



## The general characteristic of the subjective regulatory factors-properties causing an action of the right

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First of all, the subjective or internal factors-properties causing an action of the right are the properties of the subjects, which consciousness reflects and realizes a regulatory reality. The properties are a high-quality manifestation of subjectivity and subjectivity of a person at her introduction in the public relations. A subjectivity means a potential possibility of a person to act with the subject of the public relations including legal relations. A subjectivity means that a person estimates surrounding reality subjectively, from own world outlooks.

Traditionally, subjectivity and subjectivity of qualities of a person are considered through mental and activity, including professional (special) or properties of a person.

Mental properties of a person are understood as the steady mental phenomena significantly influencing the activity of a person and characterizing him mainly from a social psychological aspect.<sup>1</sup> Mental properties of a person are more or less stable, but it doesn't mean that they are invariable. Absolutely invariable properties of a person practically aren't possible. Their structure includes an orientation, temperament, character and abilities.

The orientation is a special mental property characterizing rather steady integration of requirements, motives and the purposes of a person expressing and predetermining her activity. The content of an orientation is formed on the basis of the interconnected internal motives of a person, her aspirations and the purposes.

It is connected with the ability to perceive information on a person's place in the system of public relationship, to understand and interpret, to estimate and build the behavior according to this information. The orientation is a mean of expression of the specified circumstances in the integrated type and accents the main personal sense of participation of the subject in a life of society and legal relationship.

The orientation is a difficult mental property of a person which includes requirements, purposes and motives.<sup>2</sup> As a whole the assessment of an orientation depends on its social usefulness, manifestation of social activity of a person, her readiness to enter the public relations. Therefore, establishment of an orientation of a person helps not only to realize actions of other person, but also to predict his social behavior.

Nevertheless, rather often various subjects can be characterized differently at quite identical manifestations of an orientation: persons are unaccommodating and cocky, others prove "as a little braked", without hurrying and considering each action, etc. This situation is proved by temperament, which is an important mental property of a person.

Temperament (from lat. temperamentum– the harmony, an appropriate ratio of parts) is, as a rule, considered as a natural ratio of steady features of functioning of a mentality, forming a certain dynamics of course of mental processes and being shown in behavior and activity of a person.

There are three main frames of reference for the temperament nature in the history of doctrine development about psychology of a person. The humeral approaches are the most ancient. So according to Hippocrates's theory it depends on a ratio between four liquids circulating in a human body, - blood (lat. sanquis), bile (greek. chole), black bile (greek.

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<sup>2</sup> In more detail about it see: General psychology. URL: <http://www.libpsyx.ru/?Article=15>.

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melaschole) and slime (greek. phlegma). Assuming that one of them prevails in a human body, he allocated the corresponding temperaments: sanguine, choleric, melancholic and phlegmatic.<sup>1</sup>

From the point of view of the law mental properties of a person matters for determination of sanity. For example, Article 300 of the Criminal Procedure Code of the Russian Federation fixes an opportunity of a court to discuss a question to a defendant' sanity if the matter arose during preliminary investigation or judicial proceedings.<sup>2</sup> Article 21 of Criminal Code of the Russian Federation consolidates a concept of diminished responsibility: "The person who during commission of socially dangerous act was in the condition of diminished responsibility isn't subject of a criminal liability, that is couldn't realize the actual character and public danger of the actions (inaction) or direct them owing to a chronic mental disorder, a temporary mental disorder, weak-mindedness or other disease state of mentality. To the person who has made socially dangerous act provided by the criminal law in a condition of diminished responsibility, coercive measures of medical character ..." can be appointed by a court.<sup>3</sup>

Analyzing the legislation anyway reflecting questions of sanity and diminished responsibility, it is possible to conclude that the concept "sanity" isn't defined in the legislation therefore B. Spasennikov's judgment. He claims that sanity in the domestic legislation is presumed that means that sanity is understood as a lack of diminished responsibility.<sup>4</sup> In Law Science sanity usually is defined as ability of a person to understand the actual character and a public danger of the actions (inaction) during commission of a crime and to direct them. This ability causes possibility of a person to be found guilty and to bear criminal liability for deeds, i.e. the legal precondition of a fault and a criminal liability.<sup>5</sup>

As a whole it is expedient to note the fact that mental properties of a person can have the mediated legal value (character, temperament, etc.), and as also direct legal value (in case of a sanity assessment).

