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CONCEPT OF METHOD AND METHODOLOGY IN RESEARCH OF «BRANCH OF LAW» CATEGORY

Людмила Добробог. ПОНЯТТЯ МЕТОДУ ТА МЕТОДОЛОГІЇ У ДОСЛІДЖЕННІ КАТЕГОРІЇ «ГАЛУЗЬ ПРАВА». У науковій статті зроблено спробу дослідити поняття методу та методології категорії «галузь права» через специфіку поняття методу та методології комплексної галузі права, зокрема екологічного, як комплексної галузі права, що поєднує сукупність правових норм, які регулюють суспільні відносини у сфері охорони навколишнього природного середовища і раціонального використання природних ресурсів з метою забезпечення якості довкілля в інтересах сьогодення та майбутніх поколінь.

Досліджено генезис методу та методології категорії «галузь права», починаючи з поглядів Зенона, Протагора (480–410 рр. до н.е.) до сьогодення. Порівнюються форми розвитку наукового пізнання, які були на теренах Західної Європи та Англії, тобто порівнюються методи та методологія різних правових систем. Автором зазначено, що складність у вирішенні методу та методології пов'язане з відсутністю єдиного розуміння цього поняття. Чільне місце в процесі пізнання категорії «галузь права» як елемента системи права дослідниця відводить діалектичному підходу. Окрему увагу приділено синергетичному підходу. Синергетика зумовлює необхідність комплексного дослідження екологічних відносин як складної, нелінійної системи, що самоорганізується.

Зроблено висновок, що сучасні державно-правові дослідження повинні ґрунтуватися на останніх наукових здобутках гносеології, враховувати, зокрема, напрацювання синергетики як універсальної теорії пізнання соціальних процесів та систем, що активізувала провідний на сьогодні напрям суспільної діяльності – інвайронменталізм як аттрактор екосистеми.

***Ключові слова*:** *галузь права, комплексна галузь права, екологічне право, метод, методологія*.

Relevance of the study. The study of the regularities of origin, functioning and development of the branch of law requires clarification of the methodology used. Special attention should be paid to the specifics of the complex branch of law, in particular, of environmental law. But environmental law is a complex branch of law combining a set of legal rules governing public relations in the field of environmental protection and natural resources' rational use in order to ensure the quality of the environment in the interests of present and future generations. However, it should be noted that the issue of method and methodology in the study of the "branch of law" category in the outlined context remains almost unexplored.

The methodology underlying this study should take into account the laws of nature, and the regularities of society evolution. Therefore, it should be emphasized that the issue of ecology was considered secondary and the state did not distinguish between the relevant areas of its activities until recently. The scientists dealing with the theory of state and law began distinguishing the activities in the field of rational use and environmental protection, maintaining ecological balance, ecological safety provision and gene pool preservation as an ecological function of the state only in the second half of the XX century. Regarding our state, this issue was raised by the relevant environmental situation, in particular, the disaster at the Chornobyl nuclear power plant.

The environmental problems of contemporaneity require urgency of taking into account the environmental consequences and risk degrees while the internal and external activities of states in general and Ukraine in particular. Environmental security is becoming a key factor in determining the acceptability of certain economic decisions as well as public authorities'

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efficiency.

Let us note that the beginning of the XXI century (let's mention the recent events at the Fukushima Daini nuclear power plant in Japan, the armed conflict in Ukraine, and as a consequence, the threat of man-made disasters at the nuclear power plant) once again raised environmental security issues, having proved once again that economic development should not contradict the environmental situation. The economics and ecology interconnectedness allows us to define the following principle: "economically profitable is only that that is environmentally safe" [2, p. 320].

