paying attention to a number of domestic and foreign scholars, among which is called S.S.Alyeksyeyeva, V.A. Burmistrova, D.A. Kerimov, A. Kosarevska, E.A. Lukasheva, N.M.Parkhomenko, V. Tyemchenko, I.V. Yakovyuk and many others.

Exploring different aspects of justice - its structure, features, causes degradation, and other ways to improve, researchers are paying enough attention to subjective and objective factors that give rise to specific types of defect of justice as a kind of social pathology that negatively affects the processes of social development and individuals. The need for thorough research of the main types of defect justice and the factors that give rise to them, due to the fact that scientific sources mostly focuses on legal nihilism, at least - the legal idealism and somewhat concealed these types of deformed justice as legal infantilism, legal demagoguery, Legal amateurism and others.

Recently, many societies in transition with this kind of justice tend to spread.

The problem is more global than it might seem at first glance. As you know, the science and practice of public life distinguishes except legal, and other forms of social consciousness - such as political, religious, moral, corporate, ethical and others. They also exposed the negative impact of various factors of objective and subjective nature, generating in turn their deformation. Therefore, there is a problem research into the causes and characteristics of political, religious, moral, corporate, ethical nihilism, etc., demagoguery, infantilism, dilettantism, idealism, which is the subject of research of other social sciences. The subject of our study is narrowed to the problems of interpretation and analysis of the types of deformation only legal consciousness and the factors that give rise to them.

For countries in transition inherent in the existence of immature transitional civil society is a major objective factors of deformation of justice. The transition state of social development creates a temporary disorder, disharmony economic, political and legal framework for the state, which is fertile ground for the maturation of any negative processes. In most transitional societies is no middle class, which is a major taxpayer owns the property, making it independent from the state, so it is the social foundation of any civil society, as evidenced by the social practices of the developed countries of the modern world [4, p.477]. Because immature civil society causes poor control over the power structures that generates the opacity of the authorities, officials confident in their own impunity.

These factors contribute to all major types of defective subjects of justice - and legal nihilism, infantilism and legal and legal demagoguery and legal dilettantism.

If legal nihilism manifested in skeptical contempt for the law in general or

specific legal values, or in full disbelief in its actual and potential [5, p.42], then the legal idealism is excessive revaluation of real opportunities right in the regulations. Nature of legal idealism is absolute and idealization as a right, inflated the value of its regulative and normative features compared to other systems of social regulation [6, p.657]. Legal idealism less than "by ear", so that more evident in the generation critical periods of history (eg, legal euphoria during Gorbachev's perestroika in the USSR in the 90s or during the mitigation of public-political regime under the so-called "Khrushchev thaw " in the 60 - 70-ies of XX century).

Legal amateurism shown at random, incorrect interpretation of the law, its implementation, promotion and evaluation. In other words, the legal amateurism means free treatment to the law, frivolous attitude toward the law in general [4, p.545].

Legal infantilism formed in the absence of specific subjects of profound legal knowledge of unsystematic, aborted, failure or lack of proper legal experience, with personal conviction subject to their completeness and adequacy for the performance of their official duties.

Legal infantile characteristic, usually regional officials, heads of ministries and agencies and individual law enforcement officers who obtained a law degree, due to performance requirements, while at the corresponding positions in government or public institutions.

Terms demagoguery is selfish use legal means (values) separate entities to influence the minds of other entities for their own interests, resulting in the formation of one-sided and distorted view of the legal value of such entities [4, p.546]. Peak legal demagoguery takes place during election campaigns, referenda, plebiscites, social surveys and more. Legal values are used as a means to cover their own vested interests and the implementation of populism.

An important objective factor that gives rise to certain deformed consciousness, acting immature, imperfect democracy and rule of law, which contributes to a violation of the principle of separation of powers, failure in the functioning of the machinery of government and the legal system, the confrontation of different branches of government, nepotism and corruption among public officials. These factors generates distrust of government and public institutions, uncertainty about the future, frustrated regulatory capabilities of law humiliation separate legal entities mentioned values in the legal life of society, contributing to the deformation of legal consciousness in all its forms.

An important objective factor of this strain is also the problem of simultaneously building a democratic, social and legal state and civil society in some societies in transition, generating additional difficulties and state law, difficult and increases them delaying social progress in time. Indeed, in the highly developed countries of the world based on democracy initially formed civil society that is increasingly shaped the law. Only on the basis of a mature law was the formation of the welfare state. As rightly observes E.A. Lukasheva - legal and social state is not the antithesis, and the dialectic of nation-building that recognizes the priority of human rights, thereby directed forms and methods of [7, p.115].

In these very difficult conditions of the state and the legal construction of the subjects of law, sooner or later there is a reassessment of values, including legal, shift to other social standards, generating disappointment with the right, in its regulatory

capabilities, or contempt or indifference to law as a means of regulating social conflict and reconciliation. These transformation processes of social consciousness and adversely affect the legal consciousness, causing deformities such forms as legal nihilism, infantilism legal, legal demagoguery, legal amateurism.

