

## Concepts and Categories of the General Theory of Law as a Legal, Methodological Science

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### **Abstract:**

*The main problem in the article is to determine the significance of the conceptual and categorical apparatus of the general theory of law from the point of view of cognition of legal phenomena and processes. Its solution necessarily presupposes the solution of the following goals: 1) determination of the methodological role of legal concepts and categories; 2) substantiation of a) the relationship between legal concepts and legal categories; b) legal and doctrinal legal concepts. As a result of the research, the author came to the following conclusions: 1) concepts and categories are not an independent method of cognition or a part of it; 2) legal concepts and legal categories should be distinguished; 3) doctrinal concepts should be guided by legal (official) definitions.*

### **Keywords:**

*General theory of law; conceptual and categorical apparatus; legal concepts; legal categories; legal concepts; theoretical concepts*

## **I. Introduction**

One of the important problems of a methodological nature is the substantiation of the role and significance of concepts and categories of the general theory of law in the process of cognition of law, other state and legal phenomena and processes.

As is known, any science that has an independent subject and methods of research must have a certain system of concepts, terms and categories developed in it, as well as borrowed ones, in other words, its own conceptual and categorical apparatus [1].

It seems that the relevance of the designated problem is largely due to the fact that it is in concepts and categories that the general theory of law, concentrating and expressing accumulated knowledge, reveals its subject. Legal concepts and categories that have a special subject of reflection - state and legal reality, are developed by legal theory in the person of legal scholars. Legal concepts, enshrined in legislation, become legal concepts, with the help of which the legislator expresses the state will.

## **II. Research Methods**

When preparing a scientific article, the following methods were used:

### **General Philosophical**

General philosophical (dialectical-materialistic), which is used in all social sciences;

1. General scientific (analysis and synthesis, logical and historical, comparisons, abstractions, etc.), which are used not only by the theory of state and law, but also by other social sciences;
2. Special methods (philological, cybernetic, psychological, etc.), developed by special sciences and widely used for the knowledge of state and legal phenomena;

3. Private scientific (formal legal, interpretation of law, etc.), which are developed by the theory of state and law.

### **III. Result and Discussion**

#### **3.1 On the Significance of Legal Concepts and Categories**

From the point of view of scientific knowledge of legal phenomena and processes, the significance of concepts and categories is defined differently by scientists.

Thus, Vladimir Ivanovich Chervonyuk, considering the methodology of jurisprudence in a broad sense, in addition to scientific approaches, the worldview of the researcher, methods of cognition, includes in the content of the first "scientific concepts, categories (categorical apparatus of legal science) [2].

This statement, being controversial, gives rise to discussions. In any case, representatives of general philosophy believe that "theories, laws, categories and other abstractions do not yet constitute a method. In order to perform a methodological function, they must be appropriately transformed, converted from explanatory provisions of the theory into orientational-active, regulatory principles (requirements, prescriptions, guidelines) of the method [3]. Without going into the discussion, we note that the position of Vladimir Mikhailovich Syrykh is more justified, who categorically writes that in order to recognize the concepts and categories of legal science as a method or part of it, it is necessary, firstly, to reveal the forms and methods of implementing the theoretical (methodological) role of concepts and categories in the cognition of law; secondly, to study the connection of concepts and categories with general special and other methods of science [4]. The scientist emphasizes that attempts to consider the "conceptual apparatus" of the general theory of law as a specific method cannot be recognized as correct, since they are based on the identification of the theoretical and methodological aspects of the general theory of law. Developing this idea, V.M. Syrykh believes that the methodological role of scientific legal abstractions is not that they act as a means of reflecting the essential, lawful aspects, connections of legal phenomena, but that on the basis of this knowledge, rules and principles of application of concepts and categories in specific cognitive procedures are developed, in the process of moving towards new scientific knowledge. The author believes that "scientific abstractions in themselves, outside of the "methodologically competent activity" of the cognitive subject, cannot provide new knowledge, act as the only or specific method of cognizing the law [4].

In another work, Vladimir Mikhailovich Syrykh very definitely states that "concepts and categories, although they play an important role in cognition (of state and legal reality. - Vladimir Valentinovich Kozhevnikov), act as the basis of methods, but in themselves are not an independent method of cognition" [5].

#### **3.2 The Problem of the Relationship between Legal Concepts and Categories**

Another methodological problem is related to the relationship between concepts and categories of the general theory of law. The fact is that in legal literature they are often not distinguished and are identified.