Activity, including (special) professional properties of a person are caused by the sphere of activity of a society which "dictates" certain sets of properties of a person necessary for implementation of this or that activity. These properties are standardized by the legislation in the form of various qualification requirements, abilities, skills, competences. More than four hundred legal acts of the various contents and various validity are investigated for establishment of specifics of a considered type of properties of a person. There are about fifty legal acts among the investigated in which it is talked about special (professional) properties of a person are established.<sup>6</sup>

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<sup>1</sup> Gippokratov collection. URL:<http://www.hippocrate.ru/p28/index.htm>.

<sup>2</sup> The Criminal Procedure Code of the Russian Federation of 18.12.2001 N 174-FZ (edition of 11.02.2013).

<sup>3</sup> The Criminal Code of the Russian Federation of 13.06.1996 N 63-FZ (edition of 30.12.2012).

<sup>4</sup> Spasennikov B. Sanity as category of criminal law//Criminal law. 2003 . N 2. P. 76.

<sup>5</sup> Tagantsev N.S. Russian Criminal Law: lectures. The General Part. M., 1994. T. 1 . P. 145.

<sup>6</sup> See, for example: The Federal Law of 29.12.2012 N 273-FZ "About education in the Russian Federation"; The Order of Ministry of Health of the Russian Federation of 16.09.2003 N 434 "About the approval of requirements to qualification of the doctor on physiotherapy exercises and sports medicine" (It is registered in the Ministry of Justice of the Russian Federation 05.11.2003 N 5215); Provision on certification of employees ("Documents of personnel service of the enterprise", "Gross media", "ROSBUH", 2008); The Order of the Ministry of Education and Science of the Russian Federation of 18.04.2012 N 307 "About the statement and introduction in action of the federal state educational standard of higher education in the direction of preparation 152100 Nanomaterial (qualification (degree) "master")" (It is registered in the Ministry of Justice of the Russian Federation 15.05.2012 N 24167); The order of the Ministry of Education and Science of the Russian Federation of 29.03.2012 N 239 "About the approval of federal state requirements to a minimum of the maintenance of additional professional educational programs of professional retraining and

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In some of these acts these properties are revealed, for example, article 12 of the Federal Law "About the public civil service of the Russian Federation" establishes that the number of qualification requirements to positions of civil service includes requirements to level of professional education, an experience of civil service (public service of other types) or to an experience (experience) of work in the specialty, to professional knowledge and the skills necessary for execution of functions.<sup>1</sup>

Article 13 of the Federal Law "About the state judicial and expert activity in the Russian Federation" establishes necessary personal properties which the expert has to possess. "The citizen of the Russian Federation who having higher education and has had the subsequent training on concrete expert specialty in an order can hold a position of the expert in the public judicial and expert institutions, established by regulations of the relevant federal executive authorities. The citizen of the Russian Federation having secondary vocational expert education can hold a position of the expert in expert divisions of federal executive authority in the field of internal affairs" also.<sup>2</sup>

The coherence of properties of a person established above (and mental and special) with legal regulation testifies to existence of one more group of subjective properties of a person which can be designated as regulatory properties of the personality.

For establishment of specifics of regulatory subjective properties of a person on the basis of the synthesis of mental and professional (special) qualities psychological-legal research which was conducted in two stages at Vladimir Law Institute of the Federal Penal Service of Russia during the period of December of 2011 till November of 2012.<sup>3</sup>

At the first stage competence-based properties of the identity of cadets of Vladimir Law Institute were investigated. The modern competence-based model of the graduate is reflected in the Federal State Educational Standard (FSES) of the third generation and includes the professional (personal competences), professional and special (PSK) and the common cultural competences (CCC).<sup>4</sup> A formation of the corresponding competences of a course of educational process assumes a development of individual and personal qualities of the cadets united by the concept "professionally important qualities" (PIQ).

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professional development of the civil servants, and also to level of professional retraining of the civil servants" (It is registered in the Ministry of Justice of the Russian Federation 20.04.2012 N 23921); The Order of the Ministry of Education and Science of the Russian Federation of 25.10.2011 N 2520 "About the statement and introduction in action of the federal state educational standard of higher education in the direction of preparation 220700 Automation of technological processes and productions (qualification (degree) "bachelor")" (It is registered in Ministry of Justice of the Russian Federation 29.11.2011 N 22431), etc.

<sup>1</sup> The Federal Law of 27.07.2004 N 79-FZ (an edition of 30.12.2012) "About the public civil service of the Russian Federation".

<sup>2</sup> The Federal Law of 31.05.2001 N 73-FZ (an edition of 06.12.2011) "About the state judicial and expert activity in the Russian Federation".