Another objective factor of deformation of sense of justice is the historically inherited disrespect for the law of many subjects since the Soviet era. As we know, today's transient society in the former Soviet Union were in the majority first part of the Russian Empire and later the Soviet Union. For imperial and Soviet government officials, neglect and disregard for laws and dictates of law in general, has been the norm since initiated "from above" party and departmental guidelines in the form of requests, instructions, guidelines, and legal minds of many in the ruling elite of modern transitional societies formed during the Soviet day based on Marxist dogma that popularized the supremacy of the control role of the Communist Party and its instructions, not of law and legal law [8, p.122]. The said orientation of many subjects transitional societies leads to deformation of the legal consciousness in the form of legal nihilism, legal demagoguery, legal dilettantism and more.

An important objective factor in the formation of defective justice is the fusion of the highest state of oligarchic capital, which is the main reason for exclusion of civil society from the elected government structures, especially senior and regional levels. Therefore, the legislative and executive authorities is a manipulation of traditional spiritual, social and Christian values for the sake of vested interests [9, p.685]. Such manipulation of maximum deformation promotes justice in all of the above varieties.

An important objective factor specified deformation is also the immaturity of the political elite transitional societies, the activities of which in some cases serves as an example of a negative attitude to the law, the legal values for lower government officials, and for ordinary citizens. Formation defect of justice ruling elite it serves no practical experience of civilized social activities on the basis of law and democracy for the good of society and man.

Subjective factors contributing to the deformation of justice, much more than objective, so should stay only on the most important ones.

Imperfection personnel policies at all levels of the exercise of power entails updating bureaucratic ranks of demagogues, careerists, populists and other "random" people. Lack of deep theoretical knowledge and practical experience of life gives rise to the formation of defective justice in the form of legal nihilism, legal demagoguery, jurisdictional dilettantism and legal infantilism.

These variations are generated by defective sense of justice and spread of populism and corruption among public officials, their cynical attitude toward law and, accordingly, shifting the focus to other assets to secure their own extreme needs and interests.

The negative subjective factors of deformation of sense of justice is also targeting specific legal entities in conformist behavior, based on the premise: "As all - and I do." All take bribes and I take all the misconduct and I am no exception. It has long been proven that the formation of public consciousness greatly affects surrounding social environment that is the root cause of the formation of justice [10, p.69]. Social apathy is also the subjective factor in the formation of deformed versions of justice as legal amateurism, legal nihilism and legal infantilism. Because

inertia and indifference of certain public officials and ordinary citizens in any social process, reluctance to be involved in everything that happens around creates disbelief in their own abilities, potential opportunities of power and governing bodies of public associations to change things for the better [11, p.27]. An important factor in the generation of defective justice are also loopholes in legislation, legal systems in transition, resulting in unsystematic legislative activities, non-compliance with the principles of priority, planning, feasibility, in contradiction, collision, lobbying of many regulations, causing duplication of certain state structures, blurred and the vagueness of their competence. This state legislation is the fertile ground for the deformation of justice in all its varieties.

Low levels of general and legal culture of individual subjects transitional societies encourage them ignoring the rule of law in everyday life, identification of legal decisions with administrative, which also significantly contributes to a defective conscience.

In summary, we can conclude that the considered objective and subjective factors that contribute to deformation subjects' sense of justice in transitional societies, appear complex, in close relationship, while generating different types of defect of sense of justice, and so for neutralize and eliminate them in the future the considerable efforts of both the state and civil society.

### Literature

1. Бурдоносова М.А. Правовий нігілізм як форма деформації правової свідомості населення / М.А.Бурдоносова // Держава і право. – 2009. – Вип. № 45. – С. 54-60.
2. Тацій В.Я. Здолати правовий нігілізм – завдання науки і суспільства / В.Я. Тацій // Віче. – 2009. – № 21. – с.6-8.
3. Бермен Г.Дж. Западная традиция права: эпоха формирования / Г.Дж. Берман. – М.: «Инфра-М, Издательство МГУ, Норма», 1994. – 624 с.
4. Загальна теорія держави і права: підручник для студ. юрид. вищ. навч. закл. / За ред. М.В. Цвіка, О.В. Петришина. – Х.: Право, 2009. – 584 с.
5. Юридична енциклопедія: В 6 т. / Редкол.: Ю.С. Шемшученко (відп. ред.) та ін. — К.: «Укр. енцикл.», 2003. –  
– Т. 5: П - С. – 736 с.
6. Юридична енциклопедія: В 6 т. / Редкол.: Ю.С. Шемшученко (відп. ред.) та ін. — К.: «Укр. енцикл.», 1999. –  
– Т. 2: Д - Й. – 744 с..
7. Лукашева Е.А. Общая теория прав человека // Е.А. Лукашева. – М.: Норма, 1996. – 520 с.
8. Ганьба Б.П. Причини існування та засоби подолання елітарного правового нігілізму в умовах сучасних суспільств перехідного типу. / Б.П. Ганьба. // Юридична Україна. – 2011. – № 5 (101). – С. 10-15.
9. Шакун В.І. Суспільство і злочинність / В.І. Шакун. – К.: Атіка, 2003. – 782 с.
10. Бачинський Т.В. Філософсько-правові та загальнотеоретичні аспекти правосвідомості : деякі дискусійні інтерпретації . / Т.В. Бачинський // Держава і право

: Зб. наук праці .: юрид. і політ . науки. – 2011. – Вип. 54 – с.67-72.

11. Чайковський С. Нігілістичні прояви життєдіяльності суспільства як антипод феномена поваги до права / С.Чайковський // Підприємництво, господарство і право. – 2012. – №1. – с. 25-28.