ТЕОРІЯ ТА ФІЛОСОФІЯ ПРАВА

UDC 340.1

Vladimir Brezden
Lviv National University
veterinary medicine and biotechnology
them. G. Z. Gzhytsky, Candidate of Law,
lecturer at the Department of Law

Olena Chornobai
Lviv Polytechnic National University,
Candidate of Law,
Associate Professor, Associate Professor of the
Department of Theory of Law and Constitutionalism
Educational and Scientific Institute of Law,
Psychology and Innovative Education
labau@i.ua

DIVERSITY AND DYNAMISM OF LEGAL LIFE AS A BASIS FOR THE DEVELOPMENT OF LEGAL ARGUMENTATION

http://doi.org/10.23939/law2022.34.023

It is argued that the current legal norms are closely related and consistent, ie acquire the property of consistency, which is legally introduced into law. It is established that positive law is nothing but a system of legal norms in force in society. When establishing new legal norms, the legislative body must coordinate them with the existing ones. Nevertheless, isolated from other similar legal norms of the single order, legal norms cannot be implemented outside the regulatory system, and their internal potential will not be claimed. Only with an established and well-functioning legal system is stable and productive regulation of basic social relations possible.

It is established that the power and vital importance of law is largely manifested in its dynamics, ie in its sufficient operational mobility, in the tendency to timely changes in legislation that do not meet the new requirements of life. It is proved that in the context of fundamental reforms and transformations affecting the main aspects of public life, legislation and legislation must have a high degree of legal, predictable dynamics, which allows timely adjustment of existing legislation.

When we talk about legal life, we are not talking about legality or illegality, but about the attribution of these phenomena to legal phenomena, not about law as such, but about legal existence, about a certain form of life, necessarily including the shadow sector.

It is determined that our inclusion of a negative, illegal component in the concept of "legal life" seems vulnerable in terms of formal logic, as it tries to bring different, even directly opposite phenomena under the general generic term "legal".

However, we have repeatedly stated in the literature that the legal and illegal beginnings of the legal life of society are legal (in the legal sense) and act as part of the legal environment, are segments of the legal sphere. Of course, they both differ in nature and direction, such as legal and illegal behavior.

Key words: legal life, legal argumentation, dynamism, legislation, diversification.

Formulation of the problem. Innovations that have taken place in the legal sphere of Ukraine in recent decades have become a powerful stimulus for intensifying the activities of domestic legal scholars. The theory and practice of legal argumentation in this regard have regained relevance in Ukrainian legal thinking, primarily due to the processes of democratization in modern Ukraine. Attention to this issue is due to the practical needs of society. At the same time, experts note that in modern Ukraine, many traditional methods of investigating crimes and their proceedings are insufficient, and the means of proof need to be developed, updated and improved.

The problem of legal reasoning, as well as problems of a legal nature in general belong to the category of the most complex and controversial. Represent a kind of applied thinking based on the belief in the justice (injustice) of the sentence, guilt (innocence) of the accused and legal reasoning – is a specific tool that ensures the proper functioning of the entire legal system and its development.

It should be emphasized that in modern conditions, experts are particularly interested in the theory of argumentation in general and are not limited to one fragment, such as legal argumentation related to the field of research of legal scholars. The intensification of theoretical and practical research in the field of argument theory and its applications is due to ongoing changes in the political and economic structure of the world and, consequently, the need for new, more effective methods of controversy and increased interest in argumentative discourse.

Analysis of the study of the problem. The problem of diversification and dynamism of legal life as a basis for the development of legal reasoning interested outstanding foreign and domestic thinkers and scholars, namely: R. M. Abramovich, T. Dudash, V. I. Kistyanyk, P. M. Rabinovich, O. L. Chornobay.

The aim is to analyze the specifics of the diversity and dynamism of legal life as a basis for the development of legal argumentation from a philosophical and legal point of view.

Presenting main material. Problems of legal argumentation have deep historical roots, dating back to antiquity. Of particular importance for the formation of political and legal discourse (from the Latin discourse-reasoning) and the doctrine of them is not enough for the emergence of democracy, which, as we know, in originated in ancient Greece. The ability to persuade people to make sound arguments against their opponents, to influence not only the minds but also the feelings and emotions of listeners has become important.

Public policy debates, litigation based on competition between the parties, stimulated the desire for intellectual activity, analysis and systematization of ideas accumulated during these disputes and court debates, and the development of appropriate rules and skills of such discourses.

Due to the fact that most of the inhabitants of ancient Greece did not know the techniques and methods of controversy, it quickly became necessary to teach rhetoric and argumentation. The first to undertake this mission were the ancient Greek sophists – professional teachers of philosophy and eloquence of the second half of the fifth century – the first half of the fourth century BC. however, their training was largely limited to preparing language texts and memorizing them by students or using various quasi-logical techniques that created the appearance of justification or refutation of something. Obviously,

this was clearly not enough to succeed in disputes and court debates, which often required dexterity and immediate response to the opponent's arguments. As a result, there was a public need for theory and technology of argumentation [1, p. 17].

