

METHODOLOGY OF RESEARCH OF TEMPORAL EVALUATION NOTIONS IN CIVIL LAW

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Summary

The article is devoted to the formation of the methodology of temporal evaluation concepts in civil law. In preparing the article, the approaches to the understanding of the concepts of the method, the methodology have been considered, as well as structural elements of the latter have been analyzed. It has been proved that the basis for the methodology of legal science is philosophical, general scientific and special methods. Based on the general classification of the methods in legal science, the system of methods, which is used to study temporal evaluative concepts in civil law has been proposed. Each of the applied research methods has been described and the examples of their application in the study of various aspects of temporal valuation concepts in civil law have been provided. Particular attention has been paid to the dialectical method, which is the basic one. It has been stated that the methodology is not limited to the methods of scientific knowledge, but has its own integrative patterns of development.

Keywords: method, methodology, temporal evaluation concepts, civil law, research, scientific knowledge.

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1. Introduction

The term “evaluation concept” is the achievement of the science of legal theory, but it has become widespread in various areas of law under modern conditions, including in the field of civil law. The clear idea of the concept of evaluation, its types, and features of application is important for law enforcement. It should be noted that more than a hundred evaluation concepts are used in the area of civil law at the regulatory level, among which temporal evaluation concepts occupy an important place.

Scientific knowledge of temporal evaluation concepts in the functional aspect will identify the functions of evaluation concepts in civil law as the main directions of their regulatory impact on public relations in order to create opportunities for situational and individualized legal regulation and law enforcement, adaptation of civil law to specific conditions of place, time and subjective composition of the law enforcement situation.

It should be noted that any scientific knowledge applied to achieve a reliable scientific result is impossible without the use of a number of research methods.

At the same time, the methodology of research of temporal evaluation concepts has not received adequate examination in the doctrine of civil law, which determines the relevance of this article.

In view of this, the purpose of the article is to perform generalized study of scientific methodology in order to establish its functionality by presenting general scientific approaches to the disclosure of its content.

2. The definition of the concept “methodology”

According to the explanatory dictionary of the Ukrainian language the methodology is, “firstly, the doctrine of the scientific method of cognition and transformation of the world, its philosophical, theoretical basis; secondly, the set of research methods used in any science in accordance with the specifics of the object of its knowledge” (*Busel, 2007: 664*).

The method (from the Greek “*metodos*”) is “the path to something”: the path to research, to knowledge, theory, teaching, a conscious way to achieve a certain result, the implementation of certain activities, solving certain problems (in the broadest sense of the word). It is the set of certain rules, techniques, methods, norms of cognition and action. It is the system of instructions, principles, requirements that guide the actors in solving a specific problem, achieving a certain result in a certain area of activity (*Konverskyi, 2010: 24*).

Clearly, the concept of methodology takes different forms in the process of scientific knowledge, in one or another area. Thus, sociologist T. Parsons (*Parsons, 2000: 31*) understands the methodology as a general basis for the reliability of scientific statements. According to O.V. Petryshyn (*Petryshyn, 2014: 32*), the methodology reflects a certain perspective on the subject area of the study that highlights the whole process of achieving a scientific result, involves the use of appropriate tools, techniques and methods of cognition.

O.M. Novykov (*Novykov, 2007: 20 – 21*) argues that the methodology is a doctrine of the organization of activities, i.e. the organization of effective activities that contribute to a new result.

M.M. Marchenko (1988: 27) provides a broader definition, namely, considers the methodology not only as a set of techniques, methods and tools for studying relevant phenomena and processes, but also as a special science that studies these tools, techniques and methods of research, develops technologies and methods for their application, characterizes opportunities for their combination in the implementation of the study and provides the formation of common approaches and rules for the application of techniques, methods and tools in the study of certain phenomena of social and legal reality.

E. Koziuba (*Koziuba, 1990: 7*) focuses on the multilevel nature of methodology in the course of analyzing philosophical methodology as a methodology of the highest level of generalization, which is the ideological basis for all scientific activities and specific levels of methodological understanding of science and practice, which is the system of research principles and methods of specific sciences, as well as the doctrine of this system.

Despite the existence of other definitions of the term “methodology” they are all reduced to basic task of methodology – the study of cognitive activity carried out in various areas of science, identifying general patterns of functioning and development of scientific thought, development of general scientific methods of cognition.

