

## On Legal Practice and Other Criteria for the Truth of Knowledge about the State and Law

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### Abstract

*This scientific article analyzes various criteria for the truth of knowledge about the state and law. The work emphasizes a very important and fundamental position, according to which legal practice, being the most important criterion for knowledge about the state and law, cannot objectively be recognized as a single criterion, because far from all knowledge about many state-legal phenomena and processes cannot be “measured”, based solely on legal practice.*

### Keywords

truth of knowledge; state and law; legal practice; mediated criteria of knowledge



## I. Introduction

The reason for writing this short scientific article was the fact that such an important methodological and at the same time fundamental issue as the question of the criteria for the truth of knowledge about the state and law, as a rule, is either not considered at all in the legal literature, or is analyzed very incompletely and one-sidedly. In the latter case, we are talking, in particular, about the position of Nikolai Alexandrovich Vlasenko, who raises the question of what is or can be a criterion for the truth, reliability, argumentation and validity of scientific information? [1] (we are talking about scientific knowledge about state-legal phenomena - Vladimir Valentinovich Kozhevnikov).

According to the scientist, “in any case (highlighted by us – Vladimir Valentinovich Kozhevnikov) only practical activity can serve as a criterion for the reliability and correctness of the conclusions and recommendations of legal science, including the theory of state and law”[1].

We note right away that, unlike all the diverse forms of knowledge, scientific knowledge is the process of obtaining objective, true knowledge, aimed at reflecting the laws of reality. Scientific knowledge, including about the state and law, needs certain criteria of truth. In the philosophical dictionary, truth is interpreted as “a true, correct reflection of reality in thought, the criterion of which is ultimately practice” [2].

## II. Research Method

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

- General philosophical (dialectical-materialistic), which is used in all social sciences;
- 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;
- Special methods (philological, cybernetic, psychological, etc.), developed by special sciences and widely used for the knowledge of state and legal phenomena;
- Private scientific (formal legal, interpretation of law, etc.), which are developed by the theory of state and law.

### **III. Results and Discussion**

#### **3.1 Legal Practice as a General Criterion of Knowledge about the State and Law**

Indeed, the universal criterion for the truth of knowledge is practice, which is understood in science quite broadly: it includes the practice of transforming nature (the material-transforming activity of people) and the practice of transforming social relations. Practice is a specifically human, conscious, goal-setting, expedient, sensory-objective activity. Being material due to its prerequisites, means and final results, it is carried out by people who have consciousness, thinking, knowledge and practically apply their intellectual abilities.

Therefore, practice is the unity of the subjective and the objective, consciousness and being, the objectification of the subjective and the deobjectification of the objective. The forms of practice are diverse: material production, people changing the socio-economic conditions of their lives and other activities that materially transform objects. The variety of forms of practical activity, its connection with cognition makes practice a criterion of truth – a yardstick that makes it possible to distinguish between truth and error. Practical confirmation of theoretical positions, scientific predictions proves their truth [2].

The truth of the conclusions of legal science is confirmed by legal practice, which is a kind of practice for the formation and transformation of social relations. Social practice, including in the field of state and legal construction, legal regulation, is able to evaluate the acquired knowledge and develop practical recommendations on their basis in terms of objectivity and functional quality.

Practice forms and transforms social relations, because it is based on the objective activity of people. State-legal institutions are means, instruments for the transformation of social ties and relations. The practical activity of people, including in the state-legal sphere, is a condition for the stability and development of society.

Legal practice as a kind of social practice has a complex structure and includes law-making and law enforcement, including law enforcement, which is divided into judicial, administrative, etc.

#### **3.2 Other Criteria for the Truth of Knowledge about the State and Law**

Highly appreciating practice, it is impossible to make it absolute, because it historically develops, changes, is limited by existing conditions, is subject to objective conditions.

However, it should be borne in mind that many provisions of legal science are not derived directly from practice, but are the result of theoretical generalizations, logical conclusions. Therefore, legal practice as a criterion for the truth of knowledge about the state and law can act not directly, but in indirect forms.

These forms include: language rules, laws and rules of formal logic and methodological rules. Violation of these rules in the course of scientific research calls into question the truth of scientific conclusions, often allowing one to conclude that they are untrue and unfounded.