Despite the fact that intellectual exercises were mainly based on political and legal aspects of social reality of the time, the formation of the theory of discourse of law was not separated from the formation of general theory of argumentation - interdisciplinary field of knowledge about means, methods and methods of persuasion and influence; methodology of reasonable belief.

Initially, the general theory of reasoning developed in two directions: theoretical, which helped to deepen the subject and interact with other ancient sciences (ethics, politics, dialectics) and normative, to stabilize and unify the use of rhetoric in human activity after developing a perfect technique of argumentation [5, p. 17].

The emergence of the general theory of reasoning is associated with the ancient philosophical schools, which were based on such prominent thinkers as Socrates, Plato and, in particular, Aristotle. Recent teachings on syllogistics-special logical deduction in judgments (deduction of the greater on the basis of the lesser), as well as rhetoric – oratory, dialectics – the ability to converse (debate) and subject – techniques of problem thinking with knowledge of a particular context are crucial for understanding the meaning of reasoning. stage of their occurrence.

However, a feature of the concepts of syllogism (analytical, dialectical, heuristic and rhetorical) of Aristotle was their relative distance from practical legal activity. This shortcoming was eliminated in the Roman era by Cicero and Quintilian, who began and developed a realistic theory of judicial reasoning.

The foundations of the general theory of arguments of antiquity were laid in later historical epochs – the Middle Ages and modernity – by prominent philosophers and scientists such as P. Abelard, T. Aquinas, E. Frons, F. Bacon, T. Hobbes, R. Leibniz, K. Beccaria, W. Bentham, A. Schopenhauer and others. At the same time, a significant impact on the theory of argumentation had trends and trends based mainly or exclusively on the traditional logical structure of thinking based on syllogistic methods. In this context, it is worth quoting the Italian lawyer C. Beccaria, who in his treatise “On Crimes and Punishment” (1764) insisted on the exact formal logic of judicial evidence, which is to use the so-called legal syllogism: “The judge must make the right conclusion . The big meta-universal law, the smaller – action against the law or after it; the conclusion – freedom or punishment. If the judge under duress or voluntarily draws at least two conclusions instead of one, then nothing can be sure” [3, with. 21].

Attempts to supplement the general theory of argumentation with means and methods of non-dosing, especially informal logic, anthropology, often led to contradictions that negatively affect its authority among lawyers. Excessive abstractness of philosophical judgments, their isolation from legal practice also did not contribute to this.

Therefore, it is not surprising that, despite the increase in the number of publications and various scientific events (seminars, conferences) devoted to the theory of argumentation, they had almost no effect on practical legal activities. Most lawyers either knew nothing about philosophical reasoning at all, or did not use it when they did. The skeptical attitude of lawyers also extended to logic (also called “legal”) and its significance for the theory of law and legal practice.

Inherent in the general theory of reasoning, the focus on traditional means of syllogistics and other positivist tools has made it “mechanical jurisprudence”. And this despite the fact that the general theory of reasoning is becoming increasingly relevant for jurisprudence due to the significant diversity and increased dynamics of legal life and the complexity of legal practice.

The main feature The essence of legal life is the dynamics. He distinguishes stability, stability in organizational and structural relations of the legal system from continuous change, movement with elements of regularity, renewal of legal life.

Legal life characterizes the objective forms of human existence and society, their attitude to law, the use of legal means to realize individuals and their associations of their interests and needs, which are due to

the phenomenon of current law and in this sense is a world of realities (actions) (provided) by the rules of law., actions, relationships).

Legal life is a kind of sphere for the implementation of the energy of law, its potential, a set of various forms of legal and illegal behavior of participants in legal relations, acting as plaintiffs and defendants, lawyers and prosecutors, judges and experts, testators. and heirs, victims and defendants, investigators and suspects, witnesses and accused, deputies and voters, law-abiding citizens and offenders [2, p. 86].

At the same time, legal life includes "shadow law" and various legal anomalies. Through the category of "legal life" the process of cognition of law becomes complex, which allows to cover the full range of initial and derivative, static and dynamic, normative and non-normative, positive and negative, organized and unorganized, material. and spiritual and legal phenomena, to unite them into a single complex. It is designed to reflect the socio-legal reality, the connection of various legal phenomena with all other components of public life – economic, political, moral, religious, etc.

The relationship between legal life and legal reality, in our opinion, is due to the common features of these categories and differences. The common features of the studied phenomena are determined by their belonging to the socio-legal sphere of society. Legal life and legal reality operate within society, have a specific functional purpose, belong to the legal sphere of society, have a political and legal nature, their purpose is to regulate social relations, have a certain structure, content. and forms of manifestation, suggesting the presence of objective and subjective side associated with the legal superstructure, depend on the development of society and influence it.

