SSP Modern Law and Practice (ISSN 2733-3949), Volume 4 Issue 4, Oct-Dec 2024

Identification of Legal Psychology as an Independent Branch of Law

Igor Ozerskyi, Doctor of Juridical Sciences, Professor, Attorney-at-law, Petro Mohyla Black Sea National University, Ukraine
*Corresponding author: Igor Ozerskyi

Received: September 27, 2024
Published: October 31, 2024

Abstract. The science article conducts a theoretical and legal analysis of a new field of scientific knowledge – legal psychology from the standpoint of its perception as an independent branch of law. In the context of the above, the problematic aspects of legal psychology as a scientific, educational and applied branch of legal knowledge are studied on the basis of previously developed by legal psychologists levels of interaction and integration of law and psychology. The formation of legal psychology as a science and vectors of application of its achievements in judicial practice is analyzed. The author's approach in the formation of a new independent branch of law – legal psychology and determining its place in the classification of branches of law is proposed. The author emphasizes the need and urgent demand for the separation of legal psychology as a separate special branch of law that can regulate specific legal relations inherent in the fundamental (profiling) branches of law. The relevance of the article is due to the fact that in domestic legal science the division of the legal system in the field is assessed not in terms of its practical value, but rather in terms of confirming and defending certain scientific and theoretical ideas and concepts, contrary to the expediency of combining certain legal relations in the branch of law to achieve the desired social result through comprehensive study and regulation of specific relations. This, in turn, slows down the formation of new branches of law demanded by legal practice, among which legal psychology is singled out. It is emphasized that the question of the branch affiliation of legal psychology has not only theoretical but also practical significance, uniting individual legal relations in the field of law in order to achieve the desired social result through comprehensive study and regulation of these relations. Attention is drawn to the special classification of legal psychology as a special branch of law, as the latter combines the rules of law governing public relations and related to primary social relations aimed at concretization, strengthening certain rules of basic branches of law, while providing special legal regime for a particular type of social relations. By subordination in legal regulation, legal psychology belongs to the procedural types of branches of law, as it combines the rules of law that determine the procedure, the order for implementing substantive law (criminal procedure, civil procedure, commercial procedure, administrative procedure law). It is proposed to include legal psychology in an independent branch of law, given the presence of features that are inherent in the branches of law; the specificity of the regime of legal regulation; its direct connection with the needs of practice; recognition of its achievements in judicial practice; unification of certain legal relations in the subject of law; conditionality of functional purpose and the place of this industry in the legal system (its type in the classification of industries).

Keywords: branch of law, legal psychology, public relations, method of legal regulation, beyond a reasonable doubt, science, academic discipline.

Introduction. The formation of legal psychology as a science was due to the fact that its basic patterns and partial problems could not be explained at the level of general psychological concepts or purely legal doctrines, and required the development of specialized methodological tools for the study and theoretical development of issues on the border of legal and psychological science on the principle of dual integration. "Legal psychology" as a science synthesizes the legal and psychological side of any phenomenon, process and allows the use of the term legal (*legal phenomena, processes, norms, rules*) and psychology (*psychological laws, phenomena, processes*), because it does not contradict subject of the specified science.

Legal psychology as a science and academic discipline is guided by the rules of substantive and procedural law, for instance: on the procedure for compensation for non-pecuniary damage caused to a person (plaintiff, victim), determining the child's place of residence, conducting forensic psychological examination, establishing psychological maturity, age, etcetera. The author's scientific article "Taking into account the social and psychological assessment of family

relationships as one of the factors of the judge's inner conviction in making a decision on determining the child's place of residence" Economics is emphasized in the author's scientific article. Finances. Law. 2021. № 3. pp. 17-19 [1] – emphasizes the consideration of the psychological component in court decisions.

The purpose of the study was to conduct theoretical substantiation of the author's scientific position on the attribution of legal psychology to an independent branch of law. The methodological basis of the work is the conceptual provisions for the division of the legal system in the industry (subsector).