Recent publications review. Certain aspects of the issue under consideration were studied by such lawyers as: V. Andreytsev (environmental safety law), A. Oliynyk (environmental law basics), O. Danilyan, O. Dzioban (ecology as a component of national security of Ukraine), O. Zarzhytsky (environmental policy), A. Kaczynski (ecological security of Ukraine), L. Nalyvayko (ecological function of the state), M. Panov (ecology as a component of national security of Ukraine), G. Khmil (ecological security of Ukraine), Yu. Shemshuchenko (legal problems of ecology) to mention but a few. However, the issue of the methodology regularities of origin, functioning and development of the branch of law, in particular of environmental law, requires a comprehensive study. It is undeniable that maintaining ecological balance, ensuring ecological safety, preserving the gene pool, changing priorities in the activities of state bodies and public organizations in terms of environmental protection and natural resources rational use can lead to the expected result only under condition of proper scientific support. In turn, the social significance of the results of research work in the field of environmental law is largely determined by the methodological factors of the study itself. The inconsistency and imperfection of the certain relations legislative regulation, including environmental relations in Ukraine, is a consequence of the fact that there are no clearly defined and scientifically balanced methodological principles of their study [9, p. 30]. At the same time, changes in public relations in our state, related to the definition of Art. 16 of the Basic Law of Ukraine as a duty of the state "ensuring environmental security and maintaining ecological balance on the territory of Ukraine, overcoming the consequences of the Chernobyl disaster – a global catastrophe, preserving the gene pool of the Ukrainian people" [49], necessitate a qualitatively new methodological approach to resolving these public relations [4, p. 89].

Thus, it can be argued that the issue of regularities of origin, functioning and development of branch of law, in particular of environmental law, becomes particularly special topicality, and needs immediate solution [3, p. 90].

The research paper's objectives is to explore the concept of method and methodology of the category "branch of law" through the specifics of the concept of method and methodology of a complex branch of law, in particular, of environmental law.

Discussion. To better understand the essence of the prevailing methodological paradigm, let's consider the genesis of the methodology itself. In general, the issue of the possibility of cognition can be referred to the time of Zeno, who, thanks to his aporia, pointed out the contradictions in the basic concepts' logical conclusions that were operated with ancient science.

Protagoras (480-410 BC) argued that a human being is the measure of all things: existing, that they exist, and non-existent, that they do not exist. "There are two opposing views on any thing", he said. And one can successfully assert any of these views. And, accordingly, the interests of a particular person or society should be considered the criterion, the measure of truth of thought. "What I consider a thing it is such for me, and what you consider the thing, it, in turn, is for you. Thus, as one feels cold in the wind and the other does not, it is impossible to say whether the wind itself is cold or not, but for a person who is frozen it is cold, and for a person who is not frozen it is not" [12, p. 41].

The philosophical teachings of the famous ancient Greek philosopher Plato (427-347 BC) are also crucial in the aspect under consideration. Plato, as we know, distinguished between the world of ideas and the world of things. Plato called the world of eternal, unchanging, self-existent beings – ideas the primary "truly existing" world. That is why, according to Plato, in order to establish the truth one should study the world of ideas, and not the world of things.

The Middle Ages are known to be associated (especially in Europe) with the emergence of ecclesiastical authority. The sense of human existence, according to the theorists of Christianity, is not in the knowledge and transformation of nature and society, but in

integration with God in the so-called "kingdom of God" [12, p. 61]. The transcendence and immensity of God, the finiteness and sinfulness of a human being – these foundations of Christian philosophy removed the issue of the need to develop a methodology at the time.

The rapid development of capitalist relations takes place in the XVIII century in Western Europe. It is this circumstance that necessitates a rethinking of the process of social production, which in turn changes the established view of society on such a field as science and, consequently, cognition of the world by a human being. "This period can be considered the heyday of methodological science. After all, it is then that the mechanistic approach to the world order becomes relevant. Each particle, as an element of this mechanism, performs its function. Knowing such particles, you can know the mechanism itself, the world. Therefore, the main problem – the development of methods of cognition, improves the methodology" [8, p. 49].