3. Classification of the methods

In general, the methodology of legal science is the system of approaches, methods, ways and means of scientific research. The basis for the methodology of legal science is:

- philosophical and ideological approaches (materialist or idealistic, dialectical or metaphysical, recognition or denial of objective social patterns (including state and legal ones), acquisition of true knowledge about them);

- general scientific methods, i.e. those used in all or most sciences (for example, such methods as structural, functional, ascent from the abstract to the concrete; formalistic

procedures: analysis, synthesis, etc.); group methods, i.e. those that are used only in a certain group of sciences, for example, only in social sciences (the method of specific sociological research);

– specific methods, i.e. suitable for the study of the subject matter of particular science (in jurisprudence – clarification (interpretation) of legal norms, special methods of generalization of legal practice). Research methods can be divided, somewhat conditionally, into empirical (attempts to identify, record, collect, systematize information about facts and phenomena) and theoretical ones (attempts to interpret, explain the collected data, construct concepts, definitions, forecasts, etc.) (*Syniehubov, 2015: 30; Antoniuk, Polonskyi, Averchenkov & Malakhov, 2015: 36 – 37; Rabinovych, 2018: 215*).

The presented classification of the methods is the most commonly used, but taking into account the lack of consensus on the definition of the system and the hierarchy of methods of learning in the philosophy of law and the general theory of State and law, such a classification can be supplemented. However, the above group of methods is the foundation necessary for the full and comprehensive study.

Thus, philosophical laws and categories are of general and universal nature; they are used in any process of cognition of legal phenomena, including civil law. Moreover, the content of the philosophical level of methodology lies in the general principles of cognition and depends on which philosophical doctrine to adhere to by the researcher. That is, in general, everything depends on the direction of the individual (*Prokopenko, 2016: 449*). Philosophical methods do not always manifest themselves directly in scientific research, as they can be applied both consciously and spontaneously. However, in any science there are elements of universal significance, such as laws, categories, concepts, causes, etc., which make any science the so-called “applied logic” (*Konverskyi, 2010: 27*).

In turn, general and specific methods constitute the method of cognition of any branch of legal science in their combination, including the science of civil law. However, a separate specific method is designed to solve a specific task; the subject matter of research can be fully disclosed just in combination with other methods and approaches.

Before proceeding to the choice of methods that will constitute the methodology of temporal evaluation concepts in the civil law of Ukraine, it is necessary to take into account the opinion of P.M. Rabinovych (*Rabinovych, 2018: 215 – 216*), who urges to adhere to the following general methodological postulates: 1) the objective conditionality of the chosen research methods by their subject matter; 2) the need to establish a single truth that can be proved and verified through the certain objective criterion; 3) an indispensable indicator of the acceptability, heuristics of a particular research approach (method) should be its ability to facilitate the detection, disclosure of the social essence of the phenomena being studied.

Thus, it is necessary to distinguish the methods that constitute the methodology of temporal valuation concepts in the civil law of Ukraine based on the above classification.

4. Dialectical method

Thus, the basis for the whole study is the dialectical method, which should be understood as the method of thinking, studying, research. It is not a formal set of certain principles, but their system, presented in the form of moments of the living thought movement, among which start, progression, end result are the main ones. However, the main thing is that this method allows to reveal the “laws of human thought movement to the truth” in the process of cognition (*Lysyi, 2010: 22*). That is, the dialectical method helps to clarify the

legal essence of temporal evaluation concepts, to explore them in dynamics, development and contradictions.

However, the start of any research in the area of jurisprudence focuses on the knowledge of social relations governed by the relevant rules of law, where dialectical method can be useful, but by implementing it through the method of dialectical logic, historical method, system and structural method, etc. Through them, social relations can be considered as a complex social system that allows to clarify its legal nature, objective processes that take place in it, to determine the place and purpose of interconnected elements of the system, to consider their diversity, and to trace the course of solving the problem of legal support of certain social relations (*Zaic-huk & Onishchenko, 2006: 51*).

5. Historical and legal method

The use of historical and legal method to study the evolution of civil law regulation of valuation concepts in civil law is of particular importance. The historical approach is manifested in the direction of scientific knowledge from the present to the past, which determines its retrospective nature. With the help of the historical and legal method it is possible to study not only the genesis of evaluation concepts in civil law, including temporal ones, but also the preconditions and reasons for their improper regulation.

6. General scientific methods

Among the general scientific methods, we should highlight the comparative and legal method, as well as such methods as: abstraction, analysis and synthesis, induction and deduction, analogy and modeling.

Comparison is one of the main logical methods of cognition of the external world, objects and phenomena, which lies in the fact that we distinguish them from all other objects and establish their similarity with generic objects (*Lvova, 2012: 169*).