<sup>3</sup> The research was conducted with the assistance of the authors under the leadership of A.A. Tarnovskiy, the chief of the department of psychological providing of Vladimir Law Institute of the Federal Penal Service of Russia.

<sup>4</sup> The Federal State Educational Standard of Higher Education in the direction of preparation (specialty) 031001 Law-enforcement activity (it is approved as the order of the Ministry of Education and Science of the Russian Federation of 14.01.2011 No. 20).

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Some scientific works and methodical development are devoted to profессиographical studying and the description of criteria of psychological suitability to operational search activity.<sup>1</sup> The questionnaire of the expert in an assessment of professionally important qualities is developed on their basis.

During 2011/2012 on the basis of Vladimir Law Institute of the Federal Penal Service of Russia a research on studying of PVK of the quick employee of Corrections by a method of expert poll of heads of operational divisions of Federal Penal Service of Russia which was trained at advanced training courses in Vladimir Law Institute of the Federal Penal Service of Russia was conducted. 91 experts took part in research. The method of mathematical statistics (the factorial analysis of results of the poll) allocated a number of the personal factors defining professionally important qualities of the quick employee of Corrections (Table 1).

№	Factors	The personal qualities estimated by experts	Value on each quality, received by the method of rotation of the main component
1	Stenichnost	determination activity courage persistence on overcoming of difficulties commitment orientation to achievement self-confidence inquisitiveness	0,769940 0,727336 0,690467 0,673368 0,511665 0,433516 0,400957 0,339410

<sup>1</sup> Pozdnyakov V.M. Psychological aspects of increase of readiness of listeners and cadets of educational institutions of the Ministry of Internal Affairs of the USSR to service in correctional institutions: Diss. ... cand. psychological. sciences. – M., 1989; Bovin B.G., Myagkikh N.I., Safronov A.D. Primary activities and psychological suitability to service in system of law-enforcement bodies: Handbook. – M.: Research Center of problems of medical providing Ministry of Internal Affairs of Russia, 1997; Baranovsky N.N., Dyomin V.M. Qualification requirements to the staff of the main services of Corrections: Methodical recommendations. – M.: Scientific research institute of FSIN of Russia, 2006.

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2	Emotional stability	emotional steadiness ability to supervise the irritation high performance	0,718702 0,597634 0,411744
3	Communicative competence	optimistical goodwill diplomacy the correct readiness for compromises tolerance to belief of other people variety of role behavior	0,686448 0,666600 0,659020 0,638075 0,401879 0,323976
4	Efficiency of thinking	ability to analyze allocate the main thing attentiveness observation efficiency flexibility of thinking high ability to the forecast good ability to storing	0,691035 0,654534 0,609691 0,584108 0,325977
5	Social competence	the developed intuition insight social dexterity	0,704537 0,642066 0,490363

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		thrift tendency to rivalry domination ability to understand feelings of another	0,467872 0,426331
6	Aspiration to the status	demonstrativeness impulsiveness professional and personal self-realization sociability sense of humor initiative lack of sentimentality	0,630070 0,615975 0,612376 0,598853 0,545845 0,518794 0,476966
7	Independence	ability to listen, keep up the conversation aspiration to independence, independence commitment to morals standards competitiveness, competitive spirit ability to assume responsibility	0,606653 0,566111 0,480300 0,413189 0,360089
8	Tendency to risk	aspiration to new, intriguing tendency to a romanticizing	0,759981 0,687380

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		tendency to risk	0,464837
9	Vigilance	criticality to new information independence in judgments and acts erudition	0,727930 0,604221 0,506241
10	Standartiveness	installation on respecting the rule of law achievement of result within the law social justice, fight against the evil	0,792048 0,756603 0,348876

On the basis of the allocated factors the personal model of the quick employee of Corrections which includes the following characteristics of professionally important qualities is formulated:

PVK 1 – a stenchnost (activity, courage, determination, persistence on overcoming of difficulties, motivation of achievement);

PVK 2 – emotional stability (emotional steadiness, ability to supervise external manifestations of emotions);

PVK 3 – communicativeness (ability to establishment of interpersonal contacts, skills of professional communication and interaction);

PVK 4 – efficiency of thinking (ability to analyze, allocate the main thing, creative thinking);

PVK 5 – competence (an insight, knowledge and understanding of social contexts and legal instructions, level of the general and legal culture);

PVK 6 – independence (readiness for independent professional activity, professional self-improvement);

PVK 7 – a regulativeness (understanding of the social importance of a profession, readiness to solve professional problems according to legal instructions, installation on observance of all-social norms ban).