An example is the phenomenon of a national legal system. From the standpoint of some scholars, a legal system is a concept [6, 7, 8]; others define it as the central category of comparative law [1]. Mikhail Nikolaevich Marchenko, speaking about the legal superstructure (structure) of society, argued that "in the theory of state and law, such a "holistic complex of

legal phenomena” that develop as a result of the interconnection and interaction of all components of the legal superstructure is often called the legal system of society” [9].

On the contrary, Nikolai Ignatyevich Matuzov once emphasized that “... the desire of some authors for a broader understanding of law is understandable in itself, but for this it is necessary to introduce a new category and use it for the stated purposes. The legal system may well serve as such a category” [10]. In another work, the scholar stated that the legal system is an “integrating category reflecting the entire legal organization of society, a holistic legal reality” [11].

Egor Alekseevich Kulikov considered the legal system as a “holistic complex of legal phenomena and processes, interconnected and interdependent, reflecting the legal impact on social relations” as a central legal category [12].

Scholars who recognize the legal system as a category often specify their position. Thus, Timofey Nikolaevich Radko, Valery Vasilyevich Lazarev and Lyudmila Aleksandrovna Morozova, believing that “the legal system is a broad concept, it is used to cover the entire spectrum of legal phenomena existing in society,” argued that “it appeared as a result of the development of legal science, when a comprehensive approach to the analysis of the legal life of society was required and when the old categories no longer adequately reflected the legal reality” [13].

To understand this issue, one should pay attention to the etymology of these two terms. According to Sergei Ivanovich Ozhegov, a concept is a “logically formulated thought about an object, an idea of something”, “a representation, information about something”[14], and a category is a “scientific concept expressing the most general properties and connections of phenomena of reality”[14]. In the Philosophical Dictionary, a concept is interpreted as “one of the forms of reflecting the world at the stage of cognition associated with the use of language, a form (method) of generalizing objects and phenomena [15], and categories as “forms of awareness in concepts of universal ways of man’s attitude to the world, reflecting the most general and essential properties, laws of nature, society and thinking”[15].

In another philosophical dictionary, a concept is understood as “one of the basic units of mental activity; a logical form with the help of which other forms of thinking (judgment, inference) are constructed”[16], and categories as “the most general concepts reflecting the basic properties and patterns of phenomena of objective reality and determining the nature of scientific and theoretical thinking of science”[16].

In the philosophical encyclopedic dictionary, "category is in colloquial language the same as type, grade, class, rank (a certain category of employees) [17]. Finally, in the Soviet encyclopedic dictionary, concept and category are understood respectively as "a form of thinking that reflects the essential properties, connections and relationships of objects and phenomena" [18] and as "the most general and fundamental concepts that reflect the essential, universal properties and relationships of phenomena of reality and cognition" [18].

In the literature on formal logic, it is said that "concepts are a form of thinking that reflect objects in their essential features" [19]. In the context of the problem under consideration, the statements of Ivan Dmitrievich Andreev seem interesting, who writes the following: "There is a concept that reflects the basic properties of a relatively small class of objects. In this sense, we can call them particular concepts. But there are also concepts that express essential properties of connections and relationships that belong to all or almost all subjects studied by a given science. Such general concepts are called categories"[20].

Vladimir Vladimirovich Nyrvkov writes about categories: "We often use the term "category" without thinking, sometimes intuitively wanting to emphasize the significance of some scientific concept. Most of us stick this "label" on a concept that seems to us "the most general, fundamental, or occupying some central place in the theory"[21].

Roman Aleksandrovich Shcherbakov notes that most sciences use categories as scientific concepts. Legal science is no exception, using categories only in the legal segment, which are called "legal categories"[22]. Egor Alekseevich Kulikov asserts that "Categories define the initial provisions of the conceptual apparatus of science, act as methodological cores on which science relies in its research"[12].

Nina Fedorovna Buchilo offers the following definition of the general concept of category: "Category (Greek - definition, judgment) is an extremely broad concept that reflects the essential, typical content of the contents of the phenomena of being and the relationships that prevail in it" [23]. Here it is also specified "how the concepts of categories are necessary forms of thinking. As extremely broad concepts, categories claim universal application and description of the universe as a whole" [23]. Finally, philosophical categories, according to N.F. Buchilo, are extremely broad concepts in which universal, essential aspects, properties, connections and relationships of being are thought of" [23].

