DOCTRINAL BASICS OF THE LEGAL TECHNIQUE: COMPARATIVE ANALYSIS WITHIN THE EUROPEAN LEGAL FRAMEWORK

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Abstract: The legal technique was initially developed as a kind of "interpreter" for the legislative will in the legal language using a specific ingenuity of legal engineering. Historically, the theoretical base of the legal technique was formed on a phased basis, essentially stimulated by state reforms, social transformations, and active legislation systematization. It should be mentioned here that legal technique is a distinctive category reflecting the political, economic, and legal situation in the historical period of a certain state development, but being extra-national in itself.

The resource harmonization of the legal technique within the European legal framework means norm-setting regulations, coordination, and elaboration of common recommendations for the European countries. The cooperation in the legal technique standards harmonization will require the all-European cooperation to the new level as far as legal standards, human rights, democratic development, legitimacy and cultural cooperation are concerned.

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Introduction

European integration has a profound effect upon the processes of international cooperation modernization; it acts as a rainmaker in the development of economic, political, judicial, cultural, and religious relationship within the European legal framework. Legal technique may play a role of a special integration guide in the legal realm, as its nature and "power" confer with the character of systematization, formal distinctness, brevity, and self-consistency on modern legal act.

As an art of communication in judicial activity, legal technique is a resource system necessary to prepare legal acts, to perform other kinds of judicial activity, as well as to assess the compliance with the technical legal standards and regular expression in the established legal act of the social compromise toward perfection of its form and function. The doctrinal basis development of the legal technique was greatly contributed by the representatives of the schools of thought in Great Britain, Germany, France, Russia, and other European countries, thus laying a certain foundation for the integration from legal technique resources.

Methodology

The methodology of this study constitutes the historical, legal, systemic-structural and comparative methods. This article uses doctrinal data, normative sources, and information collected from scientific journals, legal reference system, the internet, etc. Based on the analysis of data collected during our research, we have come to several conclusions, which are explained further in the conclusion section of this article.

Legal technique doctrine

The early steps of the legal technique theory are associated with the British scientist and politician Francis Bacon. A lot of researchers considered Francis Bacon as the father of the legal technique doctrine, which is consistent with the scientific paradigm followed by the scholar. According to Bacon

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(1935), his work aimed at regenerating the science, which ought to run ahead of the practical work and noted that "science aims at enriching the human life with the real events, i.e. the new means.

Legal technique is just a branch of science, which enriches the legal aspect of life with practical means of perfecting the legal act. Vladimir Baranov (Baranov, 2007) stated that "rare phenomenon where we have a 'composition' of advanced legal theory and purely applied problems."

Bacon (1935) contributed to the development of the legal technique in laying out several rules for legal act composition, especially the need for the legal language to be laconic and exact, so that no pretexts were given for ambiguous interpretation of the legal acts. He was one of the first to notice the role of incorporation as a reliable manner for composing a corpus of legal acts as way of systematizing legislation and claimed that people needed science in the first place to solve practical problems.

A German thinker, historian, and jurist, Samuel Pufendorf (Pufendorf, 1660), developed the early approaches to the legal technique doctrine. Not only did he impose serious requirements to the substance and purely technical aspects of legal act making, but also extended the concept of legal technique exceeding the bounds of exceptionally legislative technique. The scholar included the legal act enforcement into it, stating that legal acts created by the government ought to be clear to the addressees; in other words, they ought to be set forth in plain language and brought to the citizens' knowledge.

Comprehensibility and clarity (accuracy) of the legal act statement should, according to Samuel Pufendorf, leave no room for discrepancies, and are, therefore, statutory requirements. Furthermore, he inquired into the matter of legal force of the legal act; in particular, he stated a rule that a legal act (decree) ought to be composed by the person who wields the highest authority in the state. In case of lack of precision, Samuel Pufendorf (Pufendorf, 1660) recommended to apply commentary either to the legal act-making entity itself, or to the special entity having the right of interpretation, thus laying the founding principles for the interpretation rules.

Basing on the rational ideas of the rational nature of the human and the surrounding objects, French scholar, Charles Louis Montesquieu, speculated on what should be the "style of legal act" on the importance of the successive terminology used in the legal acts and of the consistent principles of the legislation. Charles Louis Montesquieu (Montesquieu, 1982) wrote of the inability to comply with the legal acts if they are incomprehensible either because they are written in a special or not in a plain language.

