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METHODOLOGY RESEARCH OF JUDICIAL PRACTICE

Summary

This article is devoted to unification of ideological position, methodological principles, classical and modern methods of research of judicial practice. They are the main methods of perception of their essence, content and form of being as a link to unify lawmaking and law enforcement. Only the unification of classical and modern methods of research allows to investigate considerable and content features of judicial practice unbiased and deeply.

Key words: methods of research, methodology, judicial practice

Problem formulation. Every scientific research is impossible without systemic methodological basis by which knowledge of the subject studied. Is no exception and judicial practice, which is a link, in fact, a binder and scope of lawmaking law-realization. Most of the previous studies conducted based on the provisions of the Marxist-Leninist dialectics. Research jurisprudence considering classical and new methodological approaches provides a more accurate understanding of the judicial practice; It contributes to a more detailed analysis of the substantive elements of the judicial practice; It allows for a more reasonably define the forms of judicial practice.

Analysis of recent research and publications. Comprehensive analysis of judicial practice, undertaken in 1975 under the leadership of S.N. Bratus [1], it has provided much food for thought about the nature, content and form of legal practice in the Soviet legal system, but from a methodological point of view, given the commitment of the authors of the materialist dialectic, and considering the influence of "party" [2, s.66-72] Soviet science, this comprehensive analysis has not brought

tangible breakthrough.

Later, the issue of the methodology of legal practice as a whole, under the same dialectical materialism, turned V.M. Surux [3, s.37-56], which is developing the methodological arsenal of researchers at the beginning of the XXI century, has tried to pay more attention to the study of the logical foundations of the practice [4 s.115-128].

Originality in a number of these studies characterized the work of Reinhold Tsippeliusa "Legal methodology", where the author, based on the latest achievements of philosophy and jurisprudence, analyzes the methods of application of the law, in particular, the judiciary [5, 125-153].

In recent years, the problems of methodology of the study of legal practice, as a basis paradigm of formation of the legal system model law addressing I.L. Beluy [6 s.162-209] and methodology of practice as a whole, has been the object of study A.M. Novikov and D.A. Novikov [7, 231-359].

The most extensive analysis of the methodology of the study of judicial practice, with an emphasis on rule-making component of this category, in modern conditions had P.A. Hook [8].

The purpose of the article. The focus of our scientific research substantiates the necessity of a comprehensive analysis of the methodological foundations of the research entity, substantial elements and forms of jurisprudence, as a link law-making and law-enforcement spheres of legal reality.

Statement of the basic material. Survey Methodology jurisprudence is, in fact, the organization of such a study [9, p.77]. The methodology is always directed to the study of the subject. In our case, this subject appears jurisprudence is based on the law enforcement activities judicial experience, the result of which is the development of legal provisions [10, p.21]. Classical and contemporary jurisprudence research methodology combines a certain world, conceptual principles of knowledge, a variety of methods.

One of the classic trends in scientific research belongs to dialectical materialism, which comes from a materialistic view of the world and the universal

recognition of the dialectical relationship of objects and phenomena. From these philosophical foundations and we repelled, considering that the object of our study should be considered a primary ontological position, as well as on the basis of constant jurisprudence existing relationship with its environment.

The basis of the study of judicial practice consists of classical methodological principles of integrated and comprehensive knowledge of pluralism. They are oriented research entity jurisprudence of its contents and forms: in the complex achievements of various sciences (mainly human); based on an analysis of its interaction with the accompanying objects (the state power, law, society), and taking into account the different scientific views on the elements studied jurisprudence.

In addition, a full study of judicial practice is impossible without its holding on the basis of methodological principles of modern science, namely the principle of determinism, the correspondence principle and the principle of subsidiarity. They are oriented research entity jurisprudence of its contents and forms: on the basis of their causes on the basis of the previous aggregate them over time circumstances (experience of the rule of law arises on the basis of the totality of rational, useful and progressive conclusions on the regulation of public relations); relying on the concept and importance of maintaining the scientific findings, the validity of which is proved empirically (the formulation of species concepts of jurisprudence based on a comparison with the generic concept of legal practice and the standard notion of social practices); means bringing in the studied elements of certain changes (defined by jurisprudence, not all judicial activity, but only that which is associated with a specialization applied by the court of law to the circumstances of a particular case, or involve a need to overcome the "gap in the law").

Among the methods of study of judicial practice, starting from the position of world vision, immediately isolate the dialectical method by which explores the beginning of formation of judicial practice, continuing evolution and development as based on the experience of judicial activity with the specific result. In accordance with the laws of dialectics, the formation of judicial practice gradually and caused public controversy and gained experience in the application of legal norms in the end gives

the result as formulated by the court law-position. Litigation is not formed by itself. The emergence and development of judicial practice depends on: the availability of a judge necessary experience, as well as the characteristics of the judicial authority, the status of which allows us to give the necessary orientation of judicial activity and to fix the result of this particular activity.

