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LEGAL RESEARCH METHODOLOGY OF LAW AS A SYSTEM OF NORMS: THE STRATEGY OF THE SYSTEM APPROACH AND THE CONCEPT OF THE LEGAL REGIME

The legal norm is in itself a unique microsystem facing both private individuals and society at the same time. Further construction of the legal system is completely predetermined by a legal regime that determines the order and methods of unifying the legal norms in institutions, sub-branches, branches of law and legal community. It should be noted the value component in the formation of the law as a system of norms, but axiological dimension of law in its (law) system-shaping is centered on the goal of legal regulation as one of the elements of legal regime. It is here values landmarks are realized, the legal system gains not only the construction features, but also receives significant features for social actors.

The question of the law as a system of norm has been examined in the writings of certain scholars. In particular, L.Luts, O. Skakun, N. Onishchenko, O.Yuschik, E. Efgrafova, O. Lisenkova paid attention to this problem. However, the methodological approach to the research of the aforementioned academic problem cannot be considered as well-explored, i.e. studied to the extent that is necessary for understanding not only the scope of the problem, but also its conceptual resolution. The above leads to the conclusion that convincing reasons exist for analyzes of necessary and important issues of legal research methodology of law as a system of norms.

First of all, it should be noted that a system-like nature (systematicity) of law applies to the field of research where interests of ideological character overlap with general jurisprudence as well as with specific branches of law. This important fact certainly influences legal research methodology of law as a system of norms. It is generally accepted that the systematicity is an important characteristic of law. At the same time, law is studied as a unique social normative-value system[1], that ultimately indicates its content and allows to uncover its essential features. Because of the above, the question of the most effective methodological approach for studying law naturally arises. Moreover, another point of interest arises that is of the necessity to emphasize legal research methodology of law as a system of norms in so far as methodological pluralism that is natural for current jurisprudence not always allows to achieve

[1] Кивалов, С.В., Оборотов, Ю.Н. (общ. ред.) (2009). *Введение в украинское право.* 2-е изд., перераб. и доп. Одесса: Юридична література, 136.

the research goals, especially when such goals is law as a system of norms. Consequently, usage of systems approach for study law as a normative system is both natural and necessary. This could not but affect the occurrence of a particular academic tradition in methodology of jurisprudence. Actually, law as a worldview problem and at the same time a complex legal concept is the result of application of systems approach in philosophy of law and epistemology of law. Moreover, it should be noted that in both cases, the determining factor is the highest level of abstraction, since law as a system of norms does not exist as a kind of reality or as a predetermined outcome that has a particular shape; such quality of the law as reflexity even being obvious to the researcher can be traced solely on the level of abstraction. It is also obvious that the systematic approach to law according to the current-established tradition creates a new vision of this methodological problem the positive solution of which seems problematic if researched by the traditional path. However, in modern times it appears that the use of previously accumulated knowledge on systematic methodology of post-modern perception of law remains ineffective and for such a conclusion good reasons exist.

Firstly, the systematic nature of law shows the most relief-like and, perhaps, the most obvious characteristics of law, indicating possibility of achieving the highest level of law`s academic development. Secondly, epistemological pluralism of modern jurisprudence caused serious changes in the content methodology, including legal research methodology of law as a system of norms, where an academic approach has expanded its cognitive boundaries, experiencing quite an active influence from worldviews as well as legal concepts. This is largely attributable to a new level of legal research methodology of law as a system of norms, including the level of institutional and functional knowledge of the law as a system[1].

It would be a mistake if we do not pay attention to the fact that within current methodological developments the relevance is still high for research of law as a system that applies principles and provisions of structuralism that in terms of further development of jurisprudence is presented by post-structuralism views on law and legal phenomena.

Without denial of the productivity of academic knowledge while applying post-structuralism views, the emphasize must be put on certain

[1] Богуцький, П.П. (2009). Інституціональна і функціональна характеристики системи права України. *Правове життя сучасної України:* тези доповідей Міжнародної наукової конференції професорсько-викладацького складу. Одеса: Фенікс, 123-126.

cognitive limitations of this approach, as the structural rules is only one element of its systems` the characteristics and cannot be viewed more broadly than its (law) systemically. At the same time the structurality of norms is a necessary and most organic element in epistemological development of law and legal phenomena using systems approach.

