

LEGAL TECHNIQUE IN LEGAL ACTIVITY: THEORETICAL AND LEGAL ANALYSIS

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ABSTRACT:

In this article the theoretical analysis of the concept-"legal activities", disclosed its relationship with the concept of legal activity. In addition, the example of the structure of the legal activity, goals, methods, forms and means added to scientific observations. Also, a theoretical analysis of scientific positions on the basic regulations, rules, types and elements of legal technique as a part of the legal action. From the analysis, it is possible to ensure that the legal machinery has both scientific and practical significance. To date, comparison of legal technique with other legal sciences, leads to the conclusion that the organic connection and interdependence between them. Legal entity (reality) is composed of many parts and small industries, depending on their availability and the degree of the study also divided and jurisprudence.

To date, the period of scientific discovery is still no consensus, treating the nature and content of the concept of legal technique. In legal literature pays great attention to the subject of legal technique, rules, requirements, objectives, means and methods, but its essence is in most cases not been disclosed and it remains on the sidelines. The essence of each phenomenon or object is important, only after detection of this condition; it is possible to define the appropriate object. Legal Technology in its essence is expressed in the law-making process, and in the process of the realization of law, namely the great importance it gets along with the creation of the regulatory - legal act, to develop and apply instruments to ensure their implementation.

Keywords: legal activities, legal activities, the implementation of law, application of the law, legal act, jurisprudence, legal advice, legal instrument, rules of legal technique, types of legal technique, elements of legal technique.

Legal activity is difficult many-sided concept in which it is possible to see its communication with the legal events and legal means existing in society. The structure of legal activity is expressed as set of elements of legal life, namely expresses as the difficult social phenomenon in the structure all legal processes existing in society, institutes, establishments, reflecting legal life as a unit.

Without legal activity, it is impossible to create the right, to interpret it, to define, apply, systematize and eliminate defects of the right. That is, legal activity is widely expressed in processes of law-making, right application.

As it is noted above, action of the right, including legal regulation, expresses in themselves "work", the action directed to realization in life legal norms and other legal phenomens, which has to be stopped with achievement of a certain result¹. For this reason in system of legal activity the question of legal technique has separate importance. Legal activity as a complex of the actions directed to establishment, realization and regulation of the right provides acceptance standardly – legal acts and their introduction in life.

¹ Osipov M.Yu. Concept and types of law action // Law and the state: theory and practice. – 2007. №11. – 11–14-p.

Based on the analysis of concept of legal activity, we are witnesses of not measurability of value of legal technique in this activity. Legal activity is, first of all, the activity based on rules of law. For this reason, the most important part of this activity is expressed in process of creation legal acts and their introduction in everyday life.

For exact and effective realization of legal activity observed need of special legal knowledge – legal technique. As note, A.H. Saidov and U.T. Tadzikhonov "the publication of all legal acts possesses some general properties. Including, they are published by special representative bodies, possess official, imperious creatively – organizational, certain social – political content. Legal actions and the methods and means fixed in a document form applied in operations reveal legal consequences, are connected with the organization of legal viability and satisfaction of certain social, personal interests and requirements. Despite theoretical and practical importance, the general theory of development of legal documents still isn't developed"¹.

Today in the period of scientific discoveries still there is no consensus treating essence and content of concept of legal technique. In legal literature the huge attention is paid to a object of legal technique, rules, requirements, tasks, means and methods, but its essence in most cases doesn't reveal and stands aside. The question of essence of each phenomenon or a subject is important, only after their identification this state, it is possible to give definition to the corresponding object. As marks out E.S. Shugrin, this question hasn't been rather studied not only in practice, but also in the theory the sufficient attention hasn't been paid to him. This problem in the majority cases was studied as a subject in the theory of the state and the right, and also it was investigated in other branches of jurisprudence. Because in this branch enough works weren't conducted².

Today about essence of legal technique in literature there are various approaches. As a result of their association, it is possible to

¹ Saidov A.Kh., Tajikhanov U.T. Theory of state and law: T.2. The theory of law. – T.: Academy of the Ministry of Internal Affairs of the Republic of Uzbekistan. – 2001. – P. 416.

² Shugrina E.S. The technique of legal writing. – M., 2001. – P. 8.

allocate three following groups 1) purely practical; 2) purely scientific; 3) scientifically - practical (methodological)¹.

