



## COMPLEMENTARY-HOLISTIC CONCEPT OF LAW-UNDERSTANDING IN THE SYSTEM OF LEGAL KNOWLEDGE

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### Summary

The general-theoretical analysis of the original category of jurisprudence – law-understanding, are defined. A great attention is paid to substantiation of general-theoretical aspects of complementary-holistic concept of law-understanding. It is proved that this concept is a holistic way to scientific understanding the essence of law as a system historical and cultural phenomenon that appears in the form of continuous social communication and has semiotic, axiological, phenomenological, functional and active components. It is grounded that globalization preconditions of universalization of understanding the essence of law have vital influence on the formation of this concept, which is approximated to law-understanding integral type.

**Key words:** law, law-understanding, concept, law-understanding type, complementary-holistic concept, cognition of law, globalization.

### Аннотация

Осуществлен общетеоретический анализ первостепенной категории юриспруденции – правопонимания, определены роль и место этой категории в системе юридического знания. Акцентировано внимание на значении методологического поиска возможностей синтеза типов правопонимания сквозь призму правовых теорий, доктрин, концепций. Особое внимание уделено обоснованию общетеоретических аспектов комплементарно-целостной концепции правопонимания как нового направления в развитии правовой мысли. Доказывается, что эта концепция представляет собой целостный образ научного понимания сущности права как системного историко-культурного явления, возникает в форме непрерывной социальной коммуникации, имеет семиотическую, аксиологическую, феноменологическую, функциональную и деятельностную составляющую. Установлено, что на формирование этой концепции, приближенной к интегральному типу правопонимания, существенное влияние оказывают глобализационные предпосылки универсализации понимание сущности права.

**Ключевые слова:** право, правопонимание, концепция, тип правопонимания, комплементарно-целостная концепция, познание права, глобализация.

**Formylation of the problem.** The question of law-understanding to the central problems of legal science. This increased interest is determined not only the range of many objective and subjective reasons, but also quite specific reasons. Historical analysis of the concept of law-understanding in the system legal knowledge suggests that for every historical stage of social development characterized by intensification of scientific efforts directed on the development of specific concepts of law-understanding. The current idea of of legal understanding are criticized, the search continues for new theoretical concepts of law-understanding, some of them because of inability science fail.

In the Soviet period the study were thinking narrowly limited ideological framework. At the stage of modern democratic change sharply a question about the rejection of stereotypes of the past and rethink this important phenomenon. Exactly now these debatable issues have gained considerable relevance of through the aggravation of the theoretical confrontation between supporters of

different types of law-understanding. Legal science is located in an intensive search internally consistent concept of law-understanding, endowed with complementary combining (integrative) properties that can grasp the holistic and multifaceted essence of the law. So today in modern Ukrainian jurisprudence there is an active search for a new type of legal understanding which would synthesize historical experience and the latest achievements of legal knowledge.

Analysis of modern legal literature testified that when considering of important issues general theoretical science, national and foreign authors of publications focus on various issues knowing the essence of law. Problems of legal understanding has become the object of attention of lawyers as S. Alekseev, S. Husaryev, V. Dudchenko, M. Kelman, M. Koziubra, V. Lazarev, V. Lapaeva, R. Livshits, P. Nedbaylo, V. Nersesyants, Yu. Obo-rotov, N. Onishchenko, O. Petrishin, P. Rabinovich, I. Timush, M. Zwick and others. They offer their own model of integrative law-understanding, based on the theory of natural law, the synthesis of various approaches to protect the

rights or positions of classical legal positivism in the context of the study of various problems of the theory and philosophy of law.

**The purpose of the article** is to analyze the scientific and theoretical provisions relating to the specific characteristics and understanding of the law as a holistic, the system social and cultural phenomenon as well as research prerequisites of complementary-holistic concept of law-understanding in modern legal system of knowledge.

**The description of major research.** Law of XXI century gets new, fundamentally different features. This is globalization changes that significantly generates the need for law enforcement purposes, the preservation and strengthening of basic legal values, maximum use of the diversity of legal cultures, all acquired by mankind achievements in sphere of legal guarantees and remedies, legal mechanisms and structures to ensure implementation of legal ideals.

This process includes all without exception components of society and the state needs to reform the national legal system, in which the right to a



social and cultural phenomenon should gain recognition of great social value and medium of the rule of law in a society based on the principle of formal equality and justice for all sub of objects relations. On this basis, has formed a new, complementary, holistic attitude to law.