A lot of care must be taken when revising previously adopted legal acts. Charles Louis Montesquieu wrote "this ought to be done in all solemnity and with so many precautions that the people come to the conclusion that legal acts are sacred as so many formalities are needed to reverse them" (Montesquieu, 1955). Montesquieu also gave an account on several legal act statement principles in "The Spirit of the Legal acts" mentioning, among them, the simplicity and brevity of the style, wherein the norms should set forth in laconic and precise manner. The scholar pointed out that the essential condition of the legal act is the demand for "every word of the legal act statement to evoke the same ideas with all people." He also proceeded to say that legal acts should not go too far into refinements, as "they are meant for ordinary people and contain sound ideas of an ordinary housefather rather than art of reasoning" (Montesquieu, 1955).

Jeremy Bentham, the English sociologist, jurist, and theoretical founder of the political liberalism. He is also considered to be the father of nomography—the science of legal act making. In "An introduction to the principles of morals and legislations," Bentham (1998) characterized the linguistic rules of legal act composition, as well as the rules of their internal structure. When composing codes of legal acts, he pointed out that it was necessary to be motivated by the principles that would provide simplicity, lack of ambiguity, and comprehensibility for the addressees. Bentham composed several

scientific papers, one of which was "Discourse on civil and penal legislation," outlining the basic notions of legal provisions and the common Inscription Book of Legal Acts (Bentham, 2006).

In addition, the formation of ideas on the legal technique within this historical period was not over yet. On the contrary, it was expanded and enriched with the approaches of various scientists, but the theory basics were laid just then, as can be judged from the aforementioned work.

So, the first period of the formation of the legal technique theory can be traced back to the period from the early 16th century to the late 18th century. This formation laid the general ideas on the subject of the legal technique, whereas the term "legal technique" was being coined in to the legal use and outlined its application realm.

The significance of the indicated period regarding the formation of the theoretical approaches to the legal technique is difficult to overestimate, since the term introduction in the scientific use and the definition of its categorical characteristics serve as a primary step in the formation of any subject area. Terminological certainty creates real premises for a more dynamic and purposeful development. At the same time, separate elements of the legal technique contents are researched, wherein the indicated fact implies a new step in the development, motivated by the intensive development of the social processes the emerging role of the legal regulators.

The second stage of the legal technique doctrine development started in the early 19th century, marked by the first special writing "Legal technique," dedicated to the study subject area, by the German scientist, Rudolf Von Jhering (Jhering, 2008). Jhering also noted that legal technique had emerged in the early days of the legal act itself, although scientific views on the legal technique were just beginning to appear much later. Jhering described the purpose and role of the legal technique as "something that ought to convince every layman in his ignorance ... is a legal method ... it just creates a legal actor," (Jhering, 2008). Subjectively, "technique" means the legal art of finishing the legal material; on the objective level, it is a technical mechanism of the legal act. Jhering formulated the concept of legal technique, understanding it as essentially a legislative technique. He classified the accumulated rules of legislative technique, thoroughly analyzed a lot of them, and proposed some new rules for composing legal acts. In "Legal technique," Jhering (2008) proved the technique important for the legal activity by claiming that "technique is implicitly endued with a huge ethic value whereas technical practical jurisprudence being extremely careful to the smallest detail when dealing with the material can praise itself for improving the legal technique for the good of the sublime and the great; its hardly visible work on the low-profile of the legal act fosters its development even more strongly that any intellectual work."

An important step in the development of the legal technique doctrine at this stage was the formation of the true legal technique objectives that define the nature and thrust of its instrumental basis. In particular, when developing the ideas of legal act and interests interconnection, Jhering (Jhering, 1880) considered the legal technique as a mean of interpreting social needs into the language of legal act, composing mandatory rules aimed at maintaining order in society, which are statutory legal act sources. Positivation, i.e. a process of making a positive (written) law, and communication are the integral parts of the legal activity, which determine its efficiency.

The second stage of the legal technique development is characterized by the development of the legal and technical requirements set for the legal act composition as well as some other types of legal activity, which deals with legal act-making, for instance, systematization technique.

The thrust of legal technique development was basically in the legislation realm. This period lasted since the early 19th century until the very beginning of the 20th century, which was marked by legal technique entering and being incorporated in the legal categories of the Roman-Germanic system.

During this period, we can talk about the transition to a system study of the legal phenomenon, which became an independent subject of research.

The third step of the legal technique development started off in the early 20th century and dealt with active research into the technique and elaboration of numerous technical tricks. The scientists' views upon the legal technique varied greatly (some of them even denying its existence), thus proving the lack of stability in the state of the art, as well as the multitude of aspects in the legal technique.