As a rule, the comparative and legal method can be used in two ways. The first way to apply the comparative and legal method lies in the study of the conditionality of the relevant legal systems by external, social factors. The second one is to establish and compare the content and composition of the rules that are the elements of the compared legal systems.

The comparative and legal method is used to study and analyze the regulation of temporal evaluation concepts in the civil law of foreign countries, in order to implement positive foreign experience into national legislation.

The inductive method of thinking is used to form scientific generalizations on the basis of empirical material, in particular on the basis of which judicial gaps are identified and conclusions on the existence of practical problems in the application of temporal evaluation concepts in civil law are drawn. The deductive method, as a method of ascension from the abstract to the concrete, from the general to the individual, is a method of research when the specificities of individual legal phenomena are derived from general ones (*Ludchenko, Ludchenko & Prymak, 2001: 49*). The use of this method allows to define the notion of temporal evaluation concepts, both in general and those inherent in civil law, their features and functions.

The method of analysis helps to distinguish the features and characteristics of temporal evaluation concepts in contractual and non-contractual obligations and in structuring evaluation concepts to study their essence.

In turn, synthesis is a process of cognition, the opposite to analysis, which lies in combining knowledge about individual parts, properties, relationships of a particular object in a system based on the results of their previous analytical research. The result of such a synthesis can be knowledge about the interaction of parts or properties of the object under study, establishing causal relationships between its individual components, finding the dependence of the function of each part of the object on the function of the object as a whole. Thus, the synthesis method is used to establish the interaction of the structural components of temporal evaluation concepts and their study in the analytical and synthetic aspect.

The method of analogy and modeling contributes to the development of proposals for the interpretation of civil law temporal evaluation concepts. By ordering the chaotic mass of the various elements of the legal phenomenon under study, modeling allows to reject secondary factors and focus on the essential properties of the studied system within legal science, thus stimulating a comprehensive understanding of the object (*Bezklubyi & Yefimenko, 2010: 15*).

7. Special legal methods

Research of temporal evaluation concepts in civil law can be carried out by applying special legal methods, namely: the method of interpretation of law, the method of studying legal practice, the formal and legal method.

Thus, the method of interpretation of law is used for the substantiation and study of law enforcement aspects in the work to clarify the content of legal norms and governing relations in the area of application of temporal evaluation concepts.

The method of dogmatic interpretation (grammatical, logical interpretation), allows to conduct etymological analysis of the concepts and legal phenomena studied in the work.

Formal and legal method highlights the formal content of legal norms or phenomena in their stable state, provides the definition of the general features of the object under consideration, its features, structure, classification. This method plays a significant role in the analysis, clarification, explanation, definition of concepts, without which it is not always possible to formulate existing problems. Note that this method is one of the oldest one in legal science (*Romanovych-Slavatynskyi, 1886: 51*). Despite its ancient origin, this method preserves its peculiarities not only in positivist but also in post-positivist methodology of legal reality (*Bielov, 2012: 64*).

8. Conclusions

Thus, it should be noted that the methodology is not limited to the methods of scientific knowledge, but has its own integrative patterns of development, as well as interconnected elements that perform only their inherent functions and implement the procedural tasks (*Dronov, 2018: 51*). A single method makes it possible to solve a specific problem posed by a scientist when conducting research, as well as, on the one hand, to qualitatively improve existing knowledge, and on the other hand – to identify problems that require further scientific research.

Summarizing the above, we can conclude that the methodological basis for the study of temporal evaluation concepts in civil law is a system of philosophical, general and special methods: philosophical (dialectical method is used to study the subject of study in the dynamics, development and contradictions); general scientific (empirical: the method of comparison is applied to identify differences between the studied legal phenomena); empirical and theoretical:

the method of abstraction makes it possible to identify the essential features of the studied objects, formulation of concepts and definition of functions, methods of analysis (in structuring evaluation concepts to study their essence) and synthesis (helps to establish the interaction of structural components of temporal evaluation concepts and their research in analytics and synthetic aspect), induction (on the basis of which judicial gaps are revealed and conclusions on the existence of practical problems in the application of temporal evaluation concepts in civil law are drawn) and deduction (in developing recommendations for the interpretation of civil law temporal evaluation concepts); historical method (is applied in the study of the normative evolution of temporal evaluative concepts in civil law).

Clearly, the above list of research methods is not exhaustive. Some aspects of temporal evaluation concepts are the subject matter of the study of sociology, psychology, political science, theory using methods specific to these sciences. At the same time, the above methodology allows to reveal the comprehensive content of evaluation concepts and to fully explore their individual aspects.

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