To open essence of legal technique it is expedient to pay attention to the definition given them. According to P.Sandevuar's, the legal technique, in a broad sense, is set of the methods and means applied to creation of rules of law by bodies of the government in civil society and their executions. According to V.M.Korelsky and V.D. Perevalov "the legal technique – consists of a complex of the rules, means and methods connected with development, registration and systematization of legal acts for ensuring their definiteness, clarity and efficiency"².

H.B. Boboyev and H.T. Odilkoriyev by legal technique mean set of rules on preparation of projects of legal acts, to their registration, the edition and systematization. According to A.H. Saidov and U.T. Tadjikhanov, "the legal technique is a set of the most suitable special means of rules and methods of an regulation of legal relationship"³.

In the above-stated definitions of scientists there are features and communities. For the analysis of these concepts it is necessary to pay attention to an essence of the word "technique". The word "technique", being Ancient Greek, in Uzbek it is applied in two values: 1) the instruments of labor used in production – mechanisms, the hardware device and another a complex, similar to them, including activities of the person for their application, studying, improvement; 2) ways of commission of certain works or actions, set of methods, art, degree of skill, mastering these receptions⁴. When using the concept "legal technique" it is necessary to understand value of the second definition stated above.

The legal technique on the essence is expressed both in the course of law-making, and in the course of right realization, namely it gets great value along with creation of legal act, in development and application of the documents aimed at providing their execution. From this point of view, it is impossible to join views of above-mentioned scientists about the importance of legal technique

¹ Najimov M.K., Saydullaev Sh.A. Legislative technique. – T.: TSIL, 2008. – P.7.

² Theory of State and Law / Ed. V.M. Korelsky and V.D. Perevalova. – M., 1998. – P. 313.

³ Saidov A.Kh., Tajikhanov U.T. Theory of state and law. T.2. – T., 2001. – P. 62.

⁴ Explanatory dictionary of the Uzbek language. T. 2. – M., 1981. – P. 169.

only in development of legal acts. Such approach narrows borders of the concept "legal technique".

In our opinion, scientists N. Saburov and Sh. Saydulayev have truly approached the matter. In their opinion, the legal technique is ways, receptions, ways and means, and also set of the practical skills applied in a certain state when developing legal acts, their acceptance, registration, setting appropriate changes and additions, cancellation outdated by authorized government bodies, and also at adoption of individual legal documents, namely in the course of adoption of law-enforcement acts¹. "The legal technique" includes the corresponding rules on development and application of any kind of the legal document.

We consider that the legal technique is a set of rules, the principles, ways and the funds allocated for development, modification and additions and application of legal documents for ensuring their accuracy, clarity, a practicality and efficiency.

T.V. Kashanina notes that for deeper explanation of essence of legal technique, it is necessary to pay attention to its signs which treat:

- the legal technique is a set of legal means. But they have to be applied not carelessly, but systematically and ordered. For example, by preparation of the bill, at the beginning, it is necessary to understand essence and content of concepts, then its legal design is formed, the presumption and other components are placed;

- the legal technique provides an expedient arrangement of data in the legal document;

- legal technique, providing effective implementation of legal activity, prevents excess wasting of energy by mankind. The mankind has to make use of the experience gained in development with advantage.

- legal means are connected with extent of progress of society and the economic achievements reached by him (for example, use of the computer), the pursued policy (for example, in the states with totalitarian the mode, reckoned with a presumption of innocence a

¹ Saburov N., Saydullaev Sh. Theory of state and law. – T.: TSIL, – 2011. – P. 110.

little), spiritually – cultural values (for example, in the legislation of the former union close relatives weren't exempted from evidence)¹.

Today the relation to signs of legal technique isn't expressed in many scientific works of the scientists connected with legal technique. In this area certain works have been carried out from T.V. Kashanina. But, some examples recognized as elements of legal technique are similar to value and the purpose of legal technique (for example, the legal technique, provides an expedient arrangement of data in the legal document, prevents extra wasting of energy by mankind. We consider that it is necessary to understand set of the elements expressing his essence as signs of legal technique.

From this point of view signs of legal technique can be expressed as follows:

1) it is expressed available to communication with legal documents, namely expressed in processes of their development, modification and additions, systematization, commenting and their cancellation;

2) it consists of the rules, receptions, tactics and the principles used for ensuring perfection of the legal document;

3) in thinking of the person and need of legal knowledge, and also in harmonization of culture, creativity, art and experience at use of legal technique;

4) it consists of the receptions and ways based on rules of logic;

5) harmony with rules of legal language.