#### **3.3 Rules of the Language**

Following the rules of the language is important in any science, because the scientific problems of hypotheses, theories, scientific facts are formulated in a linguistic form. As for legal theory, here, too, many objects of study (rules of law, normative acts, acts of implementation, etc.) “live”, exist in linguistic form, that is, in the form of grammatical sentences. Law is able to influence the will and consciousness of people only with the help

of language. It is the language that serves as a means of conveying information about the content of legal prescriptions. Legal norms in modern civilized states cannot exist otherwise than in certain linguistic forms. With the help of language, the thought of the legislator is expressed outside, formalized, becomes suitable for external use, accessible to specific addressees. In relation to law, language performs, as it were, two interrelated functions - reflective (outwardly expresses the will of the legislator) and communicative (brings this will to the attention of participants in public relations).

The task of communication, according to Albert Semenovich Pigolkin, is to influence the will and consciousness of people in order to create incentives to behave lawfully, in accordance with the requirements of legal regulations, using powers and fulfilling legal obligations.[3] The same author, clarifying, emphasized that the linguistic embodiment of a normative act gives the will of the legislator integrity, complete forms, ensures its public accessibility, maximum convenience for study and application. In our opinion, we should agree with the author, who believed that the language does not directly affect the content of the legislation, and using the same language forms, you can create both a perfect and an unsuccessful law. Perfection, accuracy and clarity of the law in certain to some extent depend on the language in which it is written, on the level of development of language norms. The scientist believed that "the language in which the law is written is not sufficiently developed, primitive, has a poor vocabulary, then it is quite difficult to write an accurate and clear law in it. And, conversely, the richer and more perfect the language in which the law is written, the easier it is to fully, clearly and accurately express the thought of the legislator, the more opportunities to achieve a high quality of the content and form of the prepared acts" [4].

Tatyana Vasilievna Kashanina, drawing attention to the fact that a legal act, being a means of regulating people's behavior, refers primarily not to the feelings and imagination of a person, but to his will and mind, and authoritatively prescribes certain behavior, believes that the language of legal documents - it is the language of state power, and therefore it has an authoritative and official character. With this in mind, the drafter of a legal document must comply with the following language rules:

Clarity is the simplicity, intelligibility of a legal document. It is required to draw up a legal document in such a way that it is understandable to all persons to whom it applies. An unclear legal act does not give a complete picture of the necessary behavior in a given situation, which leads to uncertainty, misunderstandings and errors;

- The accuracy of the legal document - without it, the document loses its certainty, and conditions are created for its contradictory interpretation, and therefore, for possible abuse;
- Availability of legal acts - here we mean not so much the contingent of addressees of a legal document, but the circle of persons in respect of whom preventive, educational work is carried out. In this case, we are talking mainly about legal acts that perform a protective role (the Criminal Code of the Russian Federation, the Code of Administrative Offenses, etc.). Accessibility is facilitated by: the use of the most simple words, terms, phrases widely used in everyday life and easily perceived by the majority of the population; refusal to use complex constructions with participial and participial phrases in legal acts; refusal to abuse foreign words; refusal to use some clerical phrases, bureaucratic clichés, archaic expressions;
- Brevity of legal documents - in this case, we are talking about reducing the volume of a legal document without compromising its quality. Contribute to brevity: lack of verbosity; reduction of unjustified repetitions of individual phrases; use of short language; typification (standardness, stereotyping) of formulations; placing definitions

at the beginning of the document so as not to expand the document in the future due to their repeated repetition;

- Lack of pathos, declarativeness of a legal document - this only distracts the attention of addressees and reduces the effectiveness of legal documents;
- The formality of the style of legal documents - the legal style is distinguished by the following features: the severity of the style; chiseled style; its neutrality; impartiality; lack of any originality and sharply stylistic individuality; restraint and even emotional coldness; lack of figurative comparisons; imperiousness (imperiousness) [4].

Violation of the rules of the language, for example, in the interpretation of laws, gives reason to question such an interpretation or directly conclude that it is false.

### 3.4 Formal Logic

The mediated form of practice is formal logic. Human thinking is logical in nature, it is subject to certain laws and is expressed in certain forms, regardless of the science of logic. If this were not so, people would not be able to correctly express their thoughts, communicate and understand each other.

But does it follow from this that it is not necessary to study logic? Correctness, logical thinking, not based on knowledge and the ability to apply logical operations and techniques in reasoning, is sufficient (and even then not always) in everyday life, in the sphere of household use, but often fails where a professional level of thinking is required - in the work of a doctor, teacher, engineer, lawyer and, of course, a scientific researcher. Any professional activity cannot be limited to spontaneously acquired skills; it must be based on knowledge of theory. Many philosophers, outstanding figures of science and culture attached great importance to the study of logic, knowledge of its laws, pointed to the need to develop the ability to think logically. "Logic is a necessary tool that frees from unnecessary, unnecessary memorization, helping to find in the mass of information that valuable thing that a person needs," wrote the famous physiologist academician Pyotr Kuzmich Anokhin, "any specialist needs it ..." [5].