Materials and methods. Scientific works and online publications, international and national regulations were used as information resources. Thus, the question of the branch affiliation of legal psychology has not only theoretical but also practical significance. On the other hand, legal psychology can be considered as a new independent branch of law, as it meets the stable characteristics of the legal system. As Dudnyk R. rightly noted, the specifics of the formation of a new industry are due to the functional purpose and place of this industry in the legal system (its type in the classification of industries). An obligatory sign of the formation of a new industry, the author notes, is a sign of complexity, which is that the new industry, formed on the basis of existing industries, inherits some of their features, and regulates certain areas of public relations and extends its scope only to a special group of subjects [2]. According to such methodological parameters, legal psychology should be hypothetically attributed to special branches of law (in the structure of profiling branches).

The works of domestic and foreign scientists are devoted to separate theoretical and methodological problems of the separation of legal psychology as a science and a training course, in particular, Androsiuk V., Antosolska M., Bark V., Baranov L., Bed V., Dulov A., Yenikeiev M., Okhrimenko I., Kazmirenko V., Kazmirenko L., Konovalova V., Kostytskyi M., Koshchenets V., Kroz M., Marchak V., Muratov S., Dudnyk R., Prylutskyi R., Stoliarenko O., Synov V. and others, but today it is impossible to say about a thorough applied study of these issues in terms of perception of "legal psychology" not only as a field of legal and psychological knowledge, but also as an independent branch of law. Among other things, as Prylutskyi R. noted, this problem lies in the fact that in domestic legal science the division of the legal system in the field is assessed not in terms of its practical value, but rather from the standpoint of confirming and defending certain scientific and theoretical ideas and concepts. According to the author, the separation of an independent branch of law should be directly related to the needs of practice, in other words, to ensure the optimal development of legislation in a particular area of public relations and facilitate all participants in these relations to use it [3]. Supporting the scientific position of Prylutskyi R., we believe that the division of law in the branch of law should be carried out not so much on "own" subject and method of legal regulation, but on the criterion of necessity and expediency of combining certain legal relations in the branch of law in order to achieve the necessary social or economic result through the comprehensive study and regulation of these relations.

The research of the article is a fragment of research work of Petro Mohyla Black Sea National University on the topic "Conceptual interdisciplinary approaches to the drug circulation system, taking into account organizational and legal, technological, biopharmaceutical, analytical, pharmacognostic, forensic and pharmaceutical, clinical and pharmacological, pharmacoeconomic, pharmacotherapeutic aspects" (state registration number 0123U100468, implementation period 2023-2028).

Results and discussion. According to Academician Kostytskyi V., the needs of jurisprudence in psychological knowledge determine the emergence of legal psychology, which is both a legal and psychological science that analyzes the psychological features of the application of law. "The emergence of such an integrative science," the scientist writes, "simultaneously stimulates the development and improvement of knowledge, both psychological and legal" [4]. A similar position is defended by Academician Konovalova V., who outlines legal psychology as a science that emerged at the junction of general psychology and certain branches of law, and thus has as its subject the study of psychological patterns of persons entering the field of justice [5]. In

this case, mentions Posner E., who in his book "Law and the Emotions", stressed that emotions and emotional states play an important role in many areas of law, providing interpretation of certain actions and phenomena [6]. Among other things, legal psychology determines the value-normative orientation of a person in the field of legal reality [7].

Interaction and integration on the border of law and psychology is manifested at three levels: the application of psychological knowledge in legal activities in its pure (primary) form; use of transformed psychological knowledge; synthesis of psychological and legal knowledge. The first level is the direct use of psychological knowledge as a method of expert psychological assessments in jurisdictional activities. In this case, the psychologist acts as an expert, specialist or consultant in criminal, civil, administrative or economic proceedings or at the stage of execution of punishment or other measures of legal influence. Also, the status of "legal psychologist" in the preserved wording is given in the Resolution of the CCC of the Supreme Court from December 23, 2020 in case No. 712/11527/17 (proceedings No. 61-18882sv19), which states: "In the opinion of a specialist 2019 No. 04/19, performed by a legal psychologist of the highest category, states that for a minor child is extremely necessary contact with the mother, regardless of gender" [8]. The terminological construction "legal psychologist of the highest category" just cited in the court decision proves the absoluteness of classifying "legal psychology" as a field of legal knowledge and full recognition of it by judicial practice.