However, this is not a simple scientific problem. Tuning to perform this scientific task, keep in mind this is right caution: «The history of law – a history of progressive universalization of rights and legal form of the regulation of the amount of formal (legal) equality while maintaining the principle of any existing legal system and law in general. Different stages of historical development rights between people has its defined forms, possibilities and limits universalization of rights and powers, its extent and its own measure of equality, freedom and justice, the circle of legal (and state law) relations, ie, its content of the principle of formal (legal) equality and its regulatory specification in law» [1, p. 44].

So one of the key areas of scientific investigations Ukrainian jurisprudence should be the legal investigation of so-called the legal globalization, which is a new step in the further development of the concept of integrated of legal understanding. Topics globalization of legal scientists believe reasonably complex and multifaceted. Paramount importance should be given to the development problems of the modern state and ways to improve the prospects of development of law and the state in the general context of globalization and its impact on the legal system of the country.

In conditions of globalization every of the existing classical law-understanding type, that every single version of the answers to questions that should be considered as a right inherent limitations and one-sidedness. Many domestic and foreign scholars associated with this circumstance critical state of scientific and theoretical legal consciousness.

Many answers to actual questions can give legal globalistics – the science that studies the laws of globalization jurisprudence that should guide people in social practice. The new phenomenon of globalization jurisprudence

generates many problems for which appropriate methodological tools needed. «Knowledge of the nature of modern jurisprudence – says Alexander Kostenko – necessary, in particular to address the problems arising in connection from the globalization of law, including globalization the problems inherent Ukrainian jurisprudence» [2, p. 219].

In order to ensure opposition to such the crisis phenomena, according to A. Kostenko, law required a new methodology that would help formulate new legal doctrine, jurisprudence adequate nature. Without this methodology today Ukrainian legal doctrine is «disarmed» before new challenges. Such methodology must be formed based on historical experience, as way out of crisis is always associated by jurisprudence with the caveat idea of natural law. The so-called «Roman law», which is based on the ideology of natural law, which was developed by the ancient Greeks and the Roman lawyers-»naturalists» forever took root in the legal culture of human progress as the basis jurisprudence [2, p. 220].

In the western legal literature over the past years represented the concept of forming a unified «global jurisprudence», which aims, on the one hand, «facilitate» the process of universalization and unification of the law at the global and regional levels, and on the other – the desire to preserve the «legal basis of the national and local culture «and maintaining» balance of values «between» individual autonomy and good governance» [3, p. 202–203].

Accordance with the principle of social naturalism social progress made by so-called «naturalization» of social phenomena, including the law. This naturalization is that all social phenomena as the product of human will and consciousness, more and more should be consistent with the laws of social nature.

An important issue is the legal definition of globalization regularities and development trends its corresponding national jurisprudence. Globalization should not be understood as a voluntary or compulsory national jurisprudence reception alien laws or regulations implementing international legal acts.

«Globalization jurisprudence – says A. Kostenko – the development of national yurysprudentsiy, which is the summarizing of their the» common denominator «, inherent to all nations, and can be determined only by the principle of social naturalism», – said A. Kostenko. According to this principle, so globalized «common denominator» for all national yurysprudentsiy are natural laws of social life which have become known people and be implemented them in the form of national legislation. The principle of social naturalism is a new form of ideology of natural law can and should be the foundation for the modern globalization of jurisprudence [2, p. 222].

The answer to the current process of globalization is the formation of jurisprudence in domestic jurisprudence a holistic integrative knowledge of the law as a multisystem phenomenon that could unite scientific and practical potentials existing types of law-understanding. Supporters of various scientific concepts gradually come to a common idea about the need for a common understanding of the essence of law under which the law to be treated as system integrity. Their views coincide in an attempt to find common ground between the classic law-understanding types, mutually enriching their concepts and ideas developed within each of them.

The researchers propose different ways of integrating classical theories of legal understanding to formulate a more concentrated definition of law. The essence of these methods is reduced to: eclectic mechanical unification of all scientific law-understanding concepts; synthesis of the most significant aspects of the concepts developed by competing scientific theories law-understanding and dismissal of antagonism based on its own original theoretical framework within holistic concept (V. Nersesyants, A. Polyakov, I. Chestnov V. Dudchenko); combining certain aspects of thinking concepts that mutually exclusive, the overall concept (V. Baranov, S. Denisov, V. Lazarev); removal of differences in each of the theories and leaving only those general aspects that these theories are combined (R. Livshits).