From the position of Yegor Alekseevich Kulikov, philosophical categories are interpreted "as extremely general concepts that cover with their content all the existence of the universe known to man, possessing the properties of universality, objectivity and a priori, and, depending on the logical operation, acting as the ultimate products of analysis, synthesis and generalization" [12]. If these provisions concerning concepts and categories are extrapolated into the field of legal science, then there is no doubt about the following point of view of Vladimir Ivanovich Chervonyuk: "legal concepts are meaningful scientific ideas that reproduce (ideally) in thinking the objective essence of real processes of legal reality and specifically express their legal qualitative certainty" [2].

As for legal categories, the scientist believes that this is a "systematized form of expression of legal knowledge, a kind of clots of human thought, a collection of such thoughts that have absorbed knowledge about state and legal phenomena, their properties and characteristics" [2].

At the same time, the author specifies, saying that legal categories, if we neglect methodological rigor, can be presented as an extremely broad legal concept. They play the role of a kind of system-forming logical nodes, with the help of which scientific knowledge penetrates the essence and content of state and legal phenomena, are distinguished by their fundamental nature, representing a logical basis around which a system of concepts is built, forming a "nest", "family" of legal concepts, their logical series ("law", "state", "action of law", "legal system", "legal environment", "legal culture", etc." [2].

It is noteworthy that at one time Nikolai Andreevich Pyanov, discussing the structure of any fundamental science, including the theory of the state and law, along with laws, private theories, scientific facts, scientific hypotheses, he also considered such an element as categories - "the basic scientific concepts expressing the most general and essential properties, sides, relations of the phenomenon of reality." With regard to the theory of state and law, "they accumulate in themselves the knowledge obtained about state and legal phenomena and act as the starting, initial provisions of this science" [24]. Without going into discussions concerning the elemental

composition of the national legal system, we note that Vladimir Ivanovich Chervonyuk, considering it as a legal category that "attracts" to itself all those phenomena of legal reality that in one way or another characterize ("manifest") the law, legal doctrine, prevailing legal consciousness, type of legal system, legal mentality of the nation, legal norms, forms and methods of giving them generally binding meaning (sources of law); the main and typical institutions and branches of law for a given country, their structural connections and associations; "the nature of legal activity, legal practice in general, the legal order that is formed on their basis and the legal means of maintaining it; the connection of law with the state, national culture, dominant religion and morality, etc." [2].

### 3.3 Doctrinal Concepts and Categories and Legal Concepts: The Problem of Correlation

It seems that the consideration of this problem of the conceptual and categorical apparatus of the general theory of law necessarily presupposes the reservation that the former is differentiated into two interrelated groups: 1) legal (official) legal concepts and 2) scientific (theoretical, doctrinal) legal concepts and categories. Distinguishing between doctrinal (theoretical and legal) legal concepts, which, being the result of cognitive activity, belong directly to science and by means of which certain "concepts", "theories", "concepts" of legal science are expressed, and legal (normative and legal) concepts that have received official consolidation in normative and legal acts (laws and by-laws), imperatively determining the volume (circle) and content of social relations that are the subject of legal regulation, Nikolai Ivanovich Panov emphasizes that in their combination they form the conceptual apparatus of legal science [25]. A similar position is shared by Sergei Petrovich Khizhnyak [26].

We believe that the doctrinal concepts and categories developed by theoretical scientists should be guided by official, legal definitions and not contradict them. Other scientists also drew attention to this important problem, which has a methodological nature. Thus, Nikolai Aleksandrovich Vlasenko believed that "when the concepts of law and legal science coincide, the concept of law is mandatory..." [27].

Sergei Konstantinovich Mamedov, addressing the problem of definitive norms of law, believed that when applied, they should not interpret it differently than formulated in the normative act (or rather, in the normative legal act. - Vladimir Valentinovich Kozhevnikov)" [28]. The language of law (legislation) is considered as "the official language of state power, in which it "speaks" with citizens", as an independent style of literary language, which is characterized by special compositional and stylistic means, a special vocabulary for expressing the thoughts of the legislator" [29]. However, despite the importance of definitive norms of law in the legal regulation of public relations, the attitude towards them, as shown by the analysis of legal literature, is very dismissive: either their content is distorted in it, or such general theoretical provisions are proposed that do not correspond to the corresponding definitive norms.

There are many such negative examples. Thus, Georgy Genrikhovich Bernatsky, speaking about such types of offenses as crimes and administrative offenses, the former are interpreted as "offenses that encroach on the most important social relations and are therefore characterized as the most dangerous illegal acts for society in comparison with misdemeanors," the latter are "offenses for which the Code of the Russian Federation on Administrative Offenses establishes administrative liability"[30].