The second level is the branching, clarification, improvement of legal concepts and institutions through the involvement of psychological categories, as well as the use of lawyers' psychological methods in research or law enforcement, law enforcement, preventive and other legal practice, the use of psychological data in operational and investigative and procedural activities, investigation of crimes, correction and re-education of offenders, professional selection, placement, adaptation and selection, etc. At the same time, such concepts as "legal consciousness", "guilt", "sanity", "capacity", "will", "motive", "offender", etc. are specified. Only legal psychology, according to Kostytskyi M., can revise a number of these and other archaic concepts of jurisprudence, replacing them with modern and adequate [9]. For instance, let's analyze from the standpoint of the above second level, Art. 17 of the CPC of Ukraine (title – "Presumption of innocence and proof of guilt"). As is known, according to Art. 17 of the CPC of Ukraine, a person is presumed innocent of committing a criminal offense and may not be subjected to criminal punishment until his guilt is proved in accordance with the CPC of Ukraine and established by a conviction of a court that has entered into force. Moreover, the second part of the article states, "no one is obliged to prove his innocence in committing a criminal offense and must be acquitted if the prosecution does not prove the guilt of a person beyond a reasonable doubt." That is why the legislator requires that any reasonable doubt in the version of the event provided by the prosecution be refuted by the facts established on the basis of admissible evidence, and the only version by which a reasonable and impartial person can explain the whole set of facts established in court – there is a version of events that gives grounds for finding a person guilty of the charges *(Resolution of the Supreme Court of the panel of judges of the First Judicial Chamber of the Criminal Court of Cassation from July 4, 2018 in case 597km17, Unified state register of court decisions No. 75286445).*

According to the Supreme Court, a conviction can be handed down by a court only if the guilt of the accused person is proven beyond a reasonable doubt. That is, adhering to the principles of competition, and fulfilling their professional duty under Art. 92 of the CPC of Ukraine, the prosecution must prove before the court with proper, admissible and reliable evidence that there is a single version by which a reasonable and impartial person can explain the facts established in court, namely – the guilt of a person in a criminal offense charge have been filed [10]. However, there is a question of doctrinal understanding and interpretation of legal-psychological terminological construction "beyond a reasonable doubt" and the appropriateness of its use in legal science and practice, as the latter seems absurd even in terms of its conscious perception.

As Morozov E. rightly pointed out, referring to the judgment of 18 January 1978 in “Ireland v. The United Kingdom”, para. 161, Series A application no. 25, the existence of doubts is

inconsistent with the standard of proof «beyond a reasonable doubt", which is used in the evaluation of evidence, and such evidence may "result from the coexistence of sufficiently convincing, clear and consistent conclusions or similar irrefutable presumptions of fact" [11]. Moreover, the terminological construction "beyond a reasonable doubt" as an element of proving "something", "someone", for the subjects of the jurisdictional process, is initially perceived as an evaluative judgment. In this case, it is appropriate to mention Part 2 of Art. 30 of the Law of Ukraine "On Information" from October 2, 1992 No. 2657-XII, where evaluative judgments are statements that do not contain factual data, criticism, evaluation of actions, as well as statements that cannot be interpreted as containing factual data, in particular given the nature of the use of linguistic and stylistic means (use of hyperbole, allegory, satire). Evaluative judgments are not subject to refutation and their veracity is not proven [12].

And this circumstance is quite probable and takes place in criminal proceedings, as the prosecution in proving the guilt of a person beyond a reasonable doubt allows evaluative statements that cannot be interpreted as containing factual data, in particular given the nature of the use of linguistic and stylistic means of the ordinary person (victim, juvenile victim, their representatives, etc., and as an exception even a prosecutor or lawyer) in contrast to a specialist in law. In order to distinguish between factual allegations and evaluative judgments, it is necessary to take into account the circumstances of the case and the general tone of the remarks, as allegations of public interest are evaluative judgments rather than statements of fact.