Legal life is an extremely broad, complex, internally contradictory and multidimensional phenomenon. An abstract-analytical approach is needed to study it. It is not about local empirical legal phenomena and processes, but about macro-scale processes in the field of law, stages and patterns of their development.

It is also important to keep in mind that part of legal life is also random and irregular. Irrationality in its pure form is not characteristic of legal life, as the mechanism of legal regulation must have patterns, otherwise the importance of law as a social regulator is lost, but it is said with varying probability.

For example, A. B. Wengerov notes that "in the legal life of society in crisis situations there may be states of uncertainty and instability, and then subjective, accidental, self-organizing sometimes sets the most unexpected directions of development, changes, forms, trends, transitions from one rule of law to another".

In the history of society, chance is stronger than in nature: because people's activities are motivated not only by their ideas and will, but also by passions and even passions. According to this position, all legal consequences are interpreted as unpredictable, legal existence appears as something unknowable, inaccessible to human thinking, existing in itself, man has no power to understand or influence legal reality, legal norms can not unreasonably achieve the goal "established" in them [2, p. 86].

Due to irrationality, the effectiveness of legal regulation is not 100 %. This explains the negative, illegal phenomena of legal life. Of course, one should not resort to apathy, which tends to see the exclusively irrational in legal life, although it exists, it is much less rational, and it must be constantly minimized, removed from the shadows of legal regulation.

A certain level of disorganization is necessary for the emergence of vital innovations. This is necessary in order for a person to be ready every day to face a real threat that comes not only from the external enemy, but also from himself, from his passivity and indifference to life.

The theory of legal positivism, which emerged in the XIX century, gave the deductive model of legal argumentation conceptually complete. According to the positivist approach, the law is seen as an internally coherent, closed system, ie the legislator provides for everything in the rules created by him. The role of

the court in such conditions is reduced to the "mouth of the law", ie to its passive (mechanical) application – the conclusion of the decision on the rules of positive law.

The question of the foundations of social consistency and clarification of the representation in it of a certain tradition of history and modernity of Ukraine will, in our opinion, also reach the sum of issues related to the ontology of law, its phenomenon ology. and dynamic parameters in terms of practical solutions for communication with the entry into the geo-legal space on the desired institutional basis of Ukraine. And in this research perspective we note the long-term historical influence on the development of the national tradition of Ukrainians of Christianity of Orthodox and Greek Catholic perception, which emphasized the following features: orientation to social justice, collectivism (catholicity) measures of morality) and the level of material well-being [4, p. 11].

In general, the whole "cultural and civilizational code" that developed on this religious basis appealed to the conscience as a standard of social rights in individualism and left economic indicators peripheral in the scale of evaluation coordinates. Of course, the Soviet era and atheistic bureaucracy greatly influenced the development of tradition, but in our opinion, the layers of the unconscious have long retained variations in the content of Orthodoxy.

Only the modern mass arrival of Protestantism on the territory of Ukraine, the invasion of new religious movements, the dispersal and deinstitutionalization of religiosity as such have created a mixture of contexts in our country, which has led to the erosion of tradition, or rather to its erosion. modification of the pressure of Western liberal influences. Finally, the analysis of this level is, in our opinion, an essential element of modern research on the methodology of law and the foundations of its institutional representation in the context of the project of globalization of the legal space [6, p. 36].

Against the background of all current discussions about the institutionalization of the future, we realize that at any level, the decisive factors that will shape its quality in certain countries are, first of all, the legal system and the degree of its functioning. Therefore, a number of issues of ontology of law, disclosure of its content and presentation in norms, methods of law-making and application, positivization of law at the international and national levels, etc. remain the subject of special scientific attention.

Meanwhile, social practice, including jurisprudence, has provided increasing evidence that any social discourse, especially legal discourse, although it belongs to the class of logical thinking, is not reduced to the classical syllogistic model.

Reasoning based solely on the rules of formal logic forms law with dogmatism, incompatible with the complexity of reality and the flexibility of life, with the dynamics of law itself. Thus, the reduction of the right to a closed logical system and the involvement of law enforcement agencies in formal logical operations have been increasingly criticized by lawyers.

Conclusions. Any life, regardless of its form, can not contain only constructive, positive principles, because it includes all sorts of manifestations, the real existence of various trends. Therefore, it is no coincidence that in the development of legal life there are two directly opposite directions: one is related to the organization of social relations, the other – with their disorganization. In legal life, there is also harmony between its elements, but there is some dichotomy, inconsistency, imbalance. Disorganization, the chaotic side of legal life – is the same attribute of it as the organized part.

