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Methodological foundations of the cognition of children's rights

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Abstract

The purpose of the study is to explore techniques and methods of the cognition of legal phenomena, scientific analysis of children's rights as a legal phenomenon, identification of general patterns, and formalisation and generalisation of children's rights at the world and national levels. The methodological basis of the study was the use of a set of methods necessary for the implementation of the scientific goal and the fulfilment of the tasks set, in particular: analysis of the rights of the child in international documents and legislation of Ukraine, the method of generalisation, hermeneutics regarding the interpretation and processing of texts of normative and doctrinal sources, and other philosophical, general scientific, and special methods. The scientific originality lies in the fact that the author has for the first time considered the rights of the child as legal phenomena that have specific features, depending on the subject, types, and age of the child. The methodological foundations of cognition of the rights of the child at each stage of its development are highlighted and the application of a number of the above methods is proposed. The scientific tools of cognition of children's rights are structured. The study of children's rights is a complex and multifaceted process of human thinking, which is necessary for improving legal mechanisms and protecting the rights of minors. Techniques and methods of cognition depend on the specifics of the legal phenomenon and the sphere of cognition. However, the scientific approaches, methods and principles of scientific research on children's rights considered in our study should be applied in a complex, preventing contradictions and refuting the results obtained by using various tools. All these methodological tools prove their value at every stage and in every segment of the study. Depending on the object of knowledge, the predominance of a certain methodological tool for implementing a specific research task is evident. Based on the conducted research, a number of generalisations are formulated, including the following: scientific cognition of children's rights is impossible without a well-chosen methodology; the methodology of scientific cognition of children's rights is a complex phenomenon that covers the structure and system of legal scientific knowledge of its theories and concepts. Methodological foundations of knowledge of children's rights form a multi-level system, which is developed by the principles of scientific cognition, dominant worldview, type of scientific thinking, philosophical foundations, scientific paradigms, methodological approaches, and scientific methods

Keywords: methodology; foundations; rights of the child; cognition process; research; philosophical method; general scientific method; special method of cognition

Introduction

The dynamism of social processes, ideological discomfort, and logical and methodological contradictions are associated with a rapid change in value orientations and the globalisation of the world. The need to find effective solutions to problems and quick solutions do not always optimise the process, complicating conflict and crisis situations. These are the realities of our time, the problems of human existence, the preservation and development of the individual, their inner world, ideological and methodological culture. In this context, logical and epistemological, and logical and methodological problems

occupy an important place. The development of science, the search for new ways of its knowledge and changing attitudes to science actualise interest in the methodology of scientific cognition, require constant rethinking and improvement of methodological research. The main vectors of the methodology of cognition were studied by M.A. Damirli [1], M.V. Kostitskyi [2], O.F. Skakun [3]; the specifics of the methodology of the cognition of children's rights were discussed by N.M. Krestovska [4].

In recent years, Ukraine has implemented a number of reforms, including the creation of an effective state-legal mechanism for the protection of children's

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rights. At the level of theory, such phenomena are subject to knowledge and rethinking in order to further improve them.

The purpose of the study is to explore methods of cognition of legal phenomena, to carry out a scientific analysis of children's rights as a legal phenomenon, to identify general patterns, and to formalise and generalise the children's rights at the world and national levels. To achieve this goal, the following tasks were defined: 1. Summarise the current problems of the methodology of cognition of children's rights. 2. Systematise methodological levels of knowledge of children's rights. 3. To substantiate the peculiarities of the methodological foundations of knowledge of the rights of the child.

Materials and Methods

Methods are one of the elements of the theory of knowledge. In the study of scientific knowledge, its methods and forms are an important study of empirical and theoretical levels, which will be considered on the example of knowledge of children's rights using specific tools.

Modern knowledge of childhood is interdisciplinary clarifying its specifics is impossible without applying the methodology and results of anthropology, genetics, cultural studies, demography, pedagogy, ethnography, psychology and other sciences [5]. The latest legal methodology prompts researchers to timely modify paradigmatic approaches in evaluating two concepts of modern communication – government and society [6].

