

**THEORETICAL, METHODOLOGICAL AND  
PHILOSOPHICAL AND LEGAL FOUNDATIONS OF  
RESEARCH IN LEGAL SCIENCE**

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**Abstract:** *The study of the processes taking place in legal science is determined primarily by the fact that such important aspects as the construction of a research methodology and the functioning of individual institutions for ensuring the legal system of the state are affected. At the same time, the development of a system for studying legal phenomena is also determined by the fact that equilibrium research requires a sufficient methodological justification. The formation of the sufficiency of research competence is the relevance of the study. The novelty of the study is determined by the fact that the legal system is constantly in development and may not always be modern to the phenomena that make up the everyday system of social and public relations. To determine the typological nature of the study of the forecasting methodology and establish the equivalence of legal phenomena, the methodological foundations of legal research are determined. The authors of the article show that there is the possibility of structuring the methodological support of the study of legal phenomena. The practical significance of the study is determined by the fact that conducting a methodologically verification study of the legal phenomenon will more accurately predict the development of the entire legal system as a whole. This, in turn, determines the application of legal measures in relation to the social phenomenon and increases the level of legal culture of the population as a whole.*

**Keywords:** Romano-Germanic legal system, ideal theoretical research, theoretical hypotheses, factual statements, measure of theory's validity.

Comparative legal studies are of wide theoretical and practical importance, they constantly turn to complex legal phenomena that operate within the framework of society, cover an unlimited number of legal systems, therefore the issues of improving and supplementing their methodological base are especially relevant. Defining and outlining the methodological rules of comparative legal research will make it possible to more thoroughly build up the process of knowing the legal map of the world, as well as increase the level of reliability of information obtained during this study<sup>1</sup>.

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<sup>1</sup> J. Evensky, "The role of law in Adam Smith's moral philosophy: natural jurisprudence and utility", in R.P. Malloy, J. Evensky (eds.), *Adam Smith and the Philosophy of Law and Economic*, Springer Netherlands, Dordrecht, 1995, p. 199-219.

The word “rule” is used in a variety of meanings. Some of its vocabulary definitions are worth mentioning: a position expressing a pattern, constant relationships in something and being the basis of any system, any series of phenomena, actions (grammar rule, rule of proportional distribution in mathematics); an order establishing one or another procedure in the execution of something (internal rules, admission rules in higher education institutions<sup>2</sup>, spelling rules, language rules); a condition that must be followed in order to achieve something; the principle of behaviour, one way or another way of thinking, one or another custom<sup>3</sup>.

In the field of law, rules are a form of normative legal act that establishes procedural rules that determine the procedure for carrying out any kind of activity (for example, Fire Safety Rules, Traffic Rules). Summarising the foregoing, it can be said that the rules are, in one case, a requirement for certain participants to fulfil certain conditions of an action, and in the other, procedural requirements that determine the procedure for carrying out any kind of activity<sup>4</sup>. The general philosophical and legal literature contains references to methodological rules, which are called differently by each scientist, but their functional orientation, undoubtedly, is the same. An analysis of the scientific heritage in the field of studying methodological rules should help in the future in identifying their characteristic features and their correlation with other methodological categories<sup>5</sup>.

## Literature review

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<sup>2</sup> E.M. Akhmetshin, A.V. Pavlyuk, V.V. Ling, M.V. Mikhailova, R.A. Shichiyakh, A.V. Kozachek, “The use of private start-ups in higher education”, in *Journal of Entrepreneurship Education*, 2019, vol. 22, no. 1, 1528-2651-22-S1-345.

<sup>3</sup> T. Gizbert-Studnicki, K. Pleszka, J. Woleński, “Legal theory and philosophy in Poland”, in E. Pattaro, C. Roversi (eds.), *A Treatise of Legal Philosophy and General Jurisprudence*, Springer Netherlands, Dordrecht, 2016, p. 547-586. Linar R. Yusupov, Dmitry N. Demyanov, „Technological process modeling for castings according to specified parameters of output production quality based on production-frame model of knowledge representation,” in *Astra Salvensis*, V (2017), no. 12, p. 410.

<sup>4</sup> C.G. Weeramantry, “Islamic influences on European legal philosophy and law”, in *Islamic Jurisprudence: an International Perspective*, Palgrave Macmillan UK, London, 1988, p. 94-112.

<sup>5</sup> O. Stovpets, “Chinese legal-philosophic syncretism and its influence to value orientations of the Chinese society”, in *Skhid*, 2019, vol. 1, no. 159, p. 55-60. doi: [http://dx.doi.org/10.21847/1728-9343.2019.1\(159\).157856](http://dx.doi.org/10.21847/1728-9343.2019.1(159).157856).