In fact, post-structuralism in its methodological load offers to go beyond the structure of objects and phenomena, criticizing structuralism for internal dogmatism and inability to successfully attain methodological research goals. However, it is important to focus on philosophical foundations of post-structuralism that despite being rather revolutionary demonstrate an exceptional mismatch essence and content of phenomena in its worldview understanding, and this mismatch implies a serious error of any scientific and educational activities.

A post-structuralism`s attempt to connect object and subject of cognition with the content of the research process are doomed to fail. At the same time, such a combination or interaction in the learning process goes further than the level of understanding of post-structuralism. This level is the system as a universal property of organized events and objects as necessary characteristic of activity in general and social activities in particular.

It is not surprising that post-structuralism in its development has become an ideological basis for the formation of post-modernism, but this important obstacle in the scholarly and methodological context shall not be an obstacle to another but still no less important conclusion – post-structuralism completely opposed philosophical explanation of the scientific interpretation of reality, questioning the creative source of consciousness. Post-modern understanding of the most of social and humanitarian problems along with the ways to resolve them exist at the expense of social pessimism carrying in in self post-structuralism, becomes largely insurmountable and, therefore, without any future in terms of their epistemological development. It is obvious that post-structuralism in addition to the epistemological «destruction» carries deconstruction that negatively impacts academic development of jurisprudence in general and in particular legal theory. At first glance it may seem that post-structuralism is based on the fullest aggrandizement of the individual and therefore has significant humanistic potential. But a more precise reading of the content of post-structuralism`s basis allows us to consider these question that are uneasily seen on surface, i.e. confusion in the face of repeatedly complicated social conditions of individual`s existence.

Perhaps the most effective and efficient response to post-structuralism is a set of proposals by sociologist A.Giddens formulated in a theory of structuration. The structuration theory is a theory of society and it is of utmost importance to keep in mind that it is a sociological theory, based ultimately on systems approach to the study of social action, where the primacy is given not only to the individual as an active social actor but to the social practices i.e. constant reproduction by individuals (social actors) of certain social actions[1]. One needs to have the courage to recognize that the theory of structuration is a logical conclusion of the scientific quest for systematic societies (society) as territorial and temporal entities. Proposed by theory of structuration so called «activity-vision» of the main issues of social reality is true like no other for law as a system.

The following important fact must not be ignored – the development of post-structuralism as a philosophical direction coincides by temporal characteristics with an active development of the systems approach and rationale for its application to both natural sciences and the humanities. Post-structuralism in law had not and perhaps could not found an active support because of its deconstructive beginning that originally contradicts to the essence of law. Structuralism, as a prior to post-structuralism ideological paradigm, has exhausted its methodological possibilities that were witnessed by the theory of structuration. Post-structuralism has caused an active development and introduction of academic legal research methodology that was the most widely reported in the legal theory along with its practical application. Methodological limitations and shortcomings of structuralism that caused a shift for post-structuralism, have found its solution in a systems approach. It is possible to have different view on the right choice of the methodological solution, but one cannot deny an active, creative role of systems approach as well as it is impossible not to celebrate such a role of systems approach in jurisprudence. Apparently this understanding is much supported the researchers and allowed them to conclude that systems approach is primary to the epistemology of law in general and the system of law in particular.

Systematicity provides a sufficient level of academic research in law and of perception of law as an integral unity that has certain components, elements, and for the reason of this a very specific, objectively structuring corpus of elements with the known and the necessary connections between the elements and their groups.

[1] Гидденс, Э. (2005). *Устроение общества: Очерк теории структурации*. 2-е изд. Москва: Академический Проект, 38-45.

In the methodology of jurisprudence the systems approach, as pinpointed above, is used in many ways. It should be noted that in rare cases the scholars apply system method or the methods of system analysis in legal research[1], ignoring the main issue connected with the subject studied, namely the system approach itself; that cannot be considered as reasonable. The systems approach to law allows considering and using all the features of systems method for research of legal phenomena without limitation. In turn, the system analysis as a way to study is completely absorbed by the research field of the systems approach.

In the second half of the last century the question of the general theory of systems was actively discussed within the scholar's community. The discussions along with philosophical and scientific developments had a positive impact not only on understanding the systems that exist in nature and in the humanitarian sphere, but also on the possibility of application a systematic approach to the various branches of science, including law[2].