The terminological construction "beyond a reasonable doubt" is generally devoid of adequate understanding by the participant in criminal procedure, as the phrase "beyond a reasonable" immediately suggests the absence of something reasonable, while looking provocative in the sense of the admissibility of the absurd outside the rational, or even its complete perception by the relevant subject. How can something exist beyond reason or reasonable doubt? For instance, a person actually observed the fact of committing a criminal offense against another person, but there is no other evidence (video, photo recording, audio recording, documents, etc.) other than visual or auditory perception of the crime. Thus, such a visual or auditory perception of the event of the crime is nothing more than an immanent form of cognition of reality for the individual.

However, this form of knowledge of the reality of the person of the crime may be perceived by a judge, lawyer, other participant or party to the proceedings only from the standpoint of doubt as general concepts without confirmation of this fact by other evidence in their entirety. Thus, it turns out that in its pure form, legal science and practice critically divide the understanding of the terminological construction "beyond a reasonable doubt" into general concepts that are perceived as doubtful, and certain forms of knowledge of reality in the form of concrete, substantiated evidence. In this case, we adhere to the positions of representatives of conceptualism as a direction of scholastic philosophy, who believe that general concepts do not exist outside the mind of the subject, but are special forms of knowledge of reality [13]. Camus A. takes a similar position in the philosophical work "The Myth of Sisyphus", where the thinker emphasizes that outside the human mind absurdity cannot exist, because the world itself has no meaning, because it gives meaning to the human mind. According to the author of the work, a person who has realized the absurdity is forever dependent on him [14].

Apparently, the US Supreme Court refused to interpret the standard of proof "beyond a reasonable doubt." According to the American scientist T. Mulrine, neither the British, nor the Canadians, nor the Australians have managed to come up with such a definition, which would not be criticized by their own judicial system [15]. According to Stepanenko A., the standard of proof "beyond a reasonable doubt", although it does not contradict the concept of inner conviction, but somewhat formalizes its psychological aspect, in other words – the subjective component of inner conviction. The task of psychological research in this case, according to the author, is to determine whether the expression of will was free, what factors influenced free will, what circumstances preceded the transaction and could affect the emotional state of the person and to what extent, whether certain features of intellectual, emotional and volitional areas that could influence decision-making in a particular situation, whether the decision was appropriate to the situation, etc. [16].

Therefore, supporting the scientific position of Beznosiuk A., we believe that the search for an ideal and legally correct definition of the standard of proof "beyond a reasonable doubt" is absurd. This is due, as the author noted, “to the fact that: first, this concept is evaluative, and therefore difficult to define; secondly, the existence of such a definition in the law will not guarantee its correct application; third, empirical observations do not demonstrate the need to determine it; fourth, the lack of a legislative definition of a standard allows for its development together with changing societal standards [17]”.

Instead, *the third level* of interaction between psychology and jurisprudence is more pronounced than the previous two, bilateral in nature. The need for jurisprudence in psychological knowledge has led to the emergence of legal psychology, which is a science that is both psychological and legal [18]. The emergence of such science stimulates the development and improvement of both psychological and legal knowledge [19]. The above is logically confirmed by the "List of scientific specialties" approved by the Order of the Ministry of Education and Science, Youth and Sports [20], where "legal psychology" is referred to the field of legal science, which is awarded a degree in law and has its own scientific code 19.00.06. It is also worth mentioning such a normative document as "Passports of specialties" approved by the Presidium of the Higher Attestation Commission of Ukraine (2008), where the first section "Legal Psychology" is presented by the formula of the specialty as a branch of jurisprudence. legal behavior, as well as the development of new and improvement of existing technologies aimed at improving the efficiency of the system "human-law", and the methodological basis of legal psychology identified system-structural analysis of social processes, delinquent behavior, jurisdictional activities in relation to the structure and content of legal norms. In the second section of the mentioned document "Passports of specialties" (2008) [21] clearly outlined areas of research in legal psychology, including: historical and conceptual analysis of domestic and foreign legal psychology, current trends in psychological mediation of social relations in order to develop its system and structure, theory and practical application; development of theoretical principles and methodological bases of research of psychological factors of delinquent behavior, legal consciousness of offenders and its elements; scientific and practical principles of the relevant areas of legal activity, proposals for their regulation; research of psychological mediation of separate directions of jurisdictional activity, status-legal and social-role features of its participants for the purpose of development of scientific and methodical recommendations on increase of efficiency of modern procedural practice; study of psychological patterns and principles of the penitentiary system; the effectiveness of the impact of organizational, legal, regime and other measures on the personality of the convict; development of methods of professional and psychological training of relevant professional areas, prevention and elimination of professional deformation of lawyers.