The study should begin with a study of the ideological postulates of K. Popper. A scientist considers methodological rules as conventions – they are a kind of rules of the game of empirical science (like a game of chess), which differ from the rules of pure logic that governs the transformation of linguistic formulas<sup>6,7</sup>. Justify methodological conventions, prove their value can only be a method for identifying and resolving contradictions. Rules are the basis of being. They accompany everyone throughout life. It's hard to imagine what would happen to society if all the rules disappeared in an instant. Obviously, there would be chaos that would jeopardise the lives of each individual. The same goes for science<sup>8</sup>. It develops following certain rules. Indeed, just as it is impossible to win a particular game without knowing its rules, it is impossible to make a scientific discovery without observing them. The better a scientist has knowledge of the rules, the more masterly he will be able to use them in practice and, as a result, achieve tangible results<sup>9</sup>.

K. Popper gives two examples of methodological rules. First, he notes that a scientific game, in principle, has no end. Anyone who ever decides that scientific statements do not need to be verified and can be regarded as fully verified is out of the game. Secondly, if a hypothesis has been put forward, tested and its stability has been proved, it cannot be eliminated without sufficient justification. A sufficient basis, for example, may be the replacement of this hypothesis with another, better verified or falsification of one of the consequences of the hypothesis under consideration. The above demonstrates the essence of methodological

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<sup>6</sup> E.T. Feteris, "A survey of approaches and studies of legal argumentation in the context of legal justification in different legal systems and countries", in *Fundamentals of Legal Argumentation: a Survey of Theories on the Justification of Judicial Decisions*, Springer Netherlands, Dordrecht, 2017, p. 255-338.

<sup>7</sup> O. Horban, M. Maletska, "Basic approaches to the definition of the concept of "videogame" as an element of modern scientific discourse", in *Skehid*, 2018, vol. 3, no. 155, p. 29-33. doi: [http://dx.doi.org/10.21847/1728-9343.2018.3\(155\).139675](http://dx.doi.org/10.21847/1728-9343.2018.3(155).139675)

<sup>8</sup> V.R. Bhatnagar, "Blending Greek philosophy and oriental law of action: towards a consciousness-propelled leadership framework", in G.P. Prastacos, F. Wang, K.E. Soderquist (eds.), *Leadership through the Classics: Learning Management and Leadership from Ancient East and West Philosophy*, Springer Berlin Heidelberg, Berlin, 2012, p. 161-180. Linar R. Yusupov, Dmitry N. Demyanov, „Technological process modeling for castings according to specified parameters of output production quality based on production-frame model of knowledge representation,” in *Astra Salvensis*, V (2017), no. 12, p. 410.

<sup>9</sup> W. Krawietz, "Legal communication in modern law and legal systems", in L.J. Wintgens (ed.), *The Law in Philosophical Perspectives: My Philosophy of Law*, Springer Netherlands, Dordrecht, 1999, p. 69-120. I. A. Kabasheva, A.G. Khairullina, I. A. Rudaleva „Analysis of scientific and technical activity resourcing in Russia,” in *Astra Salvensis*, V (2017), no. 12, p. 357.

rules. Indeed, methodological rules, like public ones, tend to change. Over time, in the process of development of cognitive activity, the old rules change to new, more relevant and correct. However, such a replacement should also be justified. Methodological rules are tested by the ability to promote correct and rational research. The main goal, which was set by K. Popper, is to explain the process of organising knowledge so that it contributes to the achievement of the progress of science. According to him, methodological rules that are normative in nature help this<sup>10</sup>.

Exploring the nature of methodological rules, the scientist is talking about their universality. According to the measure of universality, methodological rules are multilevel in nature. K. Popper distinguishes between theories of lower and higher levels of universality that give rise to metaphysical systems<sup>11</sup>. Distinguishing different levels of universality and applying this idea to methodological rules, he believes that some methodological rules are closely related to others, but first the main rule is formulated, which is something like a norm for determining the rest of the rules<sup>12</sup>. This rule, therefore, is a higher type rule. Thus, the scientists built a hierarchical structure of methodological rules. In this case, it is possible to draw an analogy with the construction of legal acts on legal force. So, in the Roman-German legal system, the law has the highest legal force. All other normative legal acts cannot contradict the law and, in terms of meaning, must comply with it<sup>13</sup>. The same applies to methodological rules. The main rule is the law, and all the others specify and supplement it. In the event of antagonisms, the main rule is to be applied<sup>14</sup>.

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<sup>10</sup> A. Zolkin, "Russian naturalistic and phenomenological theory of law and contemporary analytical philosophy of mind", in B. Brożek, J. Stanek, J. Stelmach (eds.), *Russian Legal Realism*, Springer International Publishing, Cham, 2018, p. 139-146.

<sup>11</sup> D. Patterson, M.S. Pardo, "Philosophy, neuroscience and law: the conceptual and empirical, rule-following, interpretation and knowledge", P.G.-S.T. Araszkievicz, Michal and Banaś, K. Pleszka (eds.), *Problems of Normativity, Rules and Rule-Following*, Springer International Publishing, Cham, 2015, p. 177-188.