The legal technique is considered an important component of law-making now. Analyzing concept of "legal technique" through the concept "law-making", it is possible to bring in this question still big clarity.

Law-making is the process covering definition and an assessment of legal requirements of society and state, formation in accordance with the established procedure of legal documents of authorized subjects and their acceptance².

¹ Kashanina T.V. Legal technique: a textbook. – 2 nd ed., Revision. – Moscow: Norma: INFRA– M, 2011. – P. 86.

² Islomov Z.M. Theory of state and law. – T., 2007. – P. 583.

From this definition it is visible, "law-making", being very broad concept, reflects the activity connected with creation of rule of law, directed to regulation of the public relations in lives of society; subjects of this activity, also being various, carry out the activity in all branches of the power (legislative, executive, judicial) the democratic state and their local structures.

As result of law-making we can see regulation in legal acts various public relations of life of society.

Also, the legal technique depending on a type of the legal document demands to apply separate rules and receptions during creation of each document. For example, the rules and requirements applied by drawing up the contract of purchase and sale can't be compared with the criteria, which are important during creation of the law.

Thus, legal technique, being expressed in each type of legal activity, acts as the means providing its efficiency. Legal activity consists of a set of components and branches, and the legal technique is important for their compliance and system implementation.

From the analysis of above-mentioned concepts it is possible to make sure that the legal technique has both scientific, and practical value. Today, comparison of legal technique with other jurisprudence, leads to a conclusion about organic communication and interdependence between them. The legal essence (reality), consists of a set of components and small branches, depending on their existence and extent of studying also jurisprudence is divided.

When determining the place of legal technique in system of sciences among scientists the consensus isn't created. Most of scientists on legal technique look as at the institute studied within science "The theory of the state and the right". Other group of scientists considers that the legal technique needs to be separated from science "The theory of the state and the right"¹.

Today in higher educational institutions of foreign countries with romanno –german legal family, and also at the Tashkent legal university of our country the course "Juridical technique" and "Legislative technique" is taught.

¹ Najimov M.K., Saidullayev Sh.A. Legislative technique. – T. : TSIL, 2008. – P. 9.

Really, for our country going on the way of construction democratic constitutional state, the need for regulation of the public relations with the help of the right grows day by day. And it, in turn, demands notable increase and improvement of requirements imposed to standardly – to legal acts and preparation of the documents directed to their execution. Therefore, studying of object and methodology of legal technique is important.

At the same time, similarity of the parties of legal technique with legal practice consists in title, law-enforcement activity. In opinion, F.M. Rayanova, "legal practice is an objective experience individually – legal activity of authorized bodies; it involves from law-enforcement activity and it is considered experience, step by step accumulated in the course of permission of a certain legal business"¹.

As note, U.T. Tadzhikhanov and H.A.Saidov, "legal practice is the activity which is saved up as a result socially – legal experience on the edition (to interpretation, application, etc.) legal norms by authorized subjects. Legislative, judicial, investigating, notarial and other authorities treat subjects"².

Objects of legal practice, subjects and participants, legal actions, ways and means of their performance, the made decisions and results of actions make the maintenance of legal technique. Namely, objects of legal practice are material and non-material values to which actions of subjects and participants, the public relations, actions and inaction of persons are directed, to a thing, incidents, etc. Legal technique in legal practice, being expressed in questions of law-making, the right of application and the right of realization, serves the accuracy, clarity and the prevention of various contradictions of the legal document³.

As it is stated above, action of the right, including legal regulation expresses in themselves "work", the action directed to implementation of legal norms in life and other legal phenomena, which has to be stopped with achievement of a certain result⁴.

¹ Ryanov F.M. Problems of the theory of state and law (jurisprudence). – M.: Law and the state, 2003. – P. 290.

² The same place. – P. 243.

³ Najimov M.K. Saidullayev Sh.A. Legislative technique. – T.: TSIL, 2008. – P. 26.

⁴ Osipov M.Yu. Concept and types of law action // Law and the state: theory and practice. – 2007. №11. 11–14-p.

Therefore, in system of legal activity questions of legal technique hold special position. Legal activity as a complex of the actions directed to establishment of the right, its realization and regulation demands acceptance legal acts and their implementation in life.

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