The law is a source of knowledge of childhood, and legal science, investigating the interaction of “a child in contact with the law” and “a child in conflict with the law”, turns to generalizations, conclusions, empirical material acquired in legal scientific disciplines. Some researchers suggest considering the “interests of the child” as a legal category, and this opinion is well-argued [7].

In the theory of law, general, special and private methods of the process of knowledge are distinguished. Fundamental, general theoretical concepts define methods of cognition that retain their own independence and are general philosophical laws or categories that highlight general, separate methods in specific circumstances. An important element of the methodology is the step-by-step process of learning. The first stage of knowledge involves obtaining complete, objective, reliable information, and the second one covers the comparative aspect. In this case, the information is analysed to detect inconsistencies. The next stage is based on the generalization of stable features obtained during the comparison. The step-by-step approach is completed by defining the abstraction and establishing generalized results. Methodological levels are correlated with the main stages of cognition [8].

The methodology of learning the rights of the child is a multi-level system that covers the levels of paradigms, approaches, methods and principles (sources for methods) and the level of theories and concepts. Some researchers believe that general scientific theory should be considered separately as a designation of a field of scientific theory that applies equally to all sciences, is a theory about all scientific fields, is used to distinguish science from science, and defines the criteria of scientificity. Every researcher has a scientific theory; it affects

their actions and therefore affects scientific results [9]. The latter arise simultaneously as a result of research and the beginning of further research. Knowledge of the peculiarities of the child's legal relationship in the field of law and child rights is possible only if methodological pluralism is used.

Approaches to the methodological level of scientific knowledge are interpreted by E.P. Semenyuk as a logical-epistemological, and a methodological formation that expresses only the direction of scientific research, limiting it mainly to one aspect (in the extreme case – to several interconnected spheres), but, unlike method, is based on the methodological level of scientific knowledge, fundamentally devoid of any restrictions and even a clear fixation of the means by which research is conducted [10]. The multiplicity of approaches (not opposite, not contradicting each other) within the framework of one study provides an understanding and explanation of the phenomenon under study. The complexity of the phenomenon of childhood as a socio-cultural phenomenon requires an in-depth study of the philosophy of childhood, history of childhood, ethnography of childhood, psychological history, anthropology of childhood, and history for its comprehensive and objective knowledge. pedagogy, etc. In this regard, V.M. Syrykh notes that “a theoretical analysis of the essence, social purpose of law, laws of its functioning and development are impossible without taking into account the connection of law with other social phenomena and processes” [11]. In general, sharing the position of other researchers, the study shows that it is more effective to study the rights of the child based on the methods of learning not only legal sciences.

Most researchers claim that the choice of cognition methodology depends on the concentration of attention on a separate perspective of the subject of cognition [12]. In particular, from the standpoint of the existential-humanistic approach, it is possible to consider the knowledge of the rights of the child, which is manifested in:

- awareness of the child as a legal entity in the process of continuous development and establishment of legal personality – at the philosophical and legal level of research;
- the interpretation of the child as an independent, albeit special subject of law in the dynamics of changes in its legal properties (legal capacity, legal capacity, tortious capacity) – at the level of theoretical legal research;
- identification of peculiarities of legal relations and other forms of legal behavior with the participation of children, determined by the state of childhood – at the level of sectoral – applied legal research.

The existential-humanistic approach is closely related to the axiological approach, primarily the latter focuses on a person as a socio-legal value [13].

The level of methods and principles of learning the rights of the child covers general scientific and special scientific methods and principles, including: dialectical, historical, formal-logical and comparative-legal method.

The dialectical method, developed at the beginning of the development of science as one of the types of human activity, retains its importance even at the modern stage of research. The dialectical method is used in research at the same time as other methods. Its components

are such principles as objectivity and comprehensiveness of research, patterns of transition of quantitative changes into qualitative ones, unity and struggle of opposites, negation. In relation to this research, the principle of objectivity consists primarily in the researcher's desire to be objective and impartial (although this does not exclude his value orientations), the principle of complexity is manifested in the identification and scientific analysis of all components of legal regulation, all legal relations involving children or regarding the protection of rights children, various manifestations of legal life in relation to children.