The theory of empiricism rationale in the New Age is associated with the name of F. Bekon; he, understanding the importance of scientific progress, raises the issue of searching a research method. This is a key theme in his paper "The New Organon". The new "organon" is opposed to the old one – Aristotelian. Developmental sciences, according to Bekon, are hindered by the existing scholasticism with its dogmatized Aristotle and various superstitions, deviations of the mind ("idols" "ghosts"), that like a distorted mirror, distort the true state of affairs [8, p. 49].

There are some divergences in the forms of scientific knowledge development in Europe. Thus, in England it is, first of all, empiricism. And on the territory of continental Europe it is rationalism. The founder of the rationalist trend in Western culture is the famous philosopher Descartes, who formulated the rationalism principles as a universal worldview, contrasting it with irrationalism and empiricism. The philosopher considers the discovery of means of the world cognition as the goal of philosophy, which he tried to do and present in his treatises, relying on mathematics.

Descartes' approach to knowledge of the world, as well as to understanding the role and possibilities of science is prevalent today. At the same time, it should be emphasized that this state is a deterrent factor to the development of modern science, including legal science. The methodological paradigm, formed in soviet times, hinders the development of jurisprudence; the time of the scientific revolution has come, as the famous American thinker Thomas Kuhn would say [8, p. 49].

It should be noted that the difficulty of solving the issue of understanding the methodology is primarily related to the lack of a common understanding of the sense of this concept. For example, a significant number of foreign experts in this field consider research methods and methodology to be the same phenomena.

There is no unity of understanding of methodology among domestic scientists. Although, it should be noted that the almost classical definition of the concept under study can be considered the following: "conceptual presentation of the purpose, content, research methods that provide the most objective, accurate, systematic information about processes and phenomena" [14, p. 56].

Methodology is a complex, polysystemic phenomenon including not only a set of methods, but also methodological principles, the initial basic ideas, based on which the choice of specific research methods is done. It should be noted at once that different methodological principles are used when researching the problems of various sciences (while the research methods remain identical). It should be noted that the difference in approaches to understanding law causes differences in the vision of the legal phenomenon and, accordingly, in legal reasoning. Thus, calling his paper "Legal Methodology", R. Tsippelius covers the issues of knowledge of law, the structure of law at the micro and macro levels, interpretation of regulations, etc., while the author considers neither the doctrine of methods of knowledge nor the system of such methods , in particular of philosophical, general and special scientific ones [17].

It is in this case that R. Zippelius clarifies the general principles of the study of law. Therefore, we can conclude that the basis of the study of state and legal phenomena is a system of elements of research – principles. It should be noted that the understanding of law differs within the existing legal families and, in turn, legal phenomena are covered differently, their understanding has a various sense.

A. Kuchuk points out that the structure of methodology includes both approaches and methods. For example, such common concepts as "dialectical method", "comparative method", "historical method", and "system method" are not correct as all of the above are methodological approaches. The methods are logical methods (operations) – analysis,

synthesis, abstraction, deduction, induction, and so on. After all, it is obvious that these logical operations are used in dialectical, historical and systemic approaches [8, p. 50].

Thus, before turning to the consideration of approaches and methods of research, let us note that when solving the problem of regularities of origin, development and functioning of branch of law, in particular of environmental law, it is necessary to take into account the following fundamental provisions [5, p. 91]:

1. The establishment and protection of human rights and freedoms is the main duty of the state (Article 3 of the Constitution of Ukraine).

2. Ensuring environmental security and maintaining ecological balance in the territory of Ukraine, overcoming the consequences of the Chornobyl disaster – a catastrophe on a global scale, preserving the gene pool of the Ukrainian people is the duty of the state (Article 16 of the Constitution of Ukraine).

3. Everyone has the right to a safe environment for his life and health and to compensation for damage caused by violation of this right (Article 50 of the Constitution of Ukraine).

4. Everyone is guaranteed the right of free access to information on the state of the environment, the quality of food and household items, as well as the right to its dissemination. Such information cannot be classified by anyone (Article 50 of the Constitution of Ukraine).