It is known that the methodological approach generates a research strategy. Such a strategy cannot ignore the axiomatic fact as to the existence of natural and social phenomena as the systems. Life is a complex system that has certain physical boundaries, without boundary signs of spiritual, ideological character. Ideological perception of all phenomena and processes that exist in minds of and forming consciousness naturally are tested on their system. Therefore it is clear that the system is a sure sign of completion of all phenomena. Law acquires perfection only if it is establishment as a system. Only in this sense, we can consider the law as an object of scientific study. There is every reason to believe that the doctrine of law is defined by its systematicity.

The systems approach in legal research involves the use of those methods that allow to reveal fullness of law`s characteristics, its features, properties, based on the understanding of the law as a system. That is why the orientation on systems approach in methodology of jurisprudence compels the researchers to appeal primarily to the methods that have scientific importance. To a lesser extent systematic approach focuses on the use of private-scientific methods of research. However, the choice of research methods depends on the subject of the study, the researcher, his training and experience, the skills and abilities, and ultimately on subjective attitude to the subject of study and research objectives that are essential for the success of the process of cognition.

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[1] Скакун, О.Ф. (2006). *Теорія держави і права (Енциклопедичний курс).* Харків: Еспада, 29.

[2] Садовский, В.Н. (1974). *Основания общей теории систем. Логико-методологический анализ.* Москва: Наука, 82-85.

It must be clear that the method of research cannot be arbitrary; it must not be arbitrary selected for use. Cognitive activity naturally connects in the reflex consciousness of the subject and object of knowledge, to provide new ways of knowledge and provide the expected result of the research activity. Epistemological platform of systems approach to law is strong enough to ensure effective research. The systems approach allows going to other levels of knowledge in the scientific quest to join other methodological approaches.

It is important to note that according to the scholars, in modern environment the level of epistemological rationalism that characterizes postmodern Epoch faces crisis. This fact has led to birth of theories of relativity, neorationalism, romanticism[1].

However, the problem of the crisis of rationalist thinking does not lie in a possibility of knowing free of any initial or defined boundary but in the means for achievement of the knowledge`s goal that in many cases is unattainable due to certain mythologizing. The paradigm rationalism`s crisis pertains to be a critical conceptualization. It is important to understand that the crisis of rationalism (likewise a crisis of scientific knowledge) may result from either errors in the choice of research objectives or misunderstanding the nature or methods of achieving the objectives of research. However, most likely one can talk that the crisis of rationalism is determined by addition of philosophical, ideological to the science and is explained by the concentration of attention on the ideological assessment of the object of study. It is clear that philosophy and science have different goals in search of the truth of existence of phenomena and objects. Therefore ideological approach and methodological scientific approach differs in the methods of research. Systems approach within methodology of jurisprudence in general and in legal theory in particular allows one to define within the meaning of the phenomenon as a system and, indeed, in such ideological understanding to build a further program of research activities along with academic performance and investigation. The systems approach in jurisprudence provides for rationality in research and warns of the manifestations of the crisis of rationalism that is recently broadly discussed in academic circles[2].

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[1] Исаев, Д.И. (2007). *Иррациональное в праве (из опыта политической философии романтизма): теоретико-методологические проблемы права.* Москва: ИКД «Зерцало-М», вып. 2, 161-170.

[2] Оборотов, Ю.Н. (ред.) (2011). *Общетеоретическая юриспруденция: учебный курс:* учебник. Одеса: Фенікс, 5.

The strategy of systems approach to law is based on the perception of all legal phenomena as systems that are connected within law. The law, in its turn, is a complex social macro system. Social basis of law comes out of its inner conflict-communicative nature that is fully revealed in the interaction of subjects i.e. important social actors that have a tendency to create, to make law by conscious social activities along with social practice. One should pay particular attention to the multidimensional nature of social relations between the system and its internal components[1]. However, the sociality of law that is associated with activity, interaction between subjects, is not an exclusive characteristic of law. It is still necessary to refer to normative rule and its most important properties that maintains the law`s form and represents its content. Normativity of law is inextricably linked with the systemacity, its manifestations are clearly visible at all levels – from individual norm to such macro units as a public or private law, not to mention the more specific elements, namely and branches or institutions of law.

It is hard to deny that although in a somewhat different but no less emphatic manner, systematicity of law is manifested in legal practice, in social action of law and in legal process. The system links of law are of universal nature and that must be considered when dealing with the problem of legal system. By virtue thereof the systems approach in law is naturally determined in the formation of scientific research and is the most effective to achieve research's objectives that, as mentioned earlier, may be different depending on the research`s program. The research program of the system of law is based solely on a systematic approach, and if speak more broadly then on methodology of systems research.