As we can see, the current domestic of law-understanding trying



to overcome the boundaries of certain types of classical of legal understanding and create a coherent legal concept, which provides a concentrated, comprehensive definition of law and legal phenomena. Holistic knowledge of law, obtained through interdisciplinary synthesis can be characterized by the following aspects. First, whatever the concept is expanded, complementary, comprehensive, it remains subject content. Studying Law at prisms of different concepts, the researcher does not go beyond the objective knowledge and fully depends on the subject area, which is studying. Second, scientific synthesis is achieved through inductive accumulation important information. Therefore in a basis scientific knowledge is always inductive method. For example, examining the right lawyer can ask to receive the complete picture on the right. In this case faces the task to define: the historical origins of the birth and development of the law; interaction of law with other social regulators; find answers to the question: What does the law in society; what impact has the right to politics, economics, culture and more. In view of this researcher collect necessary material from the respective adjacent areas of scientific knowledge: history, philosophy, sociology, political science, economics and cultural studies. Thirdly, the synthesis of the scientific knowledge of law broadens and deepens our understanding of the legal reality. At the present stage of historical development of legal science is to question this concept of development of legal understanding that adequately described the features of today legal reality. Fourth, an integrative understanding of the essence of law eliminates the conflict between natural and legal, normative and sociological concepts and theories of law in the theoretical and methodological aspect and increases the efficiency of legal regulation and protection of important public relations.

In modern jurisprudence advocated the idea of universal design approach to of law-understanding that would consider the idea of the main directions and approaches to understanding the essence of law. This concept should not just integrate some aspects of being right, but based on the interpretation of the law as a

complex structure, provide a synthesis of components of rights that affect different competing scientific theories.

Thus, the complementarity of views on the right of law is a response to the challenges of modern objective processes of society – of globalization. It should be emphasized that an important positive feature of this approach is an attempt to reconcile, balance gains three classic concepts of thinking, going beyond them, and pay attention to the broad social nature of law at different levels and from different sides of this phenomenon and its complexity, multidimensional and multilevel to eliminate conflict between them, while rejecting the monopoly and forced unification of views on the law.

In addition, it is important to establish methodological framework that would ensure the search for a new scientific concept of law-understanding, especially in the modern jurisprudence prevailing trend to popularize theoretical structures oriented complementarity of approaches to the study of law. Such a scientific concept, in our opinion, should be complementary, holistic concept of law-understanding.

The multifaceted nature of law makes it possible to study it in different planes or in one plane, but from different sides. So now to the legal science face the challenge – to decide how effective, necessary and effective in terms of scientific knowledge is each of these two approaches, or a possible combination. Also it is important to establish methodological framework that would ensure the search for a new scientific concept of law-understanding, especially in the modern jurisprudence dominated trends towards popularize theoretical structures oriented complementarity of approaches to the study of law.

Such a scientific concept, in our opinion, should be complementary, holistic concept of law-understanding. Note that, in juridical science title this concept was introduced Ukrainian scientist Vladimir Dudchenko [5], which once developed integrative jurisprudence, which is considered the founder of American law philosopher Jerome Hall [6].

For the study set out the name «complementary, holistic concept of

law-understanding» will focus on each of the aforementioned categories in more detail.

The first key concept is «complementarity» – the «complementary.» Etymologically, the word comes from the Latin «complementum» – additions and means «complementary.» As a term it is extremely meaningful and characteristic not only humanities.

Philosophical and legal understanding of the term was the basis for methodological pluralism based on knowledge of natural law approach by the principle *dopovnyalnosti* (complementarity). Philosophers believe fundamentally in the interpretation of the concept *dopovnyalnosti* scientific «understanding controversial (symmetrical supplementary) parties or events as being disconnected, mutually exclusive, leading to the outside *ryadopolozhnyh* equivalent descriptions or as internally connected objectively» [4, p. 169]. Based complement established and characterized the relationship between the data obtained under different experimental conditions and principles can be interpreted ideas about one another.