<sup>12</sup> H. Hofmann, "The development of German-language legal philosophy and legal theory in the second half of the 20th century", in E. Pattaro, C. Rovarsi (eds.), *A Treatise of Legal Philosophy and General Jurisprudence*, Springer Netherlands, Dordrecht, 2016, p. 285-365.

<sup>13</sup> H. Zandvoort, "Research programs and criteria for cognitive success: some views from recent philosophy of science", in *Models of Scientific Development and the Case of Nuclear Magnetic Resonance*, Springer Netherlands, Dordrecht, 1986, p. 6-43. I. A. Kabasheva, A.G. Khairullina, I. A. Rudaleva „Analysis of scientific and technical activity resourcing in Russia,” in *Astra Salvensis*, V (2017), no. 12, p. 357.

<sup>14</sup> J. Rossi, "Some recent ideas in substantive moral philosophy and their relevance to law", in *Law and Philosophy*, 1993, vol. 12, no. 4, p. 407-416.

The universality of the methodological rules lies in the generalisation of the researcher's actions, they open up prospects for widespread adaptation to comparative practitioners, both in various areas of legal reality and in the construction of their research work, including the awareness of the target orientation and defining characteristics of comparative legal research. In the process of cognition of legal reality, a comparatist uses the universality regulations. Among them are the following: goal-setting – the formulation of the task of comparative legal research based on the ratio of the known and the unknown; planning – determining the sequence of actions of the comparatist; foresight – determining the result of comparative legal research; correction – making the necessary additions and/or exclusion of certain details. In the scientific literature there is no consensus on such a property of methodological rules as universality. Despite the value and ability to be the key to the success of comparative legal studies, it is impossible to talk about the universality and inviolability of methodological rules<sup>15</sup>. Such traits are too strong to reflect a rational reconstruction of the development of scientific knowledge. Of course, in connection with the constant changes that occur in legal reality, the methodology of its research should also change.

### **Materials and methods**

The work mainly uses the reliability method. It points out that certain rules can be as reliable not even for application, but for the study as a whole. Methodological rules are derived from truths and are reliable, but universal. The problem of universality of methodological rules can be related to the complexity of translating methodological ideas to the level of simple understandable rules of research activity.

The action of proposed by Popper conventions is methodologically advantageous. However, this position has a weak side, because if all the laws were converted into principles, then nothing would remain of science. Despite the existence of guidelines formed on the basis of laws, the status of the latter would remain unchanged. It should also be noted that reflections on the role of agreements (methodological rules) in scientific knowledge and on the nature of science itself are constantly accompanied by objections to those methodologists for whom science

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<sup>15</sup> P. Casanovas, "Agreement and relational justice: a perspective from philosophy and sociology of law", in S. Ossowski (ed.), *Agreement Technologies*, Springer Netherlands, Dordrecht, 2013, p. 17-41.

consists only of conditional judgments, and scientific facts and especially laws are treated as artificial creations of a scientist.

### **Results and discussion**

Studies of conventions are reflected in the further development of science. The Convention can be considered as the result of a certain agreement (agreement), as a cognitive operation, as a condition and means of cognitive activity. Based on all these aspects of the convention, it is possible to identify its communicative nature, since it is an intersubjective entity<sup>16</sup>. Conventions are a certain interaction with another, the conclusion of an agreement for understanding and joint activities. The researcher assimilates conventions as principles of interaction with other researchers, with scientific teams. The intersubjectivity (general significance) of the conventions is that at each particular moment they have a fixed content that is understandable to the community. In this case, the methodological rules are certain constants. They are proven, tested and recognised by the scientific community. When recognising their existence, scientists will not have to reinvent the wheel every time. They will be able to move on, given the existing achievements in this area.

Scientific speech consists of terms that are conditional and, to some extent, artificial. In scientific terminology, there may be abstract idealised objects, objects, and phenomena. They are also subject to conventions. This understanding of the relationship between conventions and terms makes it possible to refer to the interpretation of the convention as a cognitive operation, implying the introduction of norms, rules, value judgments based on the agreement of subjects of knowledge. The concept of “positive heuristics” is often introduced into scientific circulation. These are methodological rules that contribute to the positive development of research programs. These rules indicate which paths to follow in further research. Positive heuristics include a number of assumptions on how to change or develop research program options, how to modernise or clarify the protective belt, what models need to be developed to expand the scope of the program. Along with positive heuristics, negative heuristics coexist, which is a set of methodological rules that limit the number of research methods, thereby excluding those that are incorrect. It suggests finding additional hypotheses of an auxiliary nature that form a protective belt round the hard core of the research

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<sup>16</sup> C.F. Cranor, “A philosophy of risk assessment and the law: a case study of the role of philosophy in public policy”, in *Philosophical Studies*, 1997, vol. 85, no. 2, p. 135-162.

program; they must adapt, modify, or even collide completely when confronted with counter-theories.

