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DEFINITION, CHARACTERISTICS AND FUNCTIONS OF LEGAL SCIENCE, AS OBJECT INSTITUTIONAL ARRANGEMENTS MANAGEMENT: THEORETICAL-LEGAL ASPECTS

ПОНЯТТЯ, ОЗНАКИ ТА ФУНКЦІЇ ЮРИДИЧНОЇ НАУКИ ЯК ОБ'ЄКТАОРГАНІЗАЦІЙНО-ПРАВОВОГО МЕХАНІЗМУ УПРАВЛІННЯ: ТЕОРЕТИКО-ПРАВОВИЙ АНАЛІЗ

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In the article on the basis of analysis of scientific and encyclopedia's study the notion of legal science, reveals its symptoms and characterized its functions. The author's definition of jurisprudence, which can be used in scientific studies of legal and regulatory fix.

Key words: science, features of legal science, function of legal science, legal science, jurisprudence.

У статті на підставі аналізу наукової та енциклопедичної літератури, а також нормативно-правових актів досліджується поняття юридичної науки, розкриваються її ознаки та надається характеристика її функцій. Пропонується авторське визначення юридичної науки, яке можна і використовувати в правових наукових дослідженнях, і нормативно закріпити.

Ключові слова: наука, ознаки юридичної науки, функції юридичної науки, юридична наука, юриспруденція.

В статье на основании анализа научной и энциклопедической литературы, а так же нормативно-правовых актов исследуется понятие юридической науки, раскрываются ее признаки и характеризуются ее функции. Предлагается авторское определение юридической науки, которое можно и использовать в научно-правовых исследованиях, и нормативно закрепить.

Ключевые слова: наука, признаки юридической науки, функции юридической науки, юридическая наука, юриспруденция.

Ukraine stands in the way of the rule of law, the final introduction of the market economy, the creation of a new society oriented to the priority of human values, modification and upgrading functionality government, the introduction of so-called «partnership» relationship of the individual and the state. To achieve positive results and the relevant state-law-making processes are possible if the principle of science, for well-founded developments in the field of legal science, the close relationship of legal science, rulemaking and enforcement. From that, what will be the scientific legal framework largely depends the effectiveness of law-making and state-building processes and their effectiveness. This is what causes the relevance-theoretic analysis of legal concepts, features and functions of legal science.

It should be noted that the doctrinal level there is no single universally accepted concept of legal science, there is no clear evidence for it, and a holistic view of the system functions as an object of legal science of organizational and legal mechanism of control. Some aspects of the conceptual apparatus, systems and functions jurisprudence investigated in scientific studies M. Rabinovich, J. SPEED, J. Shemshuchenko, V. trays, A. Selivanov, O.Skakun and others.

Considering jurisprudence as part of the organizational-legal control mechanism as its object, particular attention should be paid to the conceptual system, because of the presence of specific timing depends on the effectiveness of regulation in this area. Separation and clarification of the terms «jurisprudence», «Legal Science», «Legal Science», «law», «law» should be based on their analysis and definition.

The term «jurisprudence» is quite common in educational, scientific literature, the terminology used in a number of «Law», «Law» and other related concepts. Repeatedly in the domestic legal academic literature indicated that jurisprudence – is a difficult, complex concepts (eg, of M. Rabinovich, J. SPEED, J. Shemshuchenko, V. trays, etc.), but a clear understanding of its essence, the separation of adjacent concepts. Unfortunately, there is no by now. For example, Yu SPEED rightly notes that the jurisprudence is often identified with the jurisprudence [1, p. 11] Mr. Rabinovich all at the same time used as synonyms of «jurisprudence» and «law» [2, p. 145], and the text adds the term «jurisprudence» as well as synonymous. Analysis vocabulary reference and encyclopedic literature can talk about a word «law» comes from the Latin. «Juris prudentia», from «jus (juris)» also means «right» and prudentia – «knowledge, science» [3, p. 491]. Encyclopedic Dictionary of Sociology, edited H.Osypova defines jurisprudence as law, the right set of Sciences, as well as the practice of lawyers and the judicial authorities [4, p. 431]. Great Dictionary of the Ukrainian language, edited by W. stork defines «jurisprudence» and «law» as identical concepts whose content describes as a combination of science right [5, p. 1101, 1644]. Y. Shemshuchenko trying to clarify that the term «law» is used in two senses: legal science and in practical legal activities. Moreover, the scientist rightly points out that the scientific aspect of it is close to the term «law» [3, p. 491]. Great Encyclopedic Law Dictionary, edited by J. Shemshuchenko contains a definition of law: the branch of knowledge of the laws of the state and law is the theoretical basis of the practical problems of building state-legal and legal education of the population [6, p. 694].

