TECHNICAL LEGAL IN LOW SCIENCEVD: THEORETICAL BASIS

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The article examines the problems of the theoretical and practical nature of legal technique, its role and place in the law-making, law-interpreting and law-realization process. Various approaches to understanding this theoretical and legal phenomenon are analyzed, as well as the need to use technical and legal means and methods in the process of creating a legal norm.

The article is dedicated to the problems of theoretical and practical matters of correlation technical legal and legal technology in law, their part and place in lawmaking, legal explanatory and law realization process. In this article are analyzed different approaches to understanding of this legal theoretical phenomenon, also the necessity of application technical legal means and methods in the process of creation legal norm.

Keywords: Legal technique, law, lawmaking, law enforcement, legal means.

The concept of "legal technique" arose in the 19th century in connection with development of the doctrine of formal legal analysis of the form and structure of law and was first reflected in the works of R. von Jhering [7, p. 7]. Von Jhering wrote that "the law exists in order to was carried out. Fulfillment is the life and truth of right, is the very law" [8, p. 29].

According to von R. Jhering, legal technique is designed to ensure the ease and reliability of the application of legal norms to regulate specific social relations [8, p. 29-41].

In pre-revolutionary Russia, questions of legal technique were also the subject of scientific and theoretical research by M. Speransky, G. Shershenevich, M. Unkovsky, F. Taranovsky, P. Lubl Indian and others. The listed authors saw in legal technique the science of form of law, separated from science, studying the content of law. This judgment is most clearly formulated by M. Unkovsky, who argued that "the invention of methods that communicate clarity to the law, regardless of this or that content of legislative norms, should form the subject of a completely special

scientific discipline - the doctrine on legislative technique", and that "the content of legislative norms can change like water in a river, and the rules of legal technique can remain unshakable for centuries" [28, p. 16]. Pronounced formalism in the understanding of legal technique is found in R. Iering, who, limiting legal technique to three elements, and namely: legal analysis, logical concentration and legal construction, - he tried to build a doctrine, only on the basis of Roman law, the path of which, in his opinion, is the path of jurisprudence in general [10, p. 2-9].

The erroneousness of the stated concepts about legal technique, according to A.A. Ushakov, that these authors tear off the form rights from content. In creating law, the legislator must decide two question: what to reflect in the law and how to implement it [29, p. 73]. Law-making activity is reduced to solving the problem of content and forms in law. Content is the starting point, but law will not meet its social purpose if, with its creation does not pay due attention to the form of law. From here it is obvious a large role of legal technique, closely related to the form of law. At the same time, world practice has developed two forms of legal technique: English and continental. Due to the peculiarities of historical development, English law was very little influenced by the law-making of Rome. This led to a peculiar setting in English law of a number of institutions, a special legal system, terminology, etc. The epitome of continental legal technique is French and German. It was developed in relation to codification legislation and is based on the legal technique of ancient Rome. Based on the foregoing, two main questions arise when clarification of the content of legal technique: 1) it is used in all areas of law or is limited to one area, for example, lawmaking process (or law enforcement); 2) is the legal technique applied at all levels of law-making activity or is it limited by the boundaries of the legislative one? [12]. In the general theory of law, the place of legal technique is traditionally determined in the field of lawmaking. But is it? After all, legal technique is present in many types of legal practice, no less its significance in law enforcement and interpretation activities. Grammatical interpretation of the concept of "legal technique" brings some clarity to the problem at hand. In the Dictionary of the Russian Language S.I. Ozhegova and N.Yu. The Swedish concept of "legal" means: in a broad sense - "relating to law, legal", in a narrow sense sense - "related to the practical activities of a lawyer." The same the source interprets one of the meanings of the rather polysemic term "technique" as "a set of techniques used in some deed, skill" [13, p.797]. Therefore, the content of the legal technology can be considered, firstly, in a narrow sense, as methods and means used in the practice of a lawyer, and, secondly, in a broad sense, as the techniques and means

used in in general throughout the legal field. With all the diversity of views on the problem of legal technique that exist in different periods of the development of legal science, the following are distinguished in the literature: 1087 approaches to the definition of the investigated concepts:

1) a broad approach, when legal technique is identified with law as a whole, either underlies it, or reflects a complex of elements of legal reality;

2) a narrow approach, when legal technique is present only in one area of law - the legislative. At the same time, a broad approach prevails in Western European, a narrow one - in Soviet legal literature. [14, p. 30-31].

Most modern domestic researchers also refer legal technique exclusively to the field of lawmaking and in this context, it is often identified with the technique of lawmaking [2, p.125], legislative [15, p. 12], norm-setting [3, p. 76]. IN modern legal dictionaries and encyclopedias legal technique is defined as a set of legal rules, techniques, methods, terms and concepts used in the process of lawmaking [16, from. 950-951].

A similar point of view is shared by T.V. Kashanina, who believes that legal technique is techniques, methods, methods, means of drafting legal documents [21, p. 79-80]. Main the purpose of legal technique is to create legal institutions that play the role of "relatively stable programs behavior addressed to citizens, officials and bodies and determining the measure of due, possible, permitted and forbidden" [1, p. fifty].

In the theory of law, there is a variety of views on the concept legal technology. While recognizing the importance of precise terminology, we do not we will delve into the content of the discussion about the concept of "legal technique". In what follows, we consider it possible to use the apparent us an exact and compromise definition given by Professor T.V. Kashanina: "Legal technique is a set of tools (i.e. means, techniques, methods and methods) of conducting legal work" [17, p. fourteen]. Already in the above definition of legal technique, six interrelated elements can be distinguished: 1) cognitive-legal; 2) regulatory and structural; 3) logical; 4) linguistic; 5) documentary and technical; 6) procedural. The conclusion that follows from this is that legal technique is an inalienable element of the legal system, while technology can be identified as with law, and be an external phenomenon in relation to law. [23, p. five].