Internal capacity for self-organization appears to be an important feature or property in characterization of systems. Self-organization allows some independence of formation and existence of systems. Law as system by its self-organization is oriented towards actions of many external factors, among which the most effective factor to be considered is the influence of state and its complex mechanism that is most evident in the law-making and enforcement. However, the role of the state in shaping the system of law should not be exaggerated inasmuch as systems approach in this important process identifies the general patterns including preservance of integrity, stability; guaranteeing functionality by defining the institutional features of legal phenomena.

[1] Кемеров, В.Е. (2012). *Общество, социальность, полисубъектность.* Москва: Академический проект; Фонд «Мир», 119-121.

Thus, systems approach within academic research of law as a system while focusing on rationality of the cognition of law also requires a modern, post-modern reading and is effective in its abilities along with being able to fully provide not only the needs of the general theoretical research of law, but also of applied jurisprudence and legal practice.

Systems research of law affects its axiological dimension, revealing the complex connections between the characteristics of law and legal values. This is because the content of law and its essential characteristics are diagnosed through law`s characteristics[1].

The characteristics of law show immanently-inherit signs that most closely allow coming to an understanding of the essence of law and eventually forming an image of law. It should be recognized that the qualities of law to a greater extent manifested in the communicative connection of subjects, i.e. within the intersubjectivity of legal behavior and less clearly in doctrinal exposition of the systems multitude.

The law`s properties signal on the axiological foundations of law and joins in the essence of law its idealized beginning i.e. legal values.

According to recent jurisprudential studies, the characteristics of law include: universally binding normativity, institutionality, procedurality, systematicity, governmental (state) securing[2]. There are several different positions with respect to the properties of law, but in general they are not contradictory in nature that appears to be important for consistency of judgments in this regard. The characteristics of law in axiological dimension covers the basics of self-value and are manifested in formation of legal values. It must be taken as important to define legal values through understanding of legal nature of law that cannot overcome the social origins of law and its existence in specific social conditions created not only (and not so much) by the society, but also by an individual thorough his or her social activity.

The system of the law`s characteristics (viz existence of systemic being of law`s properties that may be involved inasmuch as the law initially forms a system) reduces the legal values and forms the system of legal values.

Legal values shall be understood as developed directly by law, its essential and meaningful phenomena, abstractions that shape the methods and opportunities to achieve legal goals. In legal literature, a broader understanding of legal values as legal phenomena is present though

[1] Оборотов, Ю.Н. (ред.) (2011). *Общетеоретическая юриспруденция: учебный курс:* учебник. Одеса: Фенікс, 51.

[2] Оборотов, Ю.Н. (ред.) (2011). *Общетеоретическая юриспруденция: учебный курс:* учебник. Одеса: Фенікс, 52-53.

whereby the above-mentioned determines the content, nature and goals of the law that exists in its basis and is a mean of explaining the legal reality[1].

"Teleologication" of the legal values is necessary as required by goal orientation of values. Nowhere the features of values are not fully disclosed but in characterization of the socio-trained (developed by social practice) goals. It is no accident, some scientists and in particular Yu. Oborotov pay attention to the presence of axiological landmarks that actually identify legal values and axiological landmarks within legal values. Goals and axiological landmarks are important and, perhaps, to a large extent determine the system of law.

However, it is necessary to adhere to the developed legal axiology and well-founded position on the difference between the values of law and legal values. However, this issue remains full of vagueness and ambiguity that does not contribute to quality resolution of the problem of legal values

The legal values consist of legal order, constitution, law, legality, subjective rights and legal obligations, legal liability, and others. The embodiment of law in the state in the conditions of formation and activities of public authorities entail interconnection between axiosphere of law and legal axiosphere thus resulting in occurrence of such legal values as the rule of law. The legal system while consolidating legal phenomena remains an important legal value that is implemented within the legal system, institutes of the law enforcement and justice. The list of legal values remains open, allowing researchers to fill it with new components, new content, focusing primarily on the legal nature of the law, i.e. on its characteristics. There is every reason to refer to the legal values of the legal system in its axiological dimension.

It is impossible to ignore the obvious fact, namely that law itself and even more law in its ontological significance comprise some legal value. The system of law`s characteristics create the necessary conditions for its existence, and ultimately forms a favorable social climate for law and has a decisive influence on the legal life with all its complex and diverse manifestations. This is the value of law`s characteristics that no doubt allows attributing them to legal values. Some law`s characteristics are unique, but most are universal in its existence, though they have particular manifestations in law. This applies primarily to the systematicity of law.