Meanwhile, in Part 1 of Article 14 of the Criminal Code of the Russian Federation, "a crime is a culpably committed socially dangerous act prohibited by this Code under threat of punishment," and "an administrative offense is an unlawful, culpable action (inaction) of an

individual or legal entity for which this Code or the laws of the constituent entities of the Russian Federation on administrative offenses establish administrative liability.” (Part 1 of Article 2.1 of the Code of Administrative Offenses of the Russian Federation).

The same author singles out “orders, instructions, regulations, regulatory letters, charters of ministries and departments”[30]. Meanwhile, both the RF Government Resolution of August 13, 1997 No. 1009 "On Approval of the Rules for the Preparation of Regulatory Legal Acts of Federal Executive Bodies and Their State Registration" and the RF Government Resolution of February 14, 2023 No. 218 "On Amending the RF Government Resolution of August 13, 1997 No. 1009 and Recognizing the Provisions of Certain Acts of the RF Government as Invalid"[31] stipulate that "regulatory legal acts are issued in the form of resolutions, orders, rules, instructions and regulations, unless otherwise provided by the legislation of the Russian Federation. Acts issued in any other form must not contain prescriptions of a regulatory and legal nature. The publication of regulatory legal acts in the form of letters, orders and telegrams is not permitted." Speaking about departmental normative legal acts, Lyudmila Aleksandrovna Morozova mistakenly believes that “most often such acts are adopted in the form of orders, instructions, regulations, instructional letters, etc.”[32] The following provisions of the author raise serious doubts: “Legal capacity is the ability to exercise rights and fulfill obligations by one’s actions. ... Legal capacity in full occurs upon reaching the age of majority, and before that a person has limited (partial) legal capacity”[32]. Indeed, Part 1 of Article 21 of the Civil Code of the Russian Federation stipulates that “a citizen’s ability to acquire and exercise civil rights, create civil obligations for himself and fulfill them (civil capacity) by his actions arises in full upon reaching the age of majority, that is, upon reaching the age of eighteen.” However, it is necessary to take into account the content of the legal norm contained in Part 2 of the same article: “in cases where the law permits marriage before reaching the age of eighteen, a citizen who has not reached the age of eighteen acquires full legal capacity from the time of marriage”, and the norm of Art. 27: “a minor who has reached the age of sixteen may be declared fully capable if he works under an employment contract, including a contract, or with the consent of his parents, adoptive parents or guardian is engaged in entrepreneurial activity”. Of course, it is impossible to equate limited legal capacity (Article 30 Limitation of the legal capacity of a citizen) and partial (Article 26 Legal capacity of minors from fourteen to eighteen years of age and Article 28 Legal capacity of minors).

The legislator of Art. Article 48 of the Civil Code is called “Legal capacity of a legal entity”, Part 1 of which stipulates that “a legal entity may have civil rights corresponding to the objectives of the activity stipulated in its constituent document (Article 52) and bear obligations related to this activity...”. Despite this normative provision, the authors discuss the legal capacity of a legal entity [33].

Alexey Valentinovich Mitskevich, also demonstrating originality, asserts that "the legal capacity of individuals and legal entities is expressed in their legal capacity and legal capacity", and "the legal capacity of a legal entity, in contrast to the legal capacity of an individual, is special" [34]. At one time, Nikolay Ignatyevich Matuzov, reflecting on the difference between legal capacity and subjective right, wrote, in particular, that it "is inseparable from the personality, it is impossible to deprive a person of legal capacity, "take it away", "take it away" from him or limit it" [35]. This statement can be the cause of scientific discussions. Thus, characterizing legal capacity as "an indispensable companion of the legal capacity of an individual" [36], Professor Alexandra Matveyevna Nechaeva reasonably highlighted the following features: firstly, legal capacity is static, and legal capacity is dynamic, since it can expand and contract depending on certain circumstances; secondly, legal capacity, being a dynamic legal category, is determined by

the age of the citizen; thirdly, a citizen may lose legal capacity due to a health condition; fourthly, legal capacity refers to the natural rights of a person, while legal capacity is based on the law [37].

Meanwhile, Part 1 of Article 22 “Inadmissibility of deprivation and limitation of legal capacity and legal capacity of citizens” stipulates that “no one can be limited in legal capacity and legal capacity except in cases and in the manner established by law.”