5. The principles of regulation of ecological safety are determined only by the laws of Ukraine (Article 92 of the Constitution of Ukraine) [7].

Regarding other components of the methodology, first of all, the study of environmental law should be based on an objective approach requiring consideration of specific phenomena in all their diversity, complexity and contradictions proceeding from a set of positive and negative aspects, regardless of their subjective perception and assessment, identification of trends and environmental relations functioning regularities.

The dialectical approach is given a prominent place in the process of cognition of the issues under study. “Dialectics as a method of cognition of nature, society and thinking, considered in conjunction with the logic and theory of cognition, is a fundamental scientific principle of the study of multifaceted and contradictory reality in all its manifestations” [14, p. 58]. This approach involves the study of phenomena, taking into account their relationship with other social phenomena, as well as taking into account changes in the object under study. [5, p. 91]. Regarding the subject of our study, this approach takes into account the fact that the development and functioning of law branch as an element of the system of law, as a social life phenomenon occurs in interconnection and interaction with other social phenomena and, accordingly, is the subject to permanent change.

Today, the fundamental approach until recently prevailing in the study of social phenomena and management of social systems, basing on linear ideas, is actively criticized. Much attention is focused on the synergetic approach [5, p. 23]. Ecology is not a closed sphere, and, therefore, the state of the ecological situation is significantly influenced by various social factors, both objective and subjective. Synergetics necessitates a comprehensive study of environmental relations as a complex, nonlinear, and self-organizing system.

According to O. Minchenko, scientific knowledge of the phenomena of state and legal reality will be incomplete if the researcher does not follow the historical approach in solving the problem. This approach makes it necessary to clarify the process of origin, formation and development of relevant phenomena, taking into account the historical conditions under which they were formed, establishing stages of development, which helps to understand the essence of the studied category, and identify relevant patterns [10, p. 80-81].

Before studying the current state of environmental law, it is necessary to study its genesis. Due to this approach, the period of formation of the ecological function of the state is established, its content is determined. This approach makes it possible to study the origin, development of environmental relations in general and environmental legal relations in particular, to find out what caused the need for changes in the field of environmental protection that have occurred and are taking place in Ukraine. The study of the genesis of environmental relations is the basis for identifying regularities of origin, functioning and development of environmental law.

Given the conclusions and provisions of systems theory, it is necessary “to consider any object as meeting the requirements of systematics, namely: contains interconnected and interacting structural elements (developed structure), has relative independence from others social objects (developed organization), internal integrity (developed core of the system), etc.”

[11, p. 26]. Therefore, a systemic approach plays an important role in the study of the laws of origin, functioning and development of environmental law.

The importance of using a systematic approach in jurisprudence was emphasized by W. Twining [12].

The structural and functional approach involving "the allocation of structural elements (components, subsystems) and determination of their role (functions) in a system, plays an important role along with the system approach. Elements and connections between these elements, create the system structure" [14, p. 61].

The use of legal and technical or formal and dogmatic method to study the regularities of origin, functioning and development of environmental law necessitates a certain "separation" of this legal reality phenomenon from others, including social, disregarding external and internal influences on it and involves knowledge of regularities of origin, development and functioning of environmental law from a purely legal standpoint, analysis of legislation in the field of environmental protection [3, p. 92].

The method plays a crucial role in the system of methodology, as its elementary particle. It should be noted that the method is usually considered as a logical technique, a means of cognition of a state and law.

In general, any scientific research is carried out with the use of the following methods such as abstraction, analysis and synthesis, deduction and induction.

Abstraction is one of the fundamental methods of theoretical research, which consists in "moving away from insignificant properties, ties, relationships of objects and simultaneously allotment, fixing of one or more the most important features that are of particular interest to the researcher" [14, p. 70].

It is impossible to define a concept without applying the method of abstraction, because the concept is a form of abstract thinking. Therefore, this technique plays a significant role in the study of environmental law.

