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VALUE OF ACTIVITY CONCEPT AND AXIOLOGICAL STRATEGY IN LEGAL KNOWLEDGE

As well as any kind of human activity, legal activity is rather diverse and has a lot of various aspects. Here exist: the creativity, special statements, executions and maintenance. All these forms are penetrated by specific communications of professional lawyers and usual citizens. But still given reality can be divided in two areas - a legal practice and legal knowledge. The first concentrates in it all actions of "material" character; the second incorporates all that makes consciousness. Needless to say, that such division is relatively, but however the scientific analysis without it is impossible. Extremely complex legal life should be reduced to abstractions and only through their rational network it will be possible to understand a real concreteness.

When the concept "legal knowledge" is legalized, it demands the further analytical work. It is a question of knowledge of the legal phenomena which are opposed to consciousness as objects, that are studied and understood. Such a scheme demands a due specification of methodology of ideas, which give a view how knowledge occurs. At one time English philosopher F.Bekon pointed the basic difficulty of the scientist-researcher, who has decided to advert to the resources of philosophical wisdom. Various doctrines are presented in it and in this situation of a great number of "plays" reigns an uncertainty of a choice of certain "performance". Though Bekon's estimation of "an idol of theatre" as a whole is naive, it fixes attention on real difficulty of the scientist, who faces with a choice of an optimum method.

In a modern legal science the theme of "idols of theatre" is rather actual. Here are remarkable reasonings of professor of the Lomonosov Moscow State University B.Pyginsky. He starts with the thesis, which is shared by almost all native lawyers. The general theory of law determines with

necessity the ideological bases of all kinds of branches of law. Which philosophy dominates here? In XX century the situation has developed so, that positivism becomes a dominating paradigm in philosophy and science of science. Under influence of his ideas was formed the sense of law in the West and in Russia. The normativist conception of which became the appropriate product - law is a system of legal norms. The normativism theoretical warning of has found its practical expression in 90th years, when the Federal Assembly accepted an endless amount of laws, but it did not correct the legal chaos. B.Putinsky's offer is unequivocal: it is necessary to replace legal positivism philosophically proved concept of the right [1]. The sympathies of the author are, apparently, quite certain, he prefers activity approach, which is capable to explain all acts of creation and application of the legal norms. Different variants of the general theory of activity (Aristotel, K.Marx, Schedrovitsky, Sadoysky, etc.) are developed in philosophy. Accordingly, the development of the appropriate versions, considering the specificity of legal activity, is required. Exactly this level of private methodology, in opinion of the author, is not realized, with rare exception [2].

The given thesis, in our opinion, requires a specification. Really there are many various variants of the general theory of activity. Thus the choice of the best concept assumes an estimation of merits and demerits. The main criterion of the theory should be presence of two additional properties: 1) high initial abstractedness and universality of the scheme (where only basic elements of activity in their most general and "clean" form are presented); 2) ability of the scheme to concretize development and to finish it up to the most individual forms of activity. It is represented to us, that the given criterion shows the best correlation with F.Yulov's technological concept of intelligence, where the leader

role of intelligence is admitted in any type of knowledge. In spite of the fact that psychologists discuss up to now an opportunity of unique intelligence of the person, we join the Yulov's opinion, who is convinced in the necessity of the recognition of even wider education. In this case it is a question of the intelligence, which represents the whole area of life. So, if "the tree of life" coincides with "a tree of knowledge", so here exists a through and unique organ of knowledge. From a position of epistemology the most preferable candidate for its role can be only intelligence. Under the concept "intelligence" is supposed an ability of any organism to transform the information (ordered structures) of environment into knowledge and to use it for maintenance of life. Such representation is opened for an explanation of all forms of knowledge. If sensory sensuality (modality of color, sound, etc.) participates in the process of knowledge, it makes it under the aegis of intelligence, it gives to the sensual signs rational values, constituting empirical knowledge. Thus the determining role of intelligence in all kinds of theoretical activity is obvious.

The main advantage of the technological concept is that activity of intelligence is presented in the form of a clear way of manufacture of knowledge. F.Yulov has developed here an Aristotel's idea about the presence of three obligatory elements: "subject" - "means" - "result". The composition "means" - "subject" - "result" also forms the scheme of any way of activity. The intelligence has brought in it only a substantial specificity. Requirements to the subject block are minimal, its content, sensual impressions of the receptor plan and knowledge of descriptive character. The role of "subject" is relatively passive, it represents that material which is a subject for transformation. These transformations are made with a method as intellectual means and its activity is caused by a high quality of knowledge (the general cognitions, rules and operations). Influence of method on subject leads to the transformation of the last into significant result. Such way of structurization of intelligence is universal and underlies all forms of cognitive activity [3].