In fairness, we note that doctrinal (theoretical) concepts must necessarily be guided by legal (official) ones, not contradicting them, however, unfortunately, the latter are not always impeccable. Thus, in the order of the Ministry of Justice of the Russian Federation "On approval of clarifications on the application of the rules for the preparation of regulatory legal rules of acts of federal executive bodies and their state registration" dated May 4, 2007 No. 88 (as amended by the order of the Ministry of Justice dated May 26, 2009 No. 155) the following legal definition of a legal norm is given: "a legal norm is usually understood as a generally binding state order of a permanent or temporary nature, designed for repeated application" [38]. Unfortunately, very often scientists mistakenly believe that "a legal norm is applied repeatedly ... [39]. Other scientists also emphasize the application of a legal norm when characterizing it - Boris Ivanovich Puginsky [40], Mikhail Nikolaevich Marchenko [41], Vadim Donatovich Filimonov [42], Oleg Viktorovich Berg [43]. It seems that if scholars unreasonably pay attention only to the application of the legal norm, then they thereby ignore direct (immediate) forms of implementation: 1) compliance with prohibitions, in which prohibitive and protective legal norms are implemented; 3) performance of duties associated with the implementation of binding legal norms; 3) the use of rights, which presupposes the implementation of the powers of the subject, and, consequently, the implementation of empowering legal norms. In our opinion, when characterizing a legal norm, we should not talk about its repeated application, but about its implementation. This theoretical position, in one form or another, was emphasized by domestic legal theorists. Thus, Anatoly Borisovich Vengerov, defining such a feature of a legal norm as “repetition (or multiplicity) of its action”, wrote that “... a legal norm is created for constant application, use, unless otherwise specified in the norm itself” [44].

It is easy to notice that here the scientist mentioned such forms of law enforcement as application and use. Quite accurate are the statements of Oleg Ernestovich Leist that a legal norm “is directed to the future in the sense that it is designed not only for a given, existing case (relationship), but also for a type, an indefinite number of cases and relations defined in a general form (conclusion of an agreement, transfer of property, marriage, birth of a child, etc.) and is implemented every time the circumstances and situations provided for by it arise” [45].

It seems that our position corresponds to and does not contradict the point of view according to which the concept of law enforcement also covers other forms of law enforcement, namely, its observance, execution and use, although there are other opinions on this matter [46].

Valery Vasilyevich Lazarev notes that “the application of some norms simultaneously requires observance, execution and use of others, hence law enforcement is a complex law-implementing activity” [47, 48].

## V. Conclusion

In conclusion, we would like to note once again that many scholars have discussed the relevance of the conceptual and categorical apparatus in one way or another. For example, Petr Uvarovich Kuznetsov believes that “the mobilization of theoretical and methodological research aimed at understanding social existence and developing the corresponding legal instruments, including legal concepts, is recognized as one of the pressing tasks of legal science”[49].

The role and significance of the conceptual and categorical apparatus of jurisprudence, according to Yegor Alekseevich Kulikov, is determined by the fact that “full-fledged legal (both scientific and applied) knowledge is possible only with the assimilation of legal concepts and categories, as well as with an adequate understanding of the manifestation of philosophical categories in law”[12]. Boris Ivanovich Puginsky and Dinus Nurimanovich Safiullin, referring to the analysis of the categorical apparatus of civilistics, in particular, note the "defectiveness of many scientific concepts: their insufficient definition, logical inconsistency, imprecision", "the dogmatism of the general concept of law has as its consequence an apologetics of formulations, frozen definitions" [50]. The authors especially emphasize that "... our legal scholars are capable of amicably searching for a suitable word for years, working out a concept instead of analyzing its suitability and applicability in practice. Terms are formed based on the needs of their own schema and regardless of whether the corresponding objects exist in reality" [50]. Summarizing that many scientists, in one way or another, addressed the problem of legal concepts and categories, the following conclusions of this work should be determined: 1) acting as the basis of methods, legal concepts and categories, although they play an important role in the cognition of legal phenomena and processes, but in themselves are not an independent method of cognition or part of it; 2) distinguishing between legal concepts and legal categories, the latter should be interpreted as the most general, essential, extremely broad concepts, characterized by their fundamentality; 3) differentiating the conceptual-categorical apparatus into two parts - legal concepts and theoretical (doctrinal) concepts and categories, it is necessary to emphasize that doctrinal concepts formed by individual scientists or their teams should be guided by legal (official) definitions and not contradict them.

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