Scientists whose scientific activity is based on the same paradigms rely on the same rules and standards of scientific practice. These general guidelines are called prescriptive rules, or methodological guidelines. Providing a visible coordination of the efforts of scientists, they are prerequisites for normal science, that is, for the genesis and continuity in the tradition of a particular direction of research. Thus, the importance of methodological guidelines should be assessed fairly restrained. The importance of their use is recognised, not excluding ignoring in certain cases<sup>17</sup>. The rules are divided into two levels – low and high, while in this category itself they put a wide sense. The range of rules in this case is quite wide: from specific regulations on the use of a specific arsenal to general philosophical rules. High content rules are considered binding and obvious. At a lower or more specific level, instructions are provided regarding preferred types of tools and the ways in which adopted tools can be legitimately used. The rules of the highest level are metaphysical (philosophical) prescriptions, without which a person cannot be a scientist. It is these latter that should lead the scientist to a thorough study, taking into account many empirical details. These three types of rules are called conceptual, instrumental and methodological, respectively. Thus, an attempt is made to systematise all the methodological rules in science and, according to their functional orientation, to build a specific algorithm for their application. Rules have also been classified<sup>18</sup>. Depending on the degree of imperative, the rules are divided into mandatory and recommendatory. According to the scope, they are conceptual, instrumental and methodological.

The quasi-metaphysical prescriptions influenced science to a large extent, but another prescription system is at a still higher level, without which a person cannot be a scientist. For example, a scientist should strive to understand the world, expand the boundaries of the sphere of knowledge and increase the accuracy with which it should be considered. The following features of these requirements are distinguished: they (even in their totality) cannot cover all that is common in various types of normal science, and there is no need for the latter to be completely determined by

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<sup>17</sup> S.G. Sreejith, “Vedanta and the philosophy of international law: from human sociality to a human reality”, in *Indian Journal of International Law*, 2015, vol. 55, no. 1, p. 3-38.

<sup>18</sup> M. Del Mar, “Concerted practices and the presence of obligations: joint action in competition law and social philosophy”, in *Law and Philosophy*, 2011, vol. 30, no. 1, p. 105-140.

certain rules. Methodological rules, therefore, are an algorithm for the action of a scientist in a typical research situation. They are by no means an end in themselves, but are called upon to assist the researcher in solving the problem of cognition<sup>19</sup>. Rules should be compared with scientific paradigms. By analysing these categories, it is determined that paradigms are priority in relation to the rules that are based on them. In addition, paradigms can influence the process of cognition without the application of rules. At the same time, they believe that finding the rules is a difficult task and brings less satisfaction than the discovery of a paradigm, but they should not be neglected in the process of scientific activity, replacing them with intuition, imagination. The difficulty in revealing the rules is explained by the fact that scientists, as a rule, do not memorise concepts, laws and theories and do not consider this an end in themselves. They always learn them in a certain context. The presence of a methodological basis is evidenced by the ability to succeed in research. However, this ability can be understood without resorting to the alleged rules of the game. An attempt was made to distinguish categories such as maxims and methodological rules. Maxims is understood as the postulates that define the overall research strategy. At the same time, methodological rules are understood as statements specifying values<sup>20</sup>.

There are the characteristics of the search for ideal theoretical research, which is also the value of theoretical knowledge. First of all, it is about the accuracy of the theory. This means that the consequences of the theory must be consistent with experimentation and observation. The next value is consistency. It lies in the fact that all components of theoretical knowledge should be consistent with each other and not discord. Speaking about the scope of the theory, its consequences should extend far beyond the facts and those theories for the explanation of which it was originally oriented. An equally important characteristic is the fruitfulness of the theory. This means that it should open up new phenomena and relationships that have not been previously investigated. After analysing all these characteristics, it can be concluded that strict regulatory rules by the scientific community are not always respected. Thus, the values of scientific research function not as rules or criteria that determine choice,

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<sup>19</sup> K.R. Nurgali, J.K. Kishkenbaeva, “Nomadism as a way of life in the Kazakh literature and culture by the example of the modern Kazakh novels”, in *Life Science Journal*, 2013, vol. 10, no. 12, p. 738-741.

<sup>20</sup> E. Oeser, “Philosophy and jurisprudence”, in *Evolution and Constitution: the Evolutionary Selfconstruction of Law*, Springer Netherlands, Dordrecht, 2003b, p. 1-27.



but as some common strategies that influence choice<sup>21</sup>. In this one of the most important characteristics of science is seen, since a combination of some common value orientations with specific norms and rules that can change in its historical development is constantly happening in it.

Methodological rules make it possible to determine the degree of theory's validity, help to solve the problem of the status of specific theories and avoid dissonance. Scientific rules and evaluation criteria make it impossible to unequivocally choose one of the theories. In order to understand scientific progress, it is proposed to apply the theory of research traditions. The formulated characteristics are common to various theories and are as follows. First, each research tradition has in its arsenal a certain number of specific theories that make up and explain its essence<sup>22</sup>. Secondly, each tradition is characterised by some metaphysical and methodological features, their combination gives the tradition individual characteristics that distinguish it from others. Thirdly, each tradition of research goes through a series of various detailed formulations that arise over a considerable period of time (in contrast to theories that often change each other). The research tradition of search is defined as a set of general provisions regarding the essence of the processes presented in this field of research, as well as the methods recommended for use in researching problems and creating theories.