In the technological concept the activity theory is supplemented by the due axiology. It appears, that not only human life is built on the basis of various values (pragmatical, spiritual, etc.), but also the knowledge is impossible without valuable orientations. Really, how "subject" and "tool" blocks are possible in a way of knowledge? Corresponding samples are necessary for their for-

mation: "What is an ideal (normative) subject" and what is admitted as a normative method". Two kinds of norms-instructions determine a character of two kinds of acts of choice. Their sequence is obvious. First it is necessary to establish a subject of knowledge, i.e. to choose due of really existing or to design it taking into account objective opportunities. Normative samples of a subject, various for practice, science and outlook act here. Then is the time for action of method's norms which help the subject to choose the necessary components for due means. Institutionalization of a method allows to apply it to a subject as to the system of mental representations and to transform it to initial result. L.Mikeshina believes, that the valuable attitude resists the cognitive attitude [4]. We are not agree with such opinion, as rather simple reflection and a certain commonsense are the evidences of the fact that appraisal proceeds inside the cognitive process. Two acts of an estimation (subject and cognitive-instrumental) prepare conditions for realization of that constructive procedure which will transform a subject to result. All this makes cognitive estimation and rational designing two additional procedures of unique process of knowledge.

The interrelation of estimation and designing is realized in two basic forms of human knowledge - experience and thinking. If experience is rather simple and historically more ancient, thinking is more difficult and is typical for high forms of culture.

The basic forms of empirical experience are sensations and perception. Any individual is always surrounded by the natural-social environment. Our sensuality processes a variety of its stimulating influences in sensory impressions of different modalities. Already since intra-uterine existence, every individual studies to distinguish external and internal stimulus. Thus, producing trial standards and building subjective rating scales, we are mistaken, we bring corrective amendments and sooner or later we achieve successful orientation in the environment. But empirical experience is not limited to one sensuality, the important and necessary role plays here intelligence. It gives certain rational values those or other allocated impressions as to sensual signs. Specific subjects are felt and perceived as a result: "signing of contract", "crime", etc. American cognitive psychologist G.Bruner has

named the procedure of giving meanings to impressions by intelligence "categorization". This operation is rather far from the logic conclusions of intellect, for selective reference of impressions to some class of subjects is reached due to overlaying the general images or knowledge ("agreement", "act") on sensory information. When we face with fulfilment of the certain forbidden act, sight has only allocated it among other subjects, brought a mute attention to the question "what is it?". Having imposed a category "crime", the intelligence has answered this question the certain perception [5].

Experience is the main school of life. Both animals and person acquire empirical knowledge by means of studying. In this studying tradition and innovation, old and new are organically combined. Any sensations and perception pass a stage of tests and mistakes at their sources. Those or other impressions of new objects at first are indistinct and indefinite for us, but through a series of recurrences we identify them confidently. With the unequivocal estimation of "subject" its certain value is formed, passing a stage of trial estimations. Then psyche begins to work, repeating sensations and perception (which have led to success) which the psyche fixes in the form of mental habits. Experience starts to show itself in the form of effective proactive aim, when it is waited from some typical situation certain impressions and unequivocal values. Such expectations in psychology are called "apperceptions". Similar dynamics is also typical for legal activity. So lawyers - experts get for years of their activity corresponding professional experience. It is a base of successful activity of judge, lawyer, inspector, etc. So experience allows lawyer to orient in a difficult situation and to make a true decision. For example, a judge applies for the sanction of concrete case the analogy of law deciding in the difficult cases which have not been settled by concrete norm. Thus he is guided intuitively by the principles of law, using them as a method of knowledge and the sanction of the legal conflict [6].

Thinking differs essentially from experience. Speed of action of sense organs and intelligence is typical for sensations and perceptions. As soon as significant impression appears, our mind makes categorization with it almost instantly. The

efficiency of habits and skills for which distinction of a subject and an establishment of its cognitive value are curtailed into the brief act also consists in this speed. Here everything is clear, there is nothing to think about, it's necessary to act. In thinking all happens vice versa. Here an external action stops and there comes that pause in which it is necessary to think. Instead of one action develop few acts: 1) institutionalization of a subject; 2) finding a due method; 3) application method to a problem; 4) establishment of true character of the received result. The third act is structurally transforming, all the others are valuable and are realized by a triad technology: norms - subject - result. Though in legal activity take place practical (adjudication), world outlook (reflections about legal ideals, etc.) and scientific (discussions at levels of the general theory of law and branch legal disciplines) kinds of thinking, we will stop on a scientific kind of thinking in more detail in this work.