Modern domestic legal thought evolves toward the production of complementary, holistic concept of law-understanding, which is a natural process of a global response to globalization and the transformation of legal systems. Moreover, this concept comes from nothing, and based on the basic classical «living» concepts proven understanding of law and legal reality. It is based on a dialogue with the various schools of legal knowledge and aims to create a concept holistic law-understanding, freed from dogmatism and stereotypes legal theory of the era of so-called «Soviet modernism» and «transition period», when existing concepts were imposed by the authorities, characterized by one-sided and primitivism.

In modern conditions become more expressive pluralism, complexity and multidimensional, the social importance of law as a social phenomenon. Thus research strategy underlying the integrated approach to the knowledge of law, first should be based on the use of pluralistic methods and means of



perception of law, but should include the formation of the general theoretical concept, development of cross-cutting concepts and categories of what can be achieved as there is no alternative (unity) approach research object of knowledge, and guaranteeing consider alternative positions [7, p. 184–185].

In complementary, holistic of legal understanding concept embodies a holistic way scientific understanding of law as a system social and cultural phenomenon emerging in the process of continuous social communication, a textual (semiotic) axiological, phenomenological, functional and activity components.

Semiotic thinking component provides that category «law» can be presented as a complete set of opinions, though, on the other hand, this set of opinions can be concentrated in one concept.

Thinking of values component involves understanding the essence of law in the light of the values that are the basis of law and can it be ensured. Value property of law are caused by the nature of this complex social phenomenon, its value as a special form *susupilnyh* relations, its place and importance in the social regulation.

Phenomenological thinking part due to the fact that the law is unique, complex and necessary for the regulation of public relations phenomenon, understanding different accents which are in constant dialectical development. In addition, thanks to pluralism in understanding the essence of humanity right at every stage of its historical development it opens more new features and faces. The right of society as a phenomenon is multifaceted, as the organic combination of natural law (pledged by the very nature of man) and positive law (established state «artificial law»); as truth and fairness, correctness and legality, freedom, equality and legality.

**Conclusions.** To understand the essence of the phenomenon law in jurisprudence developed and used a lot of variety of tools, methods, put forward many ideas and suggestions. Presence of such a diversity in perception, interpretation and interpretation of thinking complicates communication capabilities mutual

understanding between supporters of specific approaches to some extent affects the conceptualization of the defining concepts and categories, to establish their relationship. Typical for the modern period of jurisprudence peculiar methodological crisis is that moving away from the classical methodology study domestic science increasingly are looking for ways to efficiently transition to a new paradigm of law on which understanding of the essence of law, or the law-understanding, as one of the initial categories of law is linked to supranational essence of man.

Based on the above, we can formulate a definition of complementary, holistic concept of thinking as an integral way of scientific understanding of the law, seen as a system of socio-cultural phenomenon, which occurs in the form of continuous social communication, a textual (semiotic) axiological, phenomenological, functional and *deyatelnostnuyu* components.

A comprehensive description of the qualitative characteristics of the phenomenon of law and the overall system of law and legal links between its elements, development of other integration concepts thinking considering the dynamic changes in society and public life and a number of other related issues deserve thorough investigation.

#### References:

1. Нерсесянц В.С. Процессы универсализации права и государства в глобализирующемся мире // В.С. Нерсесянц // Государство и право. – 2005. – № 5. – С. 38–47.
2. Костенко А.Н. Социальный натурализм как методологический принцип юридической глобалистики / А.Н. Костенко // Наукові праці: Політичні науки. Правознавство: Том 69. – 2007. – Вип. 56. – С. 219–223.
3. Slaughter A. A Global Community of Courts / Anne-Marie Slaughter // Harvard International Law Journal. Vol. 44. – 2003. – № 1. – P. 191–219.
4. Філософський енциклопедичний словник / [під гол. ред. В.І. Шинкарука]. – К. : Абрис, 2002. – 742 с.
5. Дудченко В.В. Традиція правового розвитку : плюралізм правових

вчень / В.В. Дудченко. – Одеса : Юридична література, 2006. – 302 с.

6. Hall J. Integrative Jurisprudence / Jerome Hall. – N. Y., 1961. – 29 p.

7. Лук'янова Г.Ю. Комплементаризм праворозуміння: актуальні науковознавчі аспекти / Г.Ю. Лук'янова. – Львів : ПП Сорока Т. Б., 2014. – 214 с.