To think logically means to think accurately and consistently, not to allow contradictions in one's reasoning, to be able to reveal logical errors. These qualities of thinking are important in any field of scientific and practical activity. Logical correctness is due to logical laws. The latter, which are otherwise called as the laws of thought, determine the necessary connection of thoughts in the process of reasoning. In traditional logic, a prominent place is occupied by the basic laws of thinking (the main formally - logical laws) - the laws of identity, contradiction, excluded third and sufficient reason. It is in them that the general requirements for thinking are formulated. Their content contains important logical principles that express the fundamental properties of logical thinking – its certainty, consistency, consistency and validity. They act in any reasoning, no matter what logical form it takes, no matter what logical operation it performs.

The conclusions of science made in violation of the rules and laws of formal logic cannot be considered correct and true. Errors associated with the violation of the laws of logic are called logical errors, which are paralogisms and sophisms.

Paralogism (from the Greek paralogismos - near, near logic) is an unintentional logical error that occurs as a result of an insufficiently high culture of thinking: in an unclear formulation of thoughts, inconsistency and groundlessness in reasoning.

Sophism (from the Greek.sophism - cunning, trick) - a deliberate logical error that allows incorrect reasoning to pass off as true.

### 3.5 Methodological Rules

Various kinds of methodological rules reflect not only the features of the object of knowledge, but also the practice of scientific research. Their violation can also lead to unreasonable, untrue scientific conclusions. For example, violation of the rules of representativeness (representativeness) of the objects of a particular sociological study raises reasonable doubts about its objectivity and the reliability of the results obtained. It can be argued that, in its essence, any science is an activity for the production and organization of knowledge about the object, the study of which it is engaged in. The knowledge obtained by science must be objective, reliable, justified and verifiable, which requires following certain principles and methods of knowledge, and the degree of development of the methodology of scientific research is one of the main criteria for the development of science.

At the same time, it should be taken into account that the main function of the method is the internal organization and regulation of the process of cognition or the practical transformation of an object. Therefore, the method (in one form or another) is reduced to a set of certain rules, techniques, methods, norms of cognition and action. It is a system of prescriptions, principles, requirements that should guide in solving a specific problem, achieving a certain result in a particular area of activity. The method disciplines the search for truth, allows (if correct) to save time and effort, to move towards the goal in the shortest way. The true method serves as a kind of compass, according to which the subject of knowledge and action paves its way, allows you to avoid mistakes.

The most prominent scientists attached exceptional importance to the methods of cognition. So, Francis Bacon compared the method with a lantern illuminating the path of a scientist, believing that even a lame man walking along the road with a lantern will outrun someone who runs in the dark without a road.

The philosopher believed that one cannot count on success in the study of any issue, going the wrong way. Rene Descartes called the method “exact and simple rules”, the observance of which contributes to the increment of knowledge, allows you to distinguish the false from the true. He said that it is better not to think about finding any truths than to do it without any method [6].

Even at the beginning of the twentieth century. The well-known German legal scholar Georg Jellinek wrote the following: “Anyone embarking on the study of basic social problems cannot but feel from the first steps the absence of a deeply thought-out methodology.” “Any study of the main phenomena of state and legal life,” he wrote, “in order to become fruitful, must begin with the establishment of methodological principles based on the results of the latest research in the field of the theory of knowledge and logic.” [7].

The words of this greatest scientist, expressed more than a hundred years ago, are relevant today. At present, it is generally recognized that any fruitful independent research, including in the field of jurisprudence, inevitably involves reliance on thoroughly developed methods of cognition and the corresponding methodology.

As is known, for a long time the research methodology was “merged” with the subject of study and did not exist as an independent field of science. However, the development of recent science has led to the emergence of a range of extremely complex problems that require special efforts and the development of methods for their solution. This eventually led to the twentieth century. Allocation of methodological research into a relatively independent field of science. All of the above applies in full measure to jurisprudence.