The act of scientific problematization is centred around research results. As a subject of estimation here act available resulting forms of knowledge which are available in the given scientific discipline. The developed general scientific and level character ideals appear in a role of a method of estimation. Application of the given norms to a subject of estimation allows to reveal deviations from samples, this becomes the content of a scientific problem. The modern science has a number of general scientific norms in relation to resulting forms: an ideal of cognitive connection, norm of logic consistency, an ideal of simplicity of the theory, principles of the conformity of new knowledge to the fundamental bases, etc. When lawyers began to estimate present legislation through a prism of an ideal of connectivity it gave the well-known problem of synthesis: allocation of the general part by codification. Every general ideal has level modifications. So, the norm of connectivity acts differently concerning the scientific facts, empirical generalizations and theories. If connection with the empirical law (norm of an explanation) is enough for the fact, normativity of theory assumes a number of specific requirements (consistency, connection with empirical laws, a minimum of hypotheses ad hoc, etc.).

After problematical character it is time for a potential method. In this value procedure both general scientific and disciplinary samples take part. It is possible to relate gnosiological understanding of structure of a method to the first: the theory (idea, principle), rules, operations. Such model is specified by more certain requirements, which are dictated by a reality of the put problem and disciplinary norms. If it is a question of a biological problem the modern theory of evolutionism or molecular genetics can be involved here. There is a rather rich list of rules which can be involved in the solution of the problem, they are "razor Okkama", "C. Darvina's gold rule (to fix more carefully those facts which contradict own hypothesis)", "Merger's prism" (to decompose a seeming simplicity to the latent components), etc. Value norms play a defining role in formation of a scientific method.

Last valuable procedure is connected with an estimation of the received knowledge - result on the validity. As the subject it is estimated by the same ideals which appeared during problemalization. The difference consists in different purposes: in the beginning of research it is important to reveal a deviation from samples, in the end of a cognitive cycle it is important whether these deformations are duly removed. The certificate of true character is determined by the concrete form of the result, and it varies from the scientific fact up to the fundamental theory. Ideals of estimation [7] vary accordingly.

These theoretical reasonings especially boldly are proved in the limits of realization of corresponding reflective procedures. So during the construction of corresponding criminalistical models of crimes investigation, whether it is a program-target method, a method of the functional or factorial analysis, a person at all stages, from a choice of the general strategy of research, bringing up the version and before the production of the concrete investigatory actions, the gnosiological potential gets from the chosen methodology. The example which illustrates this thesis can be the use of archetype phenomenology, as method for investigation homicidal crimes. The specificity of the homicidal crimes consists in the fact that occurrence, formation of the criminal intention, preparatory actions of the subject, decision-making and the process of murder are subordinated to invincible influence of homicidal archetypes. The features of homicidal aggressions determine the frequency, periodicity of violent murders, a choice of a way of the murder, used instruments, character of damage, and speci-

ficity of the homicidal cruelty. Besides, during the homicidal murders the criminalistical picture of consequences on a victim's body is characterized by the plural damages which have an accented character. Homicidal mental aggression leaves the traces on a victim's body through archetype senses of cruelty which can be divided in two subgroups: 1) the symbolics of cruelty is formed situationally - reactive factors. The character of this type of consequences means the senses following from the situational conflict; 2) the symbolics of the homicidal cruelty is formed deeper, than in the first group, instinctively - archaic mechanisms - homicidal archetypes [8].

The knowledge of archetype phenomenology helps to distinguish their motivational homicidal dominant of violence and murders which is curtailed off quite often situationally - by reactive motives. In particular, the comparison of some homicidal murders allows to speak that as a rule homicidal murders in development pass four stages which determine the scenario criminal behaviour of a homicidman-simulator modeled by a universal archetype stereotype. The knowledge of these features allows during the investigations of concrete crimes at a stage of traces fixation of a crime and planning of investigation to choose the corresponding model.

So, the process of estimation is inherent in all types of knowledge. Its universal and activity technology is the composition from a passive subject and active images. Practice, outlook and science give to the acts of estimation universal but specific character.

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