As for the understanding of "legal psychology" as a discipline, it is most often represented by a separate specialized course, which is studied by future specialists in law and explores the patterns and mechanisms of mental activity in the field of legal relations [22]. That is why "legal psychology" involves the transition from general issues of theoretical and methodological importance to the analysis and recommendations on criminal, civil, commercial, administrative procedural and even substantive aspects of law in the professional activities of the future lawyer. At the same time, legal psychology is directly related to the needs of practice, combining individual legal relations in the field of law in order to achieve the desired social result through a comprehensive study and regulation of these relations. This is evidenced by the use of the achievements of legal psychology in legal practice (*for instance: forensic psychological examination, psychological counseling, psychological assistance, legal psychologist as an expert in the field of law, etc*.). Therefore, it is fair to attribute legal psychology to special (profiling) branches of law, as the latter extends its effect only to the legal relations of individual entities, such as: specialist psychologist, counselor-psychologist, expert psychologist, psychologist, mediator, expert in the field legal psychologist.

The relation of legal psychology to the branches of law is evidenced by the presence of signs of the branch of law in it, because the latter: covers a certain qualitatively homogeneous sphere of

social relations; has a relatively independent set of legal norms that determine the conditions of their implementation; marked by the uniqueness of the volume of institutions that make it up; lack of sub-branches of law; is a stable and autonomous subsystem of the legal system; has only its own regime of legal regulation, which ensures the effectiveness of its action as an industry as a whole.

Conclusions. Given the diversity of legal psychology as a science and its functional and legal essence as a system of legal knowledge, it is logical to believe that the latter deserves to become a new independent branch of law, because it is characterized by: own classification in the system of branches of law; the presence of signs of law; inherent regime of legal regulation; direct connection with the needs of practice; recognition of the achievements of legal psychology in judicial practice; unification of certain legal relations in the subject of law; due to the functional purpose and place of this industry in the legal system (its type in the classification of industries).

According to such parameters, legal psychology as a branch of law should be classified:

- *on the fundamental nature of the rules of law* concentrated in the fields of law, on *special* (on the basis of profiling – constitutional, civil, commercial, administrative, criminal law), as legal psychology combines the rules of law governing public relations and related to primary public relations aimed at concretization, strengthening of certain norms of basic branches of law, while providing a special legal regime for a particular type of public relations (family, labor, electoral, etc.);
- *by subordination in legal regulation*, legal psychology belongs to the *procedural* types of branches of law, as it combines the rules of law that determine the procedure, the procedure for implementing substantive law (criminal procedure, civil procedure, commercial procedure, administrative procedure law).

The cognitive value in distinguishing legal psychology as a branch of law for legal science, education and practice lies in the unification of procedural law, taking into account psychologically mediated legal relations, which are an integral part of domestic and international law. For example, the positivity of socio-psychological reactions to the perception of the principles of casual interpretation of the "Convention for the Protection of Human Rights and Fundamental Freedoms" is due to the unity of value orientations of the public consciousness of the participating countries. At the same time, Soloviova notes O., in countries where the supremacy of individual rights and freedoms is not obvious, the very idea of recognizing the de facto normativeness of ECtHR decisions can provoke negative socio-psychological reactions: feelings of independence, recognition of weakness, self-humiliation, etc. [23]. Given that almost every third rule of procedural and substantive law is mediated by the psychological implications of its perception and application, there is an urgent need to regulate the jurisdictional process in a separate branch of law - legal psychology.

Declaration of conflict interest. The author declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article. The author confirm that they are the authors of this work and have approved it for publication. The author also certify that the obtained clinical data and research were conducted in compliance with the requirements of moral and ethical principles based on medical and pharmaceutical law, and in the absence of any commercial or financial relationships that could be interpreted as potential conflict of interest.

Funding. The author state, that this research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors.

Data availability statement. The datasets analyzed during the current study are available from the corresponding author on reasonable request.

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