Knowing the rights of the child as a whole and the legal status of the child as its core is impossible without an analysis of the historical origins of these legal phenomena, which presupposes the use of the historical method. It covers the following research methods: retrospective; historical comparison; historical analogy; historical typification; historical periodization.

The synthesis of the evolutionary paradigm and the historical method is embodied in another aspect of the study – in determining the place of the child's rights in the legal system of Ukraine. The starting point in this sense is the idea of J. Raz, later developed by J. Harris, regarding momentary and non-momentary legal systems. According to J. Razom, the momentary system is a time span or a momentary section of the legal system, which covers all the legal standards in force at that time, and the non-momentary system, in addition, also covers obsolete and canceled standards, which are legal heritage. Any instant legal system necessarily belongs to non-instant [14].

The anthropological essence of the child and its rights is specific to legal science; therefore, it requires a special jurisprudence of the formal legal method – the basis of legal thinking [15]. The formal legal method performs several equally important functions in legal research. It is the main tool for the interpretation of existing norms that protect children's rights, formulates specific categories and concepts of the institution of child rights in legal science, classifies norms and sources of law, and identifies gaps in regulatory regulation. The method of comparative analysis is actively used to understand the rights of the child at different levels: doctrinal, normative, institutional and at the level of practical application. The comparative legal method is increasingly used in legal science. A scientifically based understanding of legal comparativistics is the proposed definition of O.F. Skakun, according to which the comparative legal method appears as a comparison of linear legal concepts and processes, clarification of similarities and differences between them [16].

In other words, the comparative legal method is a comparison of legal concepts, phenomena, processes of the same order and clarification of similarities and differences between them. Depending on the objects, the latter is used selectively, provided that the objects are comparable. The process of learning the law on a global scale is objectively necessary, that is, an inter-ethnic comparison of different legal systems that exist in the states of the world community [3].

Knowing the rights of the child, it can be argued that these are universally recognized ethical and legal

values that are established at the global level. In addition, from the standpoint of the functional approach, the criteria of comparative analysis are met by legal norms that have a single goal, namely, ensuring the conditions for survival, normal development and socialization of children, regardless of whether they belong to different legal families. For comparison, you can choose objects that are close in place in the legal systems of your countries: first of all, norms, institutions and sources of law, legal institutions that apply them, interpretive acts and doctrines.

The use of the comparative legal method in the study of the rights of the child makes it possible to compare, for example, the provisions of the laws of Ukraine on the protection of the rights of the child with the legislation of other countries, on the basis of which it is possible to conduct a comparative analysis and draw the necessary conclusions. The research shows that the value of the rights of the child in modern society unites all countries in order to create an effective mechanism for their protection. The comparative legal method is appropriate in the study of children's rights both statically and dynamically. After all, society is rapidly developing; new legal phenomena appear, which are subject to comparison with the previous ones, and for an in-depth study of the rights of the child, it is necessary to determine the range of compared elements.

D.A. Yagofarov singles out status and situational methods. The first of them is based on the fact that the legal status of a minor is not static, it changes significantly with the transition to other age and social groups. Depending on the child's age, his interaction with the state and society also changes. The second is to consider typical manifestations of the personality of minors as subjects of legal relations, typical situations in which they may find themselves [17].

For example, minors under the age of 16 are not subject to administrative liability in accordance with the Code of Criminal Procedure, as they are recognized as incapable of realizing the meaning of their own actions and managing them. The administrative responsibility of a child can arise only if he/she reaches 16 years of age at the time of committing the offense, and not at the time of issuing a decision to hold him/her criminally liable. The law stipulates those measures of influence have an educational direction and can be applied to children aged 16 to 18 who have committed an administrative offense, if the body of administrative jurisdiction reaches a conclusion about the possible correction of the offender without applying punishment – this is a more severe administrative penalty. Collectively, these measures form a system that is formed depending on the increasing severity of coercive measures – from less strict to stricter [18].