The process of abstraction is inextricably linked with research methods such as analysis and synthesis. It should be borne in mind that analysis is a method of scientific research in which the phenomenon is divided into constituent parts [143, p. 92]. "This is a method of research involving studying the subject by imaginary or real division of it into its constituent elements (parts of the object, its features, properties, and relationships). Each of the selected parts is analyzed separately within a single whole" [1]. By virtue of the analysis it is possible to single out the features of the concepts that denote the studied phenomena, to identify groups of sources on the regularities of origin, development and functioning of state and legal phenomena.

Synthesis is a process that is the opposite of analysis, which involves the combination of elements, the study of the whole. With this method it is possible to formulate definitions of concepts that are the subject of research, and to draw conclusions.

With regard to the methods of induction and deduction, it should be noted that "deductive is a mental construction in which the conclusion about an element of the set is made on the basis of knowledge of the general properties of the whole set. ... Induction is understood as the transition from partial to general, when on the basis of knowledge about some of the subjects of the class a conclusion is made about the class as a whole" [14, p. 71]. Regarding the subject of our study, the use of methods of induction and deduction allowed us to study environmental relations and identify regularities of origin, development and functioning of the branch of law as an element of the system of law.

It should be noted that the methodology is not related to scientific novelty. For example, N. Copernicus, and D. Mendeleev used the same methods as their predecessors, however, they received qualitatively new results. Methods of cognition are a fairly stable category. Since the novelty of the study is determined not by the research methodology, but by hypotheses, and intuitive feelings. Perhaps that is why in some dissertation research conducted in Russia, the introduction mentions such a subunit as "Research Hypothesis" [13, p. 9]. Therefore, one cannot but mention the following words of L. Shestov: "Science is useful – there is no dispute, but it has no truths and never will. It may not even know what the truth is, and it is accumulating only universally binding judgments. Meanwhile, obviously, there are and always have been unscientific methods of finding the truth, which led, if not to knowledge itself, then to its eve, but we have so defiled them with modern methodologies that we dare not think about them seriously" [15, p. 171].

Modern science cannot but ignore the individual facts that go beyond the established

paradigm. We should remember the words of L. Shestov, whom we have already mentioned: "If all people were blind and only one of them saw for a moment and saw the beauty and splendor of God's peace, science could not heed his testimony. Meanwhile, the testimony of one sighted person means more than the testimony of a million blind people" [155, p. 70].

Recent advances in science confirm this thesis. Let us mention for example the provisions of the theory of self-organization (synergetics), in particular the importance of chance. "Randomness (chaos at the micro level) is a constructive beginning, because it is the reason, the initiating factor for the system to enter one of its own, natural directions of its evolution, one of the attractors of evolution" – says O. Kniazieva [10, p. 29].

Conclusions. Thus, modern research on state and legal phenomena should be based on the latest achievements of epistemology, taking into account, in particular, the development of synergetics as a universal theory of knowledge of social processes and systems, which in turn intensified the leading direction of social activity – environmentalism as an ecosystem attractor.

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ABSTRACT

An attempt to explore the concept of method and methodology of the “branch of law” category through the specifics of the method and methodology concept of a complex branch of law, in particular, of environmental law, has been made in this paper. The genesis of the method and methodology of the “branch of law” category beginning from the views of Zeno, Protagoras (480-410 BC) to the present is studied in the article. The forms of scientific knowledge development that existed in Western Europe and England are compared, and the methods and methodology of various law systems are compared. The author concludes that the difficulty in solving the method and methodology is related to the lack of common understanding of this concept. A prominent place in the process of cognition of “branches of law” category, as an element of law system, is given to a dialectical approach by the researcher. Particular attention is paid to the synergetic approach. Synergetics necessitates a comprehensive study of environmental relations as a complex, self-organizing and nonlinear system. The author concluded that modern state and legal studies should be based on the latest scientific achievements.

***Keywords*:** *branch of law, complex branch of law, ecological law, method, methodology*.