The productivity of the research tradition is directly proportional to the adequacy of its correspondence to empirical and conceptual problems. In this regard, it should be emphasised that the concept of research tradition is much more plastic than the concept of a paradigm and research program. The historical development of research traditions shows that not only auxiliary theories are changing, but also, over time, the central ones, the governing ones. At any given time, some elements of the tradition are more important and justified than others. A research program (or paradigm) is always associated with a set of certain indisputable elements. However, the error lies in the fact that it is not always possible to understand that the elements of this class change over time as they shift. Methodological rules are designed to solve the problem of consensus on dissonance in scientific knowledge<sup>23</sup>.

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<sup>21</sup> C. Faralli, "Legal philosophy in Italy in the 20th century", in E. Pattaro, C. Rovelli (eds.), *A Treatise of Legal Philosophy and General Jurisprudence*, Springer Netherlands, Dordrecht, 2016, p. 369-409.

<sup>22</sup> J. Woleński, "Present status of legal philosophy", in J. Woleński (ed.), *Kazimierz Opalek Selected Papers in Legal Philosophy*, Springer Netherlands, Dordrecht, 1999, p. 137-152.

<sup>23</sup> S. Rose-Ackerman, "Law and economics: paradigm, politics, or philosophy", in N. Mercurio (ed.), *Law and Economics*, Springer Netherlands, Dordrecht, 1989, p. 233-258.

Consensus (consent) in science is achieved through the synthesis of positive theories in different concepts. By studying the nature of scientific debate, it can be concluded that they have a hierarchical structure. In this regard, it is proposed to apply a hierarchical model of justification – the theory of instrumental rationality. Within the framework of the hierarchical model of justification, there are the following levels of consensus: debates on the actual (factual differences and factual consensus), with which the scientist rises to the level of methodological rules that guide researchers. These rules are called mechanical algorithms that make it possible to create factual statements. It can also be the requirements or orders of the theory (independent verification, ad hoc properties), these are the so-called principles of empirical support for the theory (or the theory supports empirical data), the so-called support scales. However, researchers can apply conflicting methodological rules, while having common basic goals. The situation can be resolved by adopting effective competing rules. This is an axiomatic level of consensus.

The situation is also possible in which competing theories are equally supported by existing rules, or scientists have not come to the conclusion which rules are most appropriate in this situation – the version of the hierarchical model does not always allow consensus, however, the advantage of this model is that through its application, it is possible to analyse the epistemological situation that has developed and point out those factors that could lead to the solution of factual differences in consensus. Thus, the hierarchical model allows to overcome the problem of disagreement by identifying factors that contribute to consensus in science. The choice of hypotheses and theories may be compounded in situations where researchers cannot choose uniform methodological rules and procedures. In this regard, the question arises: is it possible to resolve methodological differences when the situation of normative incommensurability leads to a situation in which consensus is impossible? In accordance with the hierarchical model, the solution to this problem is proportional to the ability to solve methodological contradictions, and the latter creates an additional opportunity for justification: scientists can understand specific rules differently, but be unanimous in interpreting higher cognitive values and goals, which allows reaching agreement in situations of disagreement regarding the application of rules<sup>24</sup>.

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<sup>24</sup> E. Oeser, “Legal philosophy as a developmental theory of law”, in *Evolution and Constitution: the Evolutionary Selfconstruction of Law*, Springer Netherlands, Dordrecht, 2003a, p. 85-118.

Stating that in different sciences there is a high level of agreement regarding basic theoretical principles and methods, it should be noted that a change in the basic explanatory ideas and rules of scientific research leads to pluralism of opinions, inconsistency, which, however, is again changing by consensus. And this circumstance associated with the wording and reformulation of consensus is strange if to consider that, unlike religion, science is not based on the dogmatic body of doctrines. The methodological rules of scientific research can be considered as conditional statements of the type: if your main goal is X, then you should make Y. Such a statement as a connection between the methods of achieving the goal and its results is true or reasonable provided that Y really helps to achieve goal X, that is if Y is more likely than fulfilling its alternatives to goal X. Based on this, it can be concluded that the methodologist, when searching for methodological rules, should rely not on intuition or on the choice of the scientific elite, but on a historical analysis of the ratio of methods and results. Cognitive goals, in principle, do not define methodological rules in the same way as methodological rules do not indicate the choice of a factual theory or hypothesis. As a result, various theoretical hypotheses and factual statements can be built from the same identification (value) bases. Thus, in modern realities, a researcher is required to have high-quality methodological knowledge, which implies the ability to apply methodological rules in various fields of science.