In our opinion, we should agree with the position of Valery Pavlovich Kokhanovsky, according to which “each method will be ineffective if it is used not as a “guiding thread” in scientific or other form of activity, but as a ready-made template for redrawing facts. The main purpose of any method is, on the basis of relevant principles (requirements, prescriptions, etc.), to ensure the successful solution of certain cognitive and practical problems, the increment of knowledge, the optimal functioning and development of certain objects” [8].

For example, when using the methods of interpreting the norms of law, one should be guided by the following rules: 1) use only sources of official publication; 2) in the process of interpretation, not be limited to the assimilation of the text (“letters” of the normative legal act, but strive to understand the meaning (“spirit”) of each interpreted norms of law; 3) take into account the specific connections of the norm of law with other norms of the relevant institution and branch of law, etc.

The system of requirements of social and legal methods is also highly developed. So, among the survey rules based on the provisions of psychology, sociology and other sciences, it is not recommended to ask leading questions that suggest a definite answer; ask questions in a general, stereotyped form; raise head-on questions, etc. In order to get sincere answers and thereby operate with scientific facts, a sociologist seeks to smooth out, disguise questions that are unpleasant for the respondent and, conversely, focus his attention on the positive, favorable aspects of the survey.

The well-known Russian scientist - jurist Vladimir Mikhailovich Syrykh, who believes that the number of basic methods of the general theory of law is unchanged and consists of five elements - methods for collecting and studying single facts, inductive methods (comparative legal and statistical methods), ascent from the concrete to the abstract, system-structural approach, ascending from the abstract to the concrete, rightly believes that in the case when any method is not used or is used incorrectly, which, from the point of view of the results of cognition, is tantamount to not using the method, the organic connection between the methods is broken.

At the same time, the author emphasizes that, in the end, such methodological errors lead to incomplete and sometimes incorrect knowledge. Thus, non-compliance with the requirements of social and legal methods for the study of state legal practice (one-sided selection of facts, superficial verification of their reliability, not specifically - a historical approach, etc.) leads to the collection of unreliable information. Similarly, a study limited to the stage of empirical analysis and, accordingly, the use of methods for collecting and generalizing empirical facts will not contain new theoretical knowledge. Only the consistent application of all the basic elements of the method of the general theory of law allows us to reveal its subject in its entirety, comprehensiveness and objectivity [9].

Objective proof of the novelty and authenticity of scientific achievements becomes practically impossible without a clear indication of how, with the help of what techniques, methods and means new knowledge about the subject under study is established.

Ultimately, it can be stated that the question of the methodological side of jurisprudence in general, the theory of state and law in particular, is, first of all, the question of the reliability of knowledge that science provides, of whether the conclusions that this theory produces can be trusted.

#### IV. Conclusion

Summarizing the above, we come to the conclusion that the criterion of true knowledge about state-legal phenomena is not only legal practice, but also other objectively determined criteria - language rules, laws and rules of formal logic and methodological rules, the importance of which in scientific research is invaluable.

#### References

- [1]. Vlasenko Nikolai Alexandrovich. Theory of state and law as a legal science // Problems of the theory of state and law: textbook / / ed. Vladimir Mikhailovich Syrykh. Moscow: Eksmo, 2008. Pp.30,31.
- [2]. Philosophical Dictionary//ed. Ivan Timofeevich Frolova. M.: Politizdat, 1986. Pp.176,377-378.
- [3]. The language of the law //ed. Albert Semenovich Pigolkin M.: Jurid. literature, 1990. Pp.7.8.
- [4]. Kashanina Tatyana Vasilievna Legal technique: textbook. M.: Norma: INFRA-M, 2008. Pp.119 -123.
- [5]. Kirillov Vyacheslav Ivanovich Logic: textbook. M.: Prospekt, 2008. P.8
- [6]. Philosophical encyclopedic dictionary. M.: INFRA-M, 2000.P.58.
- [7]. Jellinek Georg. General doctrine of the state. St. Petersburg: Ed. Legal bookstore N. K. Martynov, 1908. Pp.19-20.
- [8]. Kokhanovsky Valery Pavlovich. Methodology of scientific research// Kokhanovsky Valery Pavlovich, Leshkevich Tatyana Gennadievna., Matyash Tamara Petrovna, Fatkhi Tatyana Borisovna. Fundamentals of Philosophy of Science: textbook. Rostov n / a: Phoenix, 2000. Pp. 308,309.
- [9]. Syrykh Vladimir Mikhailovich Logical foundations of the general theory of law in 2 volumes. T.1. Elemental composition. M.: Yustitsinform, 2004. Pp. 484,485 -486.