[1] Горобець, К.В. (2012). *Аксіосфера права та її компоненти:* автореф. дис. на здобуття наук. ступеня канд. юрид. наук: спец. 12.00.12 «Філософія права». Одеса, 6.

Legal values are included in axiosphere of law that has well-defined system characteristics. For all its diversity, the internal heterogeneity of legal values forms idiosyncratic system, secondary to axiosphere of law, but is essential for its existence.

The law is not conceived without its systematicity, institutionality and universal normativity, altogether being the internal properties and requiring external support i.e. ensuring by public authorities. Integrating the characteristics of law in the system of legal values is realized through law-making activities. Compulsory normativity is embodied in forms (sources) of law, in constitution, laws. Institutionality of law is manifested in a variety of institutions that fill all levels of the legal system, combine regulatory communities and form organizational support for law. General characteristic of law, namely its consistency, while focusing on the institutional features allows one to consolidate all components of law, having different value characteristics when maintaining their integrity and functional purpose. Finally, law`s ensuring by the public authorities creates conditions for implementation of legal values, their transformation from the world of ideas into reality, manifestation of existential nature of legal values in social communication.

The characteristics of law and legal values in its systemic unity fill the axiosphere of law and their integrated connections have permanent features that possess a decisive influence on the axiological dimension of law and, of course, cannot affect the formation of the system of law.

It should be recognized that axiosphere of law as a problem of its philosophical understanding, cannot be decisive in the epistemology of law, where along with the need, the value characteristics of law unites with its normativity, focusing on achievement of certain goals. In recent years, within legal theory it is possible to allocate axiosphere and normosphere of law as two independent and at the same time integrated systems that characterize law[1]. The importance of such an understanding of law shall not be neglected; however, the following neither must be omitted, namely the axiosphere of law is an ideological assessment of law while normativity of law is its intrinsic characteristic which brings us closer to understanding the essence of law.

The value attitudes, the normative beginning of law lead to the goal by socio-ordered activity where one needs to identify the functional aspect of law – its regulatority. Social activity and interaction of subjects while being exposed through the regulation of law`s value-normative influence

[1] Оборотов, Ю.М., Завальнюк, В.В., Дудченко, В.В. (та ін.) (2012). *Актуальні грані загальнотеоретичної юриспруденції:* монографія. Одеса: Фенікс, 27-33.

still manifests itself differently in different spheres of social reality. This is determined by peculiarities of communication among individuals and peculiarities of their goal-oriented activities. Social and communicative interaction between the subjects (or goal-oriented social relations in traditional for analytical jurisprudence definition) are under the complex process of institutionalization that acquires legal characteristics under the influence of norms i.e. certain rules of conduct for subjects of social activity. We will not go into the causes of and features of construction of law. It is however necessary to postulate that in the process of social communication and achievement of meaningful goals to participants of communication such rules form because of reproduction of action permitted for everyone. What is important is that the behavior of subjects in the process of communicative interactions is different, depending primarily on the method of influencing the behavior and generally on the communicative interaction of individuals, if taken more broadly – then on their activities. Thus there is a particular legal «atmosphere» of regulation of social activity of the subjects as well as the special conditions for the existence of law in a particular social environment, situation or said in other words, a special legal regime. The search for a methodological basis of the legal system, having a difficult epistemological selection by applying systems approach, allows us to make a reasonable conclusion on formative influence of legal regime on system of law[1].

The primary element of the law is a legal norm. Probably it will not count as a mistake to assert that law generally originates from the legal norm. All numerous but not always fruitful discussions on legal thinking ultimately come down to the understanding of legal norms as the primary rules of conduct of social subject`s activity. The legal norm is in itself a unique microsystem facing both private individuals and society at the same time. Further construction of the legal system is completely predetermined by a legal regime that determines the order and methods of unifying the legal norms in institutions, sub-branches, branches of law and legal community. It should be noted the value component in the formation of the law as a system of norms, but axiological dimension of law in its (law) system-shaping is centered on the goal of legal regulation as one of the elements of legal regime. It is here values landmarks are realized, the legal system gains not only the construction features, but also receives significant features for social actors.

[1] Богуцький, П.П. (2013). Правовий режим: методологічні рівні дослідження. *Право України, 1– 2,* 320-322.

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