Similar approaches to study the terms can be found in the academic and scientific legal literature. Proof of this can serve as a work of Rabinovich P. «Fundamentals of General Theory of Law and State» [2], in which a scientist uses both as synonymous terms «law», «legal science» and «law» [2, p. 145]. Although analysis of 22 themes «Law (jurisprudence): general theoretical description of» the fourth part of «Law and its methodology» of P.Rabynovycha suggesting that we are talking about legal science, focusing primarily on its first principle of knowledge of specific patterns of law (the constitutional laws) [2, p. 145-149].

Legal science in the encyclopedic literature is defined as «a system of knowledge of the objective laws of the development of law and their place and role in society» [3, p. 472]. In the academic literature, there is a legal definition of «legal science» as an element of justice. Thus, the textbook theory of state and law under the general editorship of Lisenkov jurisprudence is defined as the theoretical existence of a form of justice [7, p. 214]. A. Racehorse defines jurisprudence as a system of knowledge about the objective properties of law and the state in their legal-conceptual understanding and expression of the general and specific patterns of emergence, development and operation of law in their structural diversity [8, p. 3]. Authors Guide to Theory of Law and State S. Timchenko, R. Kalyuzhniy, N. Parkhomenko, S. Lehusha use the term «legal science», understanding it, on the one hand, as a function

of justice, on the other – as the level of justice [9, with. 150]. V. Selivanov equates the term «jurisprudence» and «law» and the law, together with the State by theory and public administration defines components of jurisprudence [10, p. 21].

Thus, the term «jurisprudence» and «law» in reference encyclopedic literature and science, education (particularly in the works of M. Rabinovich) are defined identically. However, clarification made by J. Shemshuchenko variability regarding the use of the term «law» can nevertheless conclude that the sign of equation between the term «jurisprudence» and «law» cannot be set. And the evidence of this work may serve as Yu SPEED «Theory of State and Law: a pragmatic course», in which he said that we should not equate these concepts as law includes not only scientific, but also philosophical knowledge [1, p. 11]. It is not limited to the knowledge system, and hence to legal experience (confirming the view south Shemshuchenko) beliefs, including various myths (e.g., the power belongs to the people, the law expresses the general will) [1, p. 11], which allows Yu SPEED conclude that the law is much more complex concept than jurisprudence. Moreover, Yu SPEED clarifies his position, noting that the term «jurisprudence» in relation to religious legal systems can be used with a certain destiny conventions, while the term «religious law» is quite acceptable [1, p. 11]. You can accept the fact that jurisprudence and law is somewhat different concepts in content, and for other purposes. Moreover, an interesting looking item Yu SPEED and on the ratio of law and jurisprudence. Clarifying his position on the ratio of law and legal science in the context of whole and part, the scientist notes that the last felt the differentiation of Law [1, p. 13]. Despite the fact that sometimes the law is equated with the law, it is not justified, because it allows you to fully develop the scope of State by [1, p. 13], furthermore, leaving aside the practical legal activities. It is therefore logical and appropriate differentiation seen the terms «law» and «legal science» as something diverse. Their relationship can be regarded to some extent as a whole and the part. Is not quite correct identification of the terms «law» and «legal science», because in the first case, the field of view includes only the legal laws and remain ignored state laws.