One of the inclusive legal abstractions introduced relatively recently was the concept of the legal life of society, which includes both legitimate and illegal components, calls into question the complexity of the object of legal science and is in fact an attempt to develop a more adequate one.

The legal system, in turn, is rather aimed at streamlining the legal life of society and acts as an organizational factor in relation to the latter. The legal system, rightly mentioned in the literature, is a set of interrelated legal means necessary and sufficient for the legal regulation of behavior, there is a certain legal

organization of this society as a part of legal life, it is internally organized dynamic integrity consisting of processes and actions. aimed at the formation and improvement of legal phenomena and relations.

Consideration of the diversity of components of legal life requires a separate independent study, as it is a very important area of our legal existence, which, of course, must be known. Further systematic study of legal life is needed, because to analyze not only certain aspects and aspects of legal life, but also the relationships and dependencies between them, it is also necessary to divide it into appropriate types. Such aspects are still awaiting their researchers.

REFERENCES

1. Abramovich R. M. (2013). ***Features of judicial reasoning in the application of the principle of irreversibility of the law in time in Ukraine.*** Scientific notes of NaUKMA. Legal sciences. T. 144–145. Pp. 17–20.

2. Dudash T. (2017). ***Features of reasoning of decisions of the European Court of Human Rights (to characterize methodological approaches)***. Law of Ukraine. No. 4. Pp. 86–96.

3. Kistyanyk V. I. (2012). ***Legal argumentation: modern approaches to its understanding in foreign studies.*** Scientific records ski NaUKMA. Vol. 129. Legal sciences. Pp. 20–22.

4. Rabinovich P. M., Dudash T. I. (2016). ***Legal argumentation: terminological tools of research.*** Bulletin of the National Academy of Legal Sciences of Ukraine. No. 2 (85). Pp. 8–20.

5. Chornobai O. L. (2015). ***Argumentative practice in legal activity: scientific problem and possibilities of its solution.*** Legal science. No. 8. Pp. 15–19.

6. Legal argumentation. (2015). ***Logical research :*** monograph / according to the general edition of O. M. Urkevush. 2nd edition, revised and supplemented. Kharkiv : Law. 336 p.

Дата надходження: 06.04.2022 р.

Володимир Брездень
Львівський національний університет
ветеринарної медицини і біотехнологій
ім. Г. З. Гжицького, кандидат юридичних наук,
викладач кафедри права

Олена Чорнобай
Національний університет “Львівська політехніка”,
кандидат юридичних наук, доцент,
доцент кафедри теорії права та конституціоналізму
Навчально-наукового інституту права, психології та інноваційної освіти
labau@i.ua

УРІЗНОМАНІТНЕННЯ І ДИНАМІЗМ ПРАВОВОГО ЖИТТЯ ЯК ЗАСАДИ РОЗВИТКУ ЮРИДИЧНОЇ АРГУМЕНТАЦІЇ

Аргументовано, що діючі правові норми тісно пов’язані, і є послідовними, тобто набувають властивість узгодженості, що законодавчо вводиться в закон. Встановлено, що позитивне право – це система правових норм, що діють у суспільстві. Законодавчий орган при встановленні нових правових норм обов’язково координує їх із уже діючими. Незалежно від цього, ізольовані від інших аналогічних правових норм єдиного порядку, правові норми не можуть бути реалізовані поза системою регулювання, і їх внутрішній потенціал не буде затребуваний. Тільки при встановленій і добре функціонуючій правовій системі можливе стабільне і продуктивне регулювання основних соціальних відносин.

Встановлено, що сила і життєво важливе значення права багато в чому проявляється в його динаміці, тобто в його достатній оперативній мобільності, в тенденції до своєчасних змін

законодавства, які не відповідають новим вимогам життя. Доведено, що у контексті фундаментальних реформ і перетворень, які зачіпають основні аспекти суспільного життя, законодавство повинно мати високий ступінь законної, передбачуваної динаміки, що дозволяє своєчасно коригувати чинне законодавство.

Коли ми говоримо про законне життя, ми говоримо не про законність або незаконність, а про віднесення цих явищ до юридичних явищ, не про право як таке, а про законне існування, про певну форму життєдіяльності, обов'язково включаючи тіньовий сектор.

Визначено, що наше включення негативного, незаконного компонента в поняття "правового життя" здається вразливим із боку формальної логіки, оскільки воно намагається підвести різні, навіть протилежні явища під загальний родовий термін "законний".

Однак нам не раз доводилося констатувати в літературі, що законні і незаконні початки легального життя суспільства мають правове спрямування, і виступають в якості складових частин правового середовища, є сегментами правової сфери. Звичайно, обидва вони розрізняються за типом і спрямованістю, таким як законна і протиправна поведінка.

Ключові слова: правове життя, юридична аргументація, динаміз, законодавство, урізноманітнення.