The novelty of the study is due to the fact that for the first time the concept of "child's rights" was considered as a legal phenomenon that has specific characteristics depending on its type and age of the child. The methodological foundations of learning the rights of the child at each stage of its development are highlighted and the application of a number of the above-mentioned

methods is proposed. The scientific toolkit for learning the rights of the child is structured.

Conclusions

Therefore, the study of the rights of the child is a complex and multifaceted process of human cognition, necessary for the improvement of legal mechanisms for the protection of the rights of minors. The researcher, relying on previously acquired knowledge, masters others – through cognition. In the process of cognition, self-knowledge also occurs – self-reflection of the subject of cognition occurs.

Techniques and methods of cognition depend on the object – signs of the legal phenomenon. However, the scientific approaches, methods and principles of scientific research on children's rights considered in this study should be applied in a complex manner, which allows to prevent contradictions and refute the obtained results using various means. All these methodological tools demonstrate their value at every stage and in every segment of research. Depending on the object of knowledge, it is obvious that one or another methodological

tool prevails for the realization of one or another research goal.

The same ideological and organizational principles within different methodologies have different content and meaning.

Based on the results of the research, the following conclusions were formulated:

- the methodology of scientific knowledge – a dynamic phenomenon;
- scientific knowledge of the rights of the child is impossible without the right methodology;
- the methodology of scientific knowledge is a complex phenomenon that covers the structure and system of legal scientific knowledge of its theories and concepts;
- the methodological foundations of the knowledge of the rights of the child are a necessary element of the system of ensuring and protecting the rights of the child, which is a multi-level system formed from the foundations of scientific knowledge, the dominant worldview, the type of scientific thinking, philosophical foundations, scientific paradigms, methodological approaches and scientific methods.

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Методологічні засади пізнання прав дитини

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Анотація

Актуальність дослідження полягає в тому, що нині використання негласного співробітництва для Метою статті є дослідження прийомів і способів пізнання правових явищ, науковий аналіз прав дитини як правового явища, виявлення загальних закономірностей, формалізація та узагальнення прав дитини на світовому й загальнодержавному рівнях. Методологічною основою публікації стало застосування комплексу методів, необхідних для реалізації наукової мети й виконання поставлених завдань, зокрема: метод аналізу прав дитини в міжнародних документах і законодавстві України, метод узагальнення, герменевтики щодо тлумачення та опрацювання текстів нормативних і доктринальних джерел, а також інші філософські, загальнонаукові та спеціальні методи. Наукова новизна полягає в тому, що автор уперше розглянув права дитини як правові явища, яким притаманні специфічні ознаки, залежно від предмета, видів і віку дитини. Виокремлено методологічні засади пізнання прав дитини на кожному етапі її розвитку й запропоновано застосування низки перелічених вище методів. Структуровано науковий інструментарій пізнання прав дитини. Дослідження прав дитини є складним і багатограним процесом людського мислення, який є необхідним для вдосконалення правових механізмів та захисту прав неповнолітніх осіб. Прийоми й способи пізнання залежать від особливостей правового явища та сфери пізнання. Однак розглянуті в нашому дослідженні наукові підходи, методи та принципи наукового дослідження прав дитини слід застосовувати в комплексі, що дає змогу запобігти суперечності та спростуванню результатів, отриманих шляхом застосування різноманітного інструментарію. Усі ці методологічні інструменти засвідчують свою цінність на кожній стадії та в кожному сегменті дослідження. Залежно від об'єкта пізнання очевидним є переважання певного методологічного засобу для реалізації конкретного завдання дослідження. На підставі здійсненого наукового дослідження сформульовано низку узагальнень, серед яких такі: наукове пізнання прав дитини неможливе без вдало обраної методології; методологія наукового пізнання прав дитини є складним явищем, яке охоплює структуру й систему юридичного наукового знання його теорій та концепцій. Методологічні засади пізнання прав дитини становлять багаторівневу систему, яку формують принципи наукового пізнання, домінуючий світогляд, тип наукового мислення, філософські засади, наукові парадигми, методологічні підходи й наукові методи

Ключові слова: методологія; засада; права дитини; процес пізнання; дослідження; філософський метод; загальнонауковий метод; спеціальний метод пізнання