According to William Friedman (Friedman, 1944), jurists who create norms have always been able to improve the legal act by skillfully handling the legal technique. These kinds of antagonistic approaches are inherent to the legal technique and eventually foster its development, provoking its in-depth consideration and search for scientific justification of the present approaches.

The French jurist, Sandevoir (Sandevoir, 1994), distinguished broadly taken legal technique as a set of tools and methods, which allows the aims of the Government agencies to be transformed into the legal norms and to be achieved through submitting to the legal acts. More specifically, they are conditions for implementation of the language, structure of the legal reasoning, as well as legal technical tricks, tools, and rules.

Features of doctrinal development in Russia

The legal technique doctrine was greatly contributed by the Russian scholars, public figures, and statesmen, e.g. Mikheil Speransky, Alexey Unkovsky, Sergey Muromtsev, Gabriel Scherschenevitch, Fedor Taranovsky, Evgeny Vaskovsky, etc. They dwelt in their writings on the issues dealing with preparing legislative regulations, which were considerably mobilized by the state reforms and elaboration of the Russian compliance statutes.

It should be noted here that the development of the legal technique doctrine in Russia was falling behind, which was a historically conditioned fact, but began catching up considerably during the reformation periods. Without going into detailed research of these reasons, we may note that they stem both from state of jurisprudence as well as from the legal education in this period in Russia, but this is a matter of an independent research, which is beyond this subject.

It should also be noted that the evolution of the legal technique in Russia has essentially passed through several different stages, which were based either on the approaches of the West European tradition, or on the official doctrine of "the proletarian legislation," which underestimated the legal form. These subsequent stages noticeably affected the concept of scientific development of legal technique in Russia.

During the Soviet period, the scientists actively developed the issues of the legislative stylistics and legal technique, with the prevailing legal scientific approach, which identified the legal and legislative technique. Albert Pigolkin (Pigolkin, 1968) wrote that the legal or legislative technique was being perceived as a set of regulations and methods for preparing the most perfect-in-form-and-structure draft regulations that provided the most complete and accurate compliance of the regulatory requirements form with their content, accessibility, visibility and ease of regulatory documentation, and exhaustive coverage of regulated issues. Sergey Alekseev (Alekseev, 1982) introduced a set of tools and techniques used in accordance with the rules when elaborating and systematizing the legal (statutory) regulations to ensure their perfection.

To this day, there has been some debates concerning the elements comprising the legal technique content (resource component). Some authors considered these constituents not only by the means and methods of documentary and verbal ways of legal act consolidation, but also by the means of forming the content constituent of the legal act. In particular, Sergey Alekseev considered, as a set of rules relating to the legal technique: the techniques and methods of preparing, composing, and giving a

proper form to the legal documents; their classification and accounting to provide for their excellent, efficient use of "technical and legal means and methods of the legal declaration of the legislator's will (or the will of the individual act subject)" (Alekseev, 1982). Yuriy Tikhomirov (Tikhomirov, 2000) highlighted procedural element as part of the legislative technique.

Nachitz defined the realm of legal (legal act-making) technique by omitting the means and methods used to systematize the legal acts, thus restricting the legal technique to the means and methods of technical composition of the legal acts, claiming that procedure and organization issues were not within the realm of the legal technique (Nachitz, 1974). Sergey Alekseev, on the contrary, claimed that procedural actions and the operations connected with the use of technical means and methods "still don't belong to legal technique" (Alekseev, 1982).

A similar point of view is stated by Gangir Kerimov who wrote, "the procedural organization of legislative process has rather independent meaning, being a rather independent part of the legislative theory and practice, which has no direct relation to legislative technique, though is connected with it integrally" (Kerimov, 1999).

The modern doctrine of the legal act and current state of the Russian legal system attest to broadening of the legal technique application sphere. The supporters of this approach pronounced an opinion that the legal technique ought to be understood as a set of certain tools, rules, and methods applied when elaborating the content and structure of legal acts, as well as when implementing them. Alexsandr Cherdantsev considered legal technique as "a set of rules, methods and ways of drafting, composing, and processing of the legal document, their systemizing and account" (Cherdantsev, 2001). A similar tendency is supported by other scholars as well, e.g. Tatiana Kashanina (Kashanina, 2007), Nakolay Vlasenko (Vlasenko, 2001), and Vladimir Kartashov (Kartashov, 2000).

Meanwhile, given a common idea of the "activistic" approach related to different stages of the genesis of the legal act, the kinds of the legal technique are numerous, which, according to some researchers, may lead to an extremely broad understanding of the legal technique and the concept is unreasonably extended.