The developed model of professional and significant properties (qualities) of the quick employee of Federal Penal Service contains besides other properties and a regulatory component.

At the second stage two groups of cadets of internal office of the first course (36 people) and the fourth year (34 persons) of Vladimir Law Institute took part in the research. It is established that the process of training the efficiency of regulatory properties of a person in the questions of legal regulation of educational and office activity increases the efficiency of regulatory properties of a person in the questions of realization of the all-social ban reflected in the criminal legislation decreases as a result of psychological-legal research.

Researches were conducted on the following three blocks:

1. Assessment of cognitive development of cadets taking into account potential legal relationship (an assessment of perception of legal instructions, attention, imagination, memory and thinking).
2. Assessment of professional abilities (assessment of legal knowledge, design, constructive, communicative abilities).

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3. Assessment of readiness to follow legal instructions (an assessment of emotional, intellectual and strong-willed qualities).

In the psychological-legal research the efficiency of activity of cadets according to the legal instructions causing their service in the Federal Penal Service of Russia, and as in connection with the all-social ban provided by the criminal legislation was checked.

For an assessment of level of formation of opportunity and readiness for legal lawful behavior Ayzenk's fourth subtest was used. It was offered to cadets to solve 30 problems, allowing to estimate three groups of subjective qualities of the public relations causing legal regulation (perception of norms, knowledge of norms, conviction at need of implementation of legal instructions), on ten tasks for each group of quality. The solution of tasks was estimated on a ten-mark scale, for an assessment of each group of quality. At the positive solution of all ten tasks 10 points, nine tasks - 9 points, etc. (one task 1 point) were exposed.

The detection of the features of legal regulatory of subjective properties of the identity of cadets was carried out on the basis of the analysis of a disciplinary practice (the accounting of encouragement and collecting during the control period). The results of the analysis were brought in special cards which were generalized on a formal sign. So, if at cadets of the fourth year the indicator of gnoseological perception was on the average at 8 points, cadets of the first course have 5 points; the discipline indicator at the lessons is 6 and 4 points accordingly, a level of knowledge of legal instructions an all-social ban of 7 and 5 points, a level of knowledge of the legal instructions regulating activity of cadets in specialized higher education institution - 8 and 7 points.

Thus conviction in a necessary of implementation of legal instructions (and the general and professional) in the course of training didn't grow, but went down: at the fourth years to 5 points, and at the first courses – to 8 points.

As a whole, the analysis of the results of psychological-legal researches allowed to reveal a number of the circumstances which are important for manifestation of subjective regulatory properties of the personality.

First, the hypothesis of existence of subjective regulatory properties of a person which can influence on right action was confirmed.

Secondly, regulatory properties are expressed through a sense of justice, legal culture and legal installations. On the basis of synthesis conscious, subconscious and unconscious estimates of behavior of a person, and as other participants of legal relationship are formed. On the basis of the specified estimates a person is ready to act (and works definitely). Here it is necessary to consider and that fact that the good knowledge of the right doesn't mean existence of high level of its realization and high level of legal culture yet.

Thirdly, it was revealed that in the course of study from the first to the fourth year the levels of knowledge and perception of legal instructions increased, and conviction in need of implementation of legal instructions decreased. This circumstance is connected with that acquiring knowledge of the right, trainees acquire also knowledge of its imperfection and basic opportunity "to bypass" legal instructions. And the present possibility is, as a rule, treated from "good motives", has a positive focus.

As a whole taking into account the analysis of the legislation and the conducted psychological-legal research it is obviously possible to formulate definition of the concept "the subjective factors-properties causing an action of the right" and to show a circle of these factors. So, the subjective factors-properties causing an action of the right are some circumstances connected with mental, professional (special) and other properties of a person which allow it to realize, accept, legal instructions, to estimate this or that life situation on their basis and to build the legal behavior according to this assessment.

According to this definition and in relation to action of the right it is possible to allocate: general regulatory factors-properties (mental, psychosomatic, activity (including professional), etc.) and special regulatory factors-properties (legal and unlawful).

The second basis of classification of subjective factors-properties causing a right action - depending on stadial model of realization of factors-properties in legal behavior of subjects of legal relationship. The first stage – a factor of perception of rules of law; the second stage – a factor of understanding of requirements of legal instructions; the third stage – a factor of an assessment of own behavior of a person and behavior of other people; the fourth stage – a factor of modeling of own

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behavior of a person according to requirements of legal instructions and estimates of behavior of other participants of legal relationship.

Thus, subjective factors-properties are very important circumstances promoting, can be neutral or interfere with action of legal instructions on behavior of participants of legal relations.



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