Interesting is the work of P. Rabinovich, in which he, though with a certain emphasis on the fate of general, basic provisions, provides a complex, multifaceted system of jurisprudence, focusing on the following elements of: a) the form of public display of legal phenomena – judgments about past, present, future (projected) state the facts and legal reality, the idea of state-legal phenomena, and b) based on the direct object of study – science theoretical and historical, sectoral, cross-sectoral (eg, science, environmental law), applications (eg, forensic psychiatry), international law (the science of international public and private international law), c) depending on the specific element of the research subject – the study of law, the doctrine of legal (legal) regulation, the doctrine of state doctrine of justice, the doctrine of jurisprudence (Theory of Law), d) depending on the aspects of state-legal phenomena – Ontology of Law and State (the study of their existence as a real phenomenon in the «static»), philosophy of law (the study of their necessity, the purpose for the individual and society, their place in socio-cultural system, including the achievements of human civilization), axiology of law and state (theory of value, the value of these phenomena for the individual and society), sociology of law and state (knowledge about «dynamic» mechanism and social outcomes functioning of these phenomena), epistemology rights and state (knowledge of research methodology and techniques of public-legal phenomena) e) for epistemological (cognitive) status of knowledge – factual or empirical, part science (knowledge of the constitutional facts), the theoretical part of science (categories, concepts, theories , the concept of public-legal phenomena), the practical part (recommendations, suggestions for improvement of law, legal) [2, p. 145-146].

The proposed version of legal science is logical, meaningful, and it should be considered as the base. Although sometimes offered and somewhat simplified version of legal science. For example, in the Legal Encyclopaedia edited by J. Shemshuchenko noted that jurisprudence consists of a set of separate branches, each of which examines the relevant aspects of law. These industries are classified into the following groups: a) legal science theoretical and historical profile (Theory of State and Law, History of Law, History of political and legal studies, etc.), b) sectoral Law (constitutional law, labor law, etc.), c) special (criminology, criminology, forensic psychology, etc.). Each of these areas has its own object and method that is closely related to common objects and methods of legal science [3, p. 472]. This approach is quite correct, but somewhat one-sided, because leaving aside many other elements of the legal science. That is why the option proposed by M. Rabinovich, is more appropriate to determine the system of legal science.

Legal science has its independent place in the social sciences, which was caused, primarily, by the presence of a specific subject. This has repeatedly drawn attention of legal scholars (eg, the work of P. Rabinovich, B. trays, A. Selivanov, and others). Even proposed to distinguish between subject and object of legal science. If the object of legal science is the state and the law, the subject – the objective characteristics of law in their conceptual and legal sense and expression, general and specific patterns of emergence, development and operation of law in their structural diversity [8, pp. . 5]. It can even make reference to the fact that some legal scholars are trying to not only highlight the features of the object of legal science, but also offer other options for its species diversity. For example, P. Rabinovich among the specific properties of the object of legal science highlights the relation that mediates legally: a) social determinism, and b) the structure, function and development, c) social activity, the effectiveness of state-legal phenomena [2, p. 146]. Highlighting the diversity of species is state-legal patterns he identifies: a) the content, type of connection – genetic (patterns of occurrence of state-legal phenomena), structural (pattern construction, formation, «of state and legal effects), functional – patterns «life» of the relationship, mutual, etc.), b) the action under consideration regularities in the social space – internal (communication state-legal phenomena among themselves) and external (communication state legal effects with other social phenomena); c) the scope of state-legal space – general, which cover the entire country as a whole and the entire legal system alone, acting only in part, the «fragment» of state-legal reality, d) according to historical methods of – universal, relating to the state and law in which whatsoever historical circumstances, in any place and at all times; formational acting on the state and the right to a certain type of historical, personal, unique to a particular country or a particular group of states, and, finally, e) the means of implementation, a form of display – dynamic, their effect is clearly on a case, a single connection state legal phenomena, «statistical» effect which finds expression only in large tracts, on the set state-legal phenomena as meaningful, stochastic communication [2, p. 146-147]. It is a specific object, although you can also talk about the feature functions (stating heuristic, predictive, methodological, practical application, ideological and educational) [2, p. 148], and due to an independent place of legal science in the social system.

There are other options for the list of functions of legal science. For example, among those invited to isolate a) anthological (cognitive) – the study of the fundamental properties of matter of law, the most common essential phenomena and processes in public life, the discovery of previously unknown patterns of existence of law, and b) a heuristic – new knowledge into state-legal life, discovery of previously unknown patterns of existence of law, c) predictive – allocation of state and legal process, and d) practical organization – servicing practices, and e) methodological – research and development of the study of legal validity, f) ideological – the impact on the development of legal culture society and human g) political – help in the formation of the state legal policy clarification political and legislative decisions [8, p. 5]. And it should accept.