As opposed to this point of view, various authors, though not denying the fact that the issuing legal acts is the most important part of the legal activity, still emphasized that any activity targeting the legal act as a result cannot be completely eliminated. It should be noted, however, that the legal technique is just the means to allow "transferring" of strategic aims, principles, and ideas of the legal policy into the current legislation.

Boris Chigidin viewed legal technique as a methodology of improving the form of the legal act including scientifically and empirically based methods, rules, techniques and means, and aiming primarily at providing a possibility of grammatical interpretation of the act with the view of exact determination of the law-maker's will. It is noted here that the legal technique is not just a set or a hierarchical system of particular elements, but also an activity, subjects' activity, aimed at achieving certain goals and solution of the particular tasks (Chigidin, 2002). This kind of systematic approach to the legal technique is justified by the systematic hierarchical character of the elements system.

The legal technique is considered as a broad, multi-dimensional category used for simultaneous expression of the applied aspects of professional legal activity, formally, structural aspects of the legislation theory as well as current legislation, the perfection degree of the form, structure, and language of legislation (Muromtsev, 2000).

The quantitative expansion of the legal technique applicability reveals the complication of the public relations; increase of the law value as a kind of social regulators, the importance of the legal targets demanding difficult constructive models of realization by means of legal tools.

Tatiana Kashanina (Kashanina, 2007) wrote that the legal technique is considered as a set of tools for performing legal activity. These tools have various content and Sergey Alekseev included "technical means (namely, legal structures, terms) and techniques (legal technology—ways of composing norms and a system of referencing)" (Alekseev, 1982). The contents of the legal technique therefore comprise both technical and technological aspects, which attracts the scholars attention.

In his comment on the content of the legal technique, Anatoliy Vengerov wrote that the legal technique is also "the evaluation of the act from the point of view of social procurement presence, absence of loopholes, prohibition of internal and external controversies, compromises, etc." (Vengerov, 1998).

This approach emphasizes its crucial target orientation, which is to improve the content and forms of the legal act. That is the reason why the legal technique should be considered as a set of resources and application technologies, aimed at preparing legal acts and realizing other kinds of judicial activity, and assessment of the proper social compromise expressions in the existing legal act (the perfection of its form and content).

The historical path, "passed" by the legal technique, indicates that it can be considered as a powerful reformatory resource; its scientific interest has intensified during periods of social transformations and state reforms. This pattern characterized the legal technique throughout its evolution.

As far as the development of the legal technique doctrine in Russia is concerned, stage replacement may be noted and was carried out together with the transition to the new legal doctrine (not with the timing, officially marking the transition to the new formations). Gennadij Muromtsev (Muromtsev, 2000) wrote that legal technique appears as a broad, multi-fold, and multi-level concept with mobile content, which sometimes depends on the angle of view on a particular issue of legal act.

The analysis of Russian researchers' main approaches to the definition of "legal technique" showed that firstly, when enumerating the elemental composition of the legal technique, the term "resource is applicable" is a general concept covering a variety of its elements, allowing them to be represented in the legal technique content. Secondly, the legal technique should be considered as a resource system that carries a huge social burden, manifested in the ability of legal technique and its means to embody certain social expectations. Thirdly, the main objects of legal technique are legal acts, wherein principles, ideas, needs, and interests are embodied in a legal matter; due to the legal technique potential, it is endowed with the appropriate form and content. Lastly, the legal technique content should reflect the legal technique aimed to improve the law, therefore, have the corresponding estimated potential.

Normative regulations of legal technique

Different modern approaches of states to the consolidation of the law-making technique, in particular, are an embarrassment to the basis of uniform approaches in the formation of the European legal landscape. These sources are, initially, various "common law" and "civil law" traditions of European countries, which contain numerous terminological conflicts and lack of large-scale legal researches into legal technique potential in Europe. Meanwhile, the increased role of law-making, even in countries of Anglo-American law, promoted by European integration within the European Union and the Council of Europe, requires doctrinal analysis and evaluation of the instrumental basis of law-making.

In many European countries, the rules of law-making technique have already been applied for many years. This experience is highly instructive and useful not only with regard to ways of drawing-up legal texts, but also in terms of the correct choice of subject matter (regulation), forms of instrument, restrictions on amendments, and additions to the texts of legal acts, even in their legal expertise. It can

be stated that the requirements of the legislative technique have not found their uniform legislative consolidation as it is impossible to identify all requirements for drafts of legal acts.