There is no comprehensive and generally accepted list of methodological regulations in science. This is due to the fact that they do not allow any strict formal characteristics. The formulation of methodological regulations is vague in the sense in which one should speak of the vague nature of philosophical statements. Among the features inherent in methodological regulations, the following are distinguished: they can be easily checked; they have the power of foresight; they possess fundamental simplicity; they have a systemic nature. Some scientists set themselves the scientific task – to identify the thematic core of the picture of the world. At the centre of each picture of the world is a combination of thematic categories that form its most important cognitive structure in the epistemological sense. These thematic categories have the character of unconsciously adopted, unverifiable quasi-axiomatic basic principles that have been established in the practice of thinking as its guiding and supporting means. Thematic decisions are made by the researcher

independently, based on his knowledge and values, and, to a lesser extent than paradigms, are determined by social influence<sup>25</sup>.

Like any activity, scientific research is governed by certain rules, patterns, principles that express the ideals and norms accepted in science at a certain stage of its historical development. Their system expresses the value orientations and goals of scientific activity, as well as general ideas about how to achieve these goals. Among the ideals and norms of science, two interconnected blocks can be found: actually cognitive settings that regulate the process of reproducing an object in various forms of scientific knowledge; social standards that record the role of science and its value for public life at a certain stage of historical development, govern the communication process of researchers, the relations of scientific communities with each other and with society as a whole. In historical and scientific research, a certain typology of the so-called settings (conventions) can be found. In particular, the fundamental types of attitudes of scientific knowledge were derived: the type of ontological attitudes, the type of attitudes about the source of knowledge, the type of assessment attitudes, the type of instrumental attitudes, the type of aesthetic attitudes, the type of normative (theoretical and methodological) attitudes, the type of axiomatic attitudes. The types of attitudes of scientific knowledge are characterised by high dynamics of changes. Their successful functioning is ensured only if they are used in combination.

The above studies indicate the existence in the scientific community of certain rules governing the activities of researchers and indicating the correct ways of knowing. However, there are scholars who generally deny the existence of methodological rules. Often the relativity of any methodological requirements and their historical variability is ascertained. It is believed that there are no stable rules for scientific research and the only rule may be approval that all is permitted. However, if one adheres to this point of view, then it will be completely impossible to distinguish between science and quasi-scientific forms of knowledge. In scientific creativity, it is possible to find the influence of ideas, worldviews that go beyond science. These images and ideas are borrowed from other spheres of culture, and quite often they are an impulse to the formation of new ideas, concepts and methods in science. The requirements of any method, including rules and standards, are valid only under precisely formulated

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<sup>25</sup> R.A. Abramov, M.S. Sokolov, "Theoretical and methodological aspects of the formation of anti-corruption mechanisms in the system of higher education of the Russian Federation", in *International Journal of Environmental and Science Education*, 2016, vol. 11, no. 15, p. 7431-7440.

conditions. At the same time, the only correct scientific method does not exist. Moreover, science is always replenished by unscientific methods and results. The most important results, scientific ideas and discoveries became possible due to the violation of the most rational methodological rules and prohibitions. And this means that the rules (standards) were indeed violated and that they had to be violated in order to ensure the progress of science. Thus, based on this concept, there are no rational criteria of truth. Methodological rules do not have to accurately describe what the researchers actually do.

In scientific works, methodological rules are considered as a means of optimising scientific knowledge. Despite the fact that each of the scientists calls the methodological rules in their own way (conventions, transactions, methodological guidelines, mechanical algorithms, methodological regulations, ideals of the natural order) the fact that their observance contributes to the further progress of science is indisputable. Each of the scientists is trying to formulate their own concept of the action of methodological rules, to determine their place in the methodology of science and development prospects. However, the tasks set are rather complicated, since methodological rules are an irrational concept, that is, the process of their creation and improvement is endless.

Actually, through this, in the scientific literature, there is no definition of the concept of methodological rules, their characteristic features are not clearly defined and there is no classification of species. After studying the nature of methodological rules, the following features are distinguished:

- methodological rules are requirements developed by science, conditions, requirements, compliance with which in the research process is the basis and criterion of its quality;

- methodological rules are based (or, at least, should be based) on the wide experience of research practice: they are strictly verified and are tested on this experience;

- a methodological rule is a necessary component of the methodology of any science, including comparative law. Even the comparison operation itself, which is the core of the comparative legal methodology, cannot do without certain methodological rules. Here are some of them: to perform the comparison operation, first of all, it is necessary to determine the purpose of the comparison; it must be borne in mind that it is possible to compare only in general, equivalent phenomena, objects, concepts that reflect equivalent objects connected with each other by objective reality; it is necessary to isolate the base (or

bases) for comparison; it is necessary to compare first on the most essential grounds, then on the essential, then on the less significant, before making a quantitative comparison, one should always conduct a qualitative one;

- methodological rules are closely interconnected with other components of the methodology, since they include requirements that determine the conditions for the application of other methodological tools. As a methodological unit, methodological rules can be both independent methodological tools and components of other methodological tools, approaches, methods;

- methodological rules have a multi-level, hierarchical nature (in accordance with the distribution of methodological rules on the rules of a lower (or more specific), higher and higher level of generality).