Recently, the increased number of publications which, though fragmentary, but highlights the main features (attributes) of legal science. Among them:

a) The social science that is applied nature, it is designed to serve the needs of public life, law practice, legal education, legal staff to provide the necessary data for publication and enforcement of laws;

b) the science that has the properties of exact sciences; jurisprudence mainly includes specific knowledge expressed in precise structures, relationships, as well as science. Law to some extent comparable to medical science, which also combines theoretical and applied (practical) orientation. Lawyer as a doctor has to do with health and life. Business lawyer for the «health» of society as a whole spiritual life. A lawyer conducts preventive work, «heals» defects in the social life of the human mind. This is the focus of humanist lawyer and doctor professions that have emerged from ancient times;

c) the science that embodies the positive qualities of Sciences of thinking. It explores issues related to the ability to reflect objective reality in legal judgments and concepts in the creation and application of laws (legal examination of the circumstances of the case, the interpretation of laws, etc..). So, for example, one of the legal disciplines – criminology – dedicated to specific issues of human thought, the use of many special expertise in the investigation of crimes [8, p. 3-4].

So jurisprudence incorporates as all three major branches of human knowledge: social science, science, science of thinking.

Returning to the conceptual apparatus, it should be noted that along with the term «jurisprudence» in many cases, the use of the terms «Legal Science» and «legal science.» For these terms, they have a separate linguistic interpretation which suggests their purely scientific terms, that terminology legal scholar. Scientific analysis of legal literature suggests that the term «legal science» often applies to branch of law (civil law science, administrative and legal science, etc.).

Thus, we can state the fact that, unlike the encyclopedic sources, educational and scientific legal literature, except that a broad terminology used to refer to a number of legal knowledge, does not contain a clear definition of legal science.

However, it should focus on the fact that unlike generalizing the category of «legal science» in scientific terminology sources is determining the components of legal science, often on an industry focus. For example, A. Frytskyy notes that the science of constitutional law is a system of ideas, theories, concepts of constitutional law as a branch of the national law of Ukraine [11, p. 50]. The textbook on civil law Kharytonova and N. Saniahmetova say that the science of civil law (civil law) is the doctrine of the civil law as a branch of law, combined in a system of concepts, categories, ideas, concepts, theories [12, p. 44]. In academic courses on administrative law under the general editorship of Averyanova a definition of science as a field of administrative law jurisprudence, which is the subject of research complex organizational and legal issues related to the implementation of the state executive powers and tasks and functions of the government [13, p. 85]. Because the object outline a definition of science in environmental law academic courses in environmental law under the general editorship of J. Shemshuchenko stating that the subject of the science of environmental law is the laws of its development, the study of the nature and mechanism of action of norms, institutions and industries (industries) of law, its comparative aspect ratio problems of national environmental law with international law of the environment, etc. [14, p.23].

In addition, the level of dissertations and research focuses on individual components of legal science, in which they provided a generalized definition. In this context it is worth paying attention to the thesis O. Lysenko, who argues autonomy of science of comparative law as a component in the system of legal science by identifying its subject. Yes, she said that the subject of comparative law as a science in its most general form is the development of the theory of comparative legal method and research on the basis of general principles and laws of creation, operation and development of different legal systems [15, p. 16]. It is interesting to study A. Lysenko functions of comparative law, which deals also common features that are inherent in legal science in general, namely, ontological, which, in turn, is divided into descriptive and interpretative, information, heuristic, methodological and predictive , practical organizing, political, legal, integrative [15, c. 12].

As an example, should also give the thesis T. Yamnenko which says that science finance is determined, above all, the financial law of Ukraine as a branch of law that reflects the patterns of development of the industry is, so to speak, the nature of the service, so each element of the financial right corresponds to a separate section of the financial and legal theory. However, as noted by T. Yamnenko does not mean that the finance of Ukraine as a branch of the law should be identified with science, in front of which there are more challenges than clarify the appointment of appropriate financial and legal norms and institutions of finance. It is through the prism of the relationship of science and law T. Yamnenko identifies three main functions of science finance, namely analytical, critical and constructive [16, p. 13].

It should be noted that national legislation does not define legal science. The Law of Ukraine of 13.12.1991 «On Scientific and Technological Activities», which is actually a legal basis for the functioning of science in general (and legal science in particular) in the preamble recognizes science «an integral part of national culture», but does not determine its terminology. The legislator, determining the existence of normative principles of science in Ukraine, uses the term «scientific activity», which is positioned as a creative intellectual activity aimed at obtaining and using new knowledge (Article 1 of the Law of Ukraine «On scientific and technical activities»).