Ratio of doctrinal principles and regulatory requirements, for bills and other regulatory legal acts, differs among different countries. In particular, there are several approaches to the sources where the technical and legal rules are set out including: laws, parliament regulations, guides, recommendations, and special government and ministry of justice documents. In such diversity, the recognized status of legal technique in the legal system of a particular state is observed, which does not minimize its role and is associated exclusively with insufficient study of required unification and harmonization of technical degree and legal resources, to ensure uniform standards and deeper interaction of legal systems.

In Poland, France, Czech Republic, and Hungary, technical legal work rules are contained within parliament regulations or in special government and ministry of justice documents. For instance, in Poland, such rules are contained in the Regulation of the Polish Sejm (1992) and in the Resolution of the Council of Ministers of Poland (1991).

In Germany, the technical legal requirements are contained in the Law on registration of legal acts and normative technique directory (the directory) (2008), developed by the German Federal Ministry of Justice. Brigitte Zypries (Zypries, 2008) wrote that the directory (2008) is based on legal norms and practical experience of rule-making, the increasing influence of European law-making, and most of its recommendations are related to specific phases of the rule-making process. German Federal Ministry of Justice, recognizing the importance of technique to the normative legislative process, has accompanied the rule-making process with a kind of "guide" to the use of standard-setting technique in the form of recommendations, which is "intended to provide legal perfection while maintaining uniformity of legal technique used in federal legislation" (Zypries, 2008).

In the United Kingdom, the laws, e.g. Parliament Act of 1911 (1911), Parliament Act of 1949 (1949), and Parliament Numbering and Citation Act of 1962 (1962), govern similar questions of statutes registration. Further information is contained in the Guide for people involved in the preparation of legal acts and related parliamentary procedures (Statutory Instrument Practice, 2006).

In Russia, the legal framework of drawing-up rules for regulatory legal acts is focused on a by-law level, e.g. the Resolution of the Government of the Russian Federation (RGRF) № 1009 (1997), the Decree of the Russian President № 511 (2000), and the RGRF № 389 (2009), which are the distinguishing feature of Russian state normative standards. At the same time, the fate of the Federal Law Draft № 96700088-2 (1996) was not enviable. This bill has not been changed for many years after the first reading, which significantly affects the legislative activity. Under these conditions, law (non-regulatory) instruments deserve special attention in establishing some rules of draft and regulations (normative legal acts) by the President, for instance, the Guidelines of the Russian Federation № вн 2-18/490 (2003) on legal and technical drawing-up and Manual on regulations (normative legal acts) registration from the President's Administration.

Conclusion

The scope of "legal technique" includes its doctrinal and typological peculiarities, the specific character of the legal form and structure, special juridical and stylistic aspects of the legal matter formation, as well as scientific views upon it.

The legal technique was initially developed as a kind of "interpreter" of the legislative will in the legal language using a specific ingenuity of legal engineering. Historically, the legal technique theoretical base was formed on a phased basis, essentially stimulated by state reforms, social transformations, and active legislation systematization (Kostenko, 2014). It should be mentioned here that legal technique is

quite a distinctive category reflecting the political, economic, and legal situation in the historical period of a certain state development, but being extra-national in itself.

However, the undertaken study of the legal technique framework has demonstrated a great variety of approaches by the state to provide a legislative framework for the norm-setting process, thus complicating the formation of the all-Europe legal framework, which is based on the uniformity of approaches. The approaches, used by European countries for norm-setting, may be classified on different basis: the degree of the norm insistence (binding authority); its resources' legal consolidation in the national legal system; types of the legal act, containing the legal and technical specifications; and the level of detail and specific mechanisms of the norm-setting technique structuring.

Harmonization expansion and identification of specific resources of legal technique are responsible for the formation of minimum and sufficient law-making standards, which will bring this process to a new level in order to determine the technical and legal standards in the European legal landscape, thus striking the keynote (raising the bar) for the quality of European rule-making.

Harmonization of legal technique resources is a high-tech mechanism to facilitate the process of legislation harmonization and simplification of the of international obligations implementation, which gives a balanced and purposeful nature to the use of the technical and legal tools. The cooperation in the development of legal technique standards will facilitate the cooperation between European countries in the development of law standards, human rights, democratic development, legality and, cultural interaction.

In general, under the uniform approach of the European states to the consolidation of the normative standards resulting in a combination of normative and doctrinal basis, their detailed elaboration and ratio are different. This reflects not only the status of the given rulemaking resource, but also legal traditions, even in a certain way of the social mentality. Furthermore, some steps toward harmonization in the designated area are currently being made.

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