In the framework of comparative legal scientific literature, there is also no common understanding of methodological rules, and their system is not clearly developed. The definition of methodological legal comparative legal studies sometimes has a fragmented, not systematic character. The implementation of comparative studies for a beginner sometimes creates the illusion that it is rather difficult and even impossible to compare the same type of legal norms in different legal systems. In many cases, this is due to the existing dogmatism of researchers, violation of the rules of the system of comparative legal analysis, incompleteness of accounting for the features of the formation, development and functioning of national legal systems. These difficulties can be overcome by the systematic application of methodological rules. There are typical errors of comparative law:

- the wrong choice of objects of comparative legal analysis and the criteria for their comparison;

- neglect of objective conditions and factors that give rise to the same legal institutions in different countries;

- direct non-critical borrowing of scientific legal concepts, which objectively cannot be reflected in the legislation;

- incorrect (including not corresponding to the semantic context) use of legal constructions, concepts and terms of a foreign legal language;

- direct copying of legal institutions and norms without assessing the possibilities of their implantation in the fabric of the legal system and legislation.

In order to overcome these errors, it is proposed to use six methodological rules:

- the correct choice of objects of comparative analysis and the correct setting of goals justified by their nature and the needs of the subject of comparative law;
- the implementation of legal comparisons at different levels, using the methods of systematic and historical, logical analysis, analogy to identify both internal relations and dependencies in the framework of legal systems that are compared, and their development in the context of a particular state and society;
- the correct definition of signs of legal phenomena, norms, institutions that are compared, and the establishment of social and state tasks, the solution of which determined their appearance and development;
- identification of the degree of similarity and difference of legal concepts and terms used in the compared legal systems, acts;
- development and application of criteria for assessing the similarities, differences and predictability of legal phenomena, institutions and norms;
- determination of the results of comparative legal analysis and the possibilities of their use in law-making and the development of legislation and its industries, in law enforcement practice.

Analysing the above rules, it can be concluded that the attention should be paid, firstly, to their abstractness, which reduces the possibility of using these rules by practicing lawyers and politicians, and, secondly, to their weak attachment to the process (procedure) comparative legal analysis. Indeed, the methodological rules are generalised, but they create a theoretical framework of knowledge. In carrying out comparative legal research, comparatists can take them as a basis and adapt them to a specific situation. Often methodological rules of comparative legal research, which should be followed by a comparatist, are formulated. Firstly, when studying foreign law, restrictions must be avoided. This, in particular, concerns the problem of assessing the sources of law. At the same time, a comparatist should treat them as a lawyer of the country to whose law he appealed. In particular, it is necessary to study to the same extent as a foreign lawyer, statutory and customary law, judicial practice and legal science, and if it concerns private law – model contracts, general conditions of sale and trade customs. Secondly, a comparatist should take care of the constant deepening and maintenance of his knowledge of other countries, their rights<sup>26</sup>, culture, and, first of all, the forefathers of the main

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<sup>26</sup> A.V. Kostruba, “The notion and attributes of right – terminating legal facts”, in *Journal of Advanced Research in Law and Economics*, 2019, vol. 10, no. 1, p. 254-262.

legal systems of our time. Thirdly, a comparatist needs to have a certain ingenuity to systematise the norms of foreign law, functionally similar, identical to his own legal order. Fourth, different legal systems can only be compared to the extent that they solve a particular problem, being content with adequate regulation of law. Fifth, the creation of an appropriate system of their own concepts and terms for use as an institute of research, without which its implementation is almost impossible. The meaning of these concepts is to show that it is about phenomena that separate legal obligations from purely social obligations, that is, peculiar indicators of significance. Sixth, a critical assessment of the comparison results. Thus, scientists formulated methodological rules covering all stages of the implementation of comparative legal research.

A comparatist should beware of hasty, like simple and understandable translations of legislative texts, as this has repeatedly led to errors. He wants to know a foreign language, besides remembering that literary and legal languages are not the same thing. Nor should one succumb to apparent ease and obviousness. For example, if in foreign legislation it is possible to quickly find a norm on the issue under study, then we should not dwell on this, because the norm must be taken not in isolation, but in the context of other norms and categories of law. It cannot be assumed that such problems in such conditions are always solved in this way. Each time, one should take into account the national flavour, especially the specific situation, since otherwise superficial generalisations arise. Indeed, legal reality is dynamic, and each comparative legal study, based on generalised methodological rules, can, at the same time, take into account the specifics of a particular research situation. Not always outwardly identical terms and definitions have a similar meaning in various legal systems; the same or externally similar institutions in different legal systems can perform different functions. Terminological and functional differences are the defining research issues. Most methodological errors can be associated with them, because identical terms and outwardly similar institutions can be perceived as of the same type. To eliminate these errors, a number of methodological rules should be applied that will reveal the true essence of the compared phenomena, objects and processes.