As a way out in the face of different (sometimes significantly) views On the problems of legal technique, many legal scholars propose to abandon the use of the term "legal technique". So, V.M. Baranov believes that the term "legal technique" is

inaccurate, contradictory and is used only by virtue of legal tradition. In his view, the term is inconsistent with a valid distinction between science and technology. For this, points out V.M. Baranov, it is necessary to use another term - "technology" [19, p. 10]. However, all the above points of view are relatively solidary in regarding the structure of legal technique, which, according to O.A. Borzunova make up; the first group of rules, techniques, means used for the external design of regulatory legal acts.

The second group of rules of legal technique is formed by rules, techniques, methods of rational organization of the structure, style, logical and linguistic construction of the content of legal prescriptions, ensuring the relationship of legal norms, presentation of their structural elements. The third group of rules of legal technique includes rules, techniques and methods for the development and execution of law enforcement and interpretative acts [4, p. 4]. Based on the foregoing, it can be concluded that the techniques and rules of legal technique are for the most part formed and act as business habits, which in itself does not exclude the possibility of its improvement through regulatory legal regulation, while due to the specifics of the very application of the rules of law, regulation its legal and technical side can be quite intense. The application of the rules of law in general is the type of legal activity that is regulated in the most detail not only from the substantive, but also from the formal side. However, the possibilities for improving the application of the rule of law through legal and technical regulation only at first glance seem almost limitless. Upon closer examination, it becomes obvious that quite often attempts to fix certain methods and rules of law enforcement technique at the level of current legislation turn out to be very unsuccessful and lead to negative consequences. So in the current Russian legislation there are examples of legislative consolidation not only of the term "legal technique", but also specific techniques and rules of this technique. A good example of this is the content of Decree of the Government of the Russian Federation of June 1, 2004 No. 260 “On the Regulations of the Government of the Russian Federation and the Regulations on the Office of the Government of the Russian Federation” in paragraph 60. Section IV, which is fixed: “Draft federal laws, decrees of the President of the Russian Federation regulatory nature and acts of the Government of a normative nature (draft resolutions of the Government), after their approval in accordance with paragraphs 57 - 59 of these Regulations, before being submitted to the Government, they are sent with the minutes of the conciliation meetings (if any) and comments for legal expertise and anti-

corruption expertise for assessment of the draft act for its compliance with acts of higher legal force, the absence of internal contradictions and gaps in the legal regulation of relevant relations and compliance with the rules of legal technique, as well as the presence or absence of corruption factors in it. Based on the results of these examinations, the Ministry of Justice of the Russian Federation issues relevant conclusions" [25]. A similar kind of example is the content of clause 6.7. Section VI. Order of the Ministry of Finance of the Russian Federation of March 23, 2005 No. 45N "On Approval of the Regulations of the Ministry of Finance of the Russian Federation" in the content, which states that "Draft federal laws, decrees of the President of the Russian Federation of a regulatory nature and government decrees after their agreement with interested bodies and organizations and before contributions to the Government are sent by the Deputy Ministers or the Minister (in accordance with the distribution of duties) for conclusion to the Ministry of Justice of the Russian Federation, which assesses the draft normative act for its compliance with acts of higher legal force, the absence of internal contradictions and gaps in the legal regulation of the relevant relations, compliance with the rules of legal technique" [25]. In confirmation of these examples in paragraph 29. Section III. Decree of the Government of the Russian Federation of April 30, 2009 No. 389 "On measures to improve the drafting activities of the Government of the Russian Federation" establishes that "The conclusion of the Ministry of Justice of the Russian Federation on the results of legal expertise should contain the following information: c) assessment of the form of the bill (new federal law, amendments into the current federal law, etc.) and the compliance of its text with the rules of legal technique;" [27].

Finally, since the techniques and rules of legal technique are for the most part formulated spontaneously, as business habits, effective improvement in the application of the rule of law through legal and technical regulation can only be ensured if the implementation of normatively fixed requirements is guaranteed - using such specific means as state-legal persuasion. , encouragement and (or) coercion. It should be noted that the listed conditions of efficiency legal and technical regulation as a means of improving law enforcement are determined directly by the peculiarities of the legal technique itself as a specific aspect of activity in the field of law. However, there are also conditions dictated by the specifics of the very application of the rules of law as a special form of law enforcement. And also, one should not forget that not only lawyers turn to the law, but also citizens who are completely unfamiliar with legal technology. Law

enforcement technique is distinguished by the use of a much larger number of techniques, means and rules than is typical for other types of legal technique. At the same time, legal and technical tools are also very heterogeneous, which is determined by a wide variety of legal documents, in the preparation and execution which the appropriate means, techniques and rules are used. Due to these features, the effectiveness of improving the application of the rule of law through regulatory legal regulation largely depends on how the newly introduced requirements and rules really take into account the specifics of those documents, during the execution of which the corresponding requirements and rules will find their implementation [22, p. 10].

Summing up the indicated positions and points of view, we can say that legal technique is defined as a system of rules, techniques (methods, methods) and means developed by the theory and practice of legal activity, used in the process of implementing the legal will (law-making, interpretive, law enforcement) of the authorized bodies and persons [4, p. 13].

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