Thus, given the above, we can propose a definition of legal science: jurisprudence – a system for objectively systematic and reliable knowledge about the specific laws of the state and law, which includes knowledge of the constitutional facts, and ideas, theories, concepts and conceptual foundations of public-legal phenomena, aimed at developing recommendations for improving the state legal validity and resulting research activities.

Given the purpose of legal science, it should focus on managerial influence (both by state and non-state institutions in a certain extent) what about the object and determine the regulatory framework to ensure the management of the functional purpose of legal science and in some way affected, given their connection 'Connection with legal science to legal education, the legal culture of people, law-making and enforcement activities.

In this context, it would be advisable to adopt the Concept of Legal Science of Ukraine, within which to define the concept of legal science, and basic directions of development of the branch of law outlining the priorities for research in the relevant areas. However, the concept of «legal science» should be legal and enforceable under another statute, such as under the Law of Ukraine «On the main directions of state policy in the field of legal science» that would define the strategic directions of research in the field of law for a period of , with the possibility of monitoring their effectiveness and transformation priorities to reflect changes in society and, consequently, to new national needs.

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ВИХІДНІ ЗАСАДИ КОДИФІКАЦІЇ АДМІНІСТРАТИВНОГО ПРАВА: НОТАТКИ ДО НАУКОВОЇ ДИСКУСІЇ

BACKGROUND PRINCIPLES OF CODIFICATION OF ADMINISTRATIVE LAW NOTES TO SCIENTIFIC DISCUSSION

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Статтю присвячено визначенню передумов кодифікації адміністративного права. Автором обґрунтовується думка про те, що визначення напрямків та обсягу кодифікації адміністративного права може бути здійснено лише після реформування системи адміністративного права України. У статті висловлюються погляди на зміст системи адміністративного права та, відповідно, на можливі напрямки кодифікації норм останнього.

Ключові слова: адміністративне право, кодифікація, система, підгалузь права, інститут права.

Статья посвящена определению предпосылок кодификации административного права. Автором обосновывается мысль о том, что определение направлений и объема кодификации административного права может быть осуществлено только после реформирования системы административного права Украины. В статье высказываются взгляды на содержание системы административного права, и, соответственно, на возможные направления кодификации норм последнего.

Ключевые слова: административное право, кодификация, система, подотрасль права, институт права.

The article is devoted to the determination of preconditions for codification of administrative law. The author proves the idea that direction and the scope of administrative law codification can be realized only after reformation of the system of administrative law of Ukraine. Opinion about the content of administrative law system and also about possible directions for codification of administrative law norms is expressed.

Key words: administrative law, codification, system, subbranch of law, institution of law.

Питання кодифікації адміністративного права[1], тобто об'єднання його норм, зосереджених у правових звичаях, судових рішеннях та правових актах різної юридичної сили, в межах окремих кодифікованих актів є надзвичайно актуальним та практично необхідним для української держави. Це пов'язано насамперед з наявністю великої кількості нормативного матеріалу, який переважно знаходиться в несистематизованому вигляді, що ускладнює його вивчення та застосування.

Необхідно відзначити, що питання про кодифікацію адміністративного права (законодавства) час від часу доволі активно обговорюється на сторінках наукових праць. Так, в останні часи над зазначеною проблематикою тою або іншою мірою працювали такі вчені, як В. Б. Авер'янов, Ю. П. Битяк, І. С. Гриценко, Т. О. Коломоєць, А. Т. Комзюк, А. М. Школик та інш. Аналіз робіт названих авторів показує, що вони, зазвичай, концентрували свою увагу на пошуку відповіді на питання або про напрями кодифікації адміністративного права (законодавства), або про кодифікацію його окремих інститутів, наприклад, кодифікацію інституту адміністративної відповідальності, інституту адміністративного примусу або інституту адміністративного процесу. Відзначимо, що подібні підходи до розв'язання названої проблематики в цілому є можливими та доречними. Проте водночас вони є дещо обмеженими, оскільки їх автори ухиляються від формування концепції кодифікаційних робіт, не визначають критеріїв, на підставі яких має здійснюватися систематизація норм адміністративного права. Інакше кажучи, пропозиції щодо необ-

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