The path of the evolutionary development of jurisprudence is directly related to each stage of a state structure, economy, legal culture, legal, communication, sense of justice in society. Regulation of social relations is achieved through the customs treaties, case law, regulations. However, conflict resolution entrusted to the courts, which according to the results of the dispute decide. Repeated use of the courts rules governing the controversial public relations, creating uniformity in the process of reviewing the dispute and produces a single rule applying these rules in a particular dispute.

In close connection with the dialectic is historical research and historical method enables us to better understand how the formation of the court practice took place at a particular stage of its development.

The formation of judicial practice took place against the background of the existence of an extremely aggressive form of proceedings (lynching, ordeal, trial by battle). Only with the formation of a developed country, the development of the legal culture of the society, the beginning of the trial is carried out within the established rules and principles.

D.A. Karimov noted that "the unity of the historical and logical approach - the fundamental principle of the philosophy of law" [11, p.110]. Accordingly, the use of historical method leads to the use of its satellite - logical method.

Knowledge of and compliance with the laws of logic avoids incorrect, erroneous conclusions, eliminate false and unsubstantiated inferences definitively prove the truth of the object of scientific knowledge by means of logical laws.

The logical method of research accumulates such basic research methods and operations as analysis and the synthesis, deduction, induction, definition, classification, comparison.

So, study the theoretical essence of jurisprudence analysis and synthesis method allows to identify the main types of it, to show the mechanism of formation and functions. On the basis of the synthesis of the combination occurs and summarize the main features of the concept of judicial practice.

Deductive reasoning allows us to trace the presence in court practice activity component characteristic of the general concept of social practice. Inductive reasoning allows us to formulate a general concept of judicial practice on the basis of particular notions of the judiciary, judicial activities, experiences of law.

Using the definition of a logical operation set point core categories: jurisprudence, its subjects and objects, and so on law classification as a logical operation, allows you to split the amount of certain core categories (for example, judicial practice and its functions).

A special place among the cognitive operations involved in the study of jurisprudence, takes comparison. The development of legal knowledge are often interrelated with the problems of dialectical categories, finding the coordination and subordinate relationships of the studied elements, the need to analyze the internal contents of these elements. Need to study relationships and internal contents arises with respect to methodological categories, one of which is a comparison. Because of the importance of judgments about the similarity or difference of many essential skills and content of judicial practice in the research process last used full comparative method.

In its epistemological nature of the comparison and the comparative method are similar, but a comparison as such - is not the prerogative of the comparative method and comparative law. The comparison can be used in all areas of scientific knowledge, and regardless of the comparative method, they can not be opposed to each other, because the logical methods are always included in the content of the method as a system of cognitive tools and techniques used in a particular order for the study.

The comparative method is one of the important means of studying the legal phenomena. With it, we study the problem of judicial practice in the legal systems of

the world, which allows to identify common patterns of occurrence, development and formation of judicial practice.

Method of System Analysis provides ample opportunities for identifying general theoretical problems of judicial practice allows you to find its place in the structure of the legal system, to identify the main ways of interaction of judicial practice with a variety of legal institutions and events in the legal system, to analyze the processes of stabilization, renovation and preservation of judicial practice as a link law-making and law enforcement areas of the legal system.

These positions suggest that the study of judicial practice requires the involvement of scientific methods and the empirical level, and theoretical and metatheoretical level, which underlines the complexity and diversity of the object.

Classical scientific research methodology provides the energy for a long time, but the rapid pace of development of society and the state, "the globalization of the legal sphere, the prospects of liberalism and humanism" [12, 95] in the construction of civilization confront researcher increasingly difficult obstacles. Legal standards of the modern world were formed and approved for several centuries, the domestic scientific research has long been constrained by the framework of Marxist-Leninist philosophy. In this regard, the filling methods of scientific research with new content and design update will give a positive result only in terms of social and scientific traditions of our country and the legal mentality of our people.

Among the modern methods of investigation jurisprudence we highlight the synergistic method that is expressed in the study of jurisprudence connection with other social practices (lawyer, notary), as well as in the influence of the jurisprudence of other social groups - lay judges and jurors etc. Synergistic method allows to fully disclose the subject composition of judicial practice and reveal the influence of her so-called members of the judicial practice, in particular, research and educational institutions of the legal structure.

In addition, the deepening of understanding of the judicial practice as an integral category three interrelated elements - experience, performance and results - allows for an integrative approach. This method of theoretical knowledge and practical

development of the social and legal reality, allows the researcher to "gather" together, to unite on the common basis of all internal and external components of the judicial practice, thereby displaying its social and public nature, its special regulatory and binding. The integrative approach allows more precise approach to the assessment of the objective and subjective in the judicial practice, to understand the role of actual activity in the process of legal provisions, and hence the nature of the so-called "judicial norms", not rejecting and relating them to factors not legal.

Conclusions. In our view, world outlook dialectical materialism, the principles of pluralism, comprehensive and integrated knowledge and the principles of determinism, conformity and additionality, classical and modern methods of scientific research, allow an objective and harmonious approach to the study of jurisprudence, reveal general patterns of occurrence and development this phenomenon, identify its content, form, function, interaction with other legal phenomena influence on lawmaking and law-realization, procedure of formation, the practical application of its results and to reach a common understanding of the nature of judicial practice.

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