Methodological rules are those developed by science, strictly verified, tested on a wide experience of research practice, regulations, requirements, conditions, recommendations that establish the procedure for carrying out research activities by determining: conditions for the application of one or another methodological tool, which is included in



the methodological arsenal of science (instrumental rules); the order and sequence of actions for their application (procedural rules), compliance with which in the research process is the key to its quality.

The developments in the scientific literature on the issue of methodological rules are a springboard for further developments in this area. They create a certain framework in the process of cognition. Based on conceptual generalisations in the field of studying methodological rules, universal formulas for studying legal reality can be derived. Methodological rules regulate scientific activity and set the researcher on the right path to knowing the truth. When conducting comparative legal research, a scientist, as a rule, is faced with the problem of methodological confusion. The reason for this may be a misunderstanding of the methodological procedures or their incorrect application in the circumstances of the place and time. The implementation of comparative legal research contains objective and subjective aspects. In this case it is important that the subject of cognition must take into account the objective laws of the development and functioning of legal reality. The level of correctness of the actions of the subject can be determined by comparing them with methodological rules. Moreover, the assessment of methodological actions will depend on the conformity or non-compliance with them. Truth is revealed directly by comparing the content of thought with the object between which identity is established, and correctness is revealed by comparing the action (theoretical or practical) with the rule, correctness is connected with the object through the truth of the knowledge system, on the basis of which the rule is formulated.

Methodological rules are designed to ensure the orderliness of comparative legal research. Failure to apply methodological rules robs the research process of logic. Methodological rules are formulated on the basis of knowledge about the properties and relationships of legal reality, about the laws of functioning and development of legal entities. They require a comparatist to act in the process of cognition of legal reality in accordance with specific instructions. The methodological rules will contribute to the most effective solution of comparative legal problems if they reflect the characteristics of comparative activity. Methodological rules are able to correctly direct the actions of a comparatist only if they are formulated on the basis of fundamental knowledge about the objects being compared and taking into account the actual state of things. Therefore, taking into account the above opinions of scientists, there is the author's definition of the methodological rules of comparative legal research – these are methodological regulations and prescriptions that establish the procedure

for carrying out research activities, which determine the conditions for the application of methodological tools, the order and sequence of actions for its application, compliance with which in the research process is the basis and criterion of its quality. The various forms of organisation of legal comparative scientific research are associated with the rules for their implementation, as well as the rules of self-regulation of the researcher, that is, the range of regulation extends from the ideals and norms of science to the self-regulation of a particular comparative researcher. Comparative legal research may vary in many ways.

The following varieties of methodological rules can be distinguished. Depending on the orientation, methodological rules can be identified that determine: the conditions for the application of one or another methodological tool that relates to the methodological arsenal of science; the procedure and sequence of actions for their application (procedural rules). Depending on the nature of the guidelines, one can distinguish: absolutely specific methodological rules and methodological rules-recommendations. The first ones provide for absolute, unambiguous, binding requirements for the implementation of research activities, and are considered the most useful for researchers, as they provide accurate and unambiguous guidance on actions, the latter suggest following certain tips in certain situations, taking into account specific circumstances, recommend the best one among the number of behaviours. It should be noted that the rules of the second type in the framework of comparative legal science can be distinguished more.

Depending on the form of expression, it is possible to distinguish between positive and negative methodological rules. Positive methodological rules are expressed in a positive form, that is, indicate what should be done, and negative ones – in a negative form, that is, indicate what should not be done, what should be avoided (as noted above, one part of the methodological rules of the research program, indicating which research paths should be avoided, are called negative heuristics, and the other part of the methodological rules indicating the paths along which it is necessary to choose and follow them is positive heuristics). Based on the correlation of methodological rules with other methodological tools, there are: methodological rules as an integral part of other methodological tools, approaches, methods, for example, the rules for the implementation of functional comparison; methodological rules as independent methodological tools.

Depending on what stage of the study they are, there are methodological rules that relate to: the choice of the object and subject of

research; material collection and primary processing; processing of empirical data, their comparison and description; explanation and understanding of mechanisms of similarities and differences; interpretation of the results of the study; the preparation of information and analytical materials and recommendations on the implementation of research results. According to the levels of scientific knowledge, it is possible to distinguish between methodological rules of empirical and theoretical level. At the empirical level, they are aimed at collecting information related to legal systems and its initial processing, establishing similarities and differences. At the theoretical level, they are associated with obtaining deep generalisations, creating theoretical concepts, typologies, classifications, models and samples, elucidating general trends in the functioning and development of legal systems. Depending on the types of comparison that are used, there are the methodological rules of the micro level and macro level, normative and functional comparison, diachronic and synchronous comparison, morphological and subinstitutional comparison.

Methodological rules occupy a prominent place in the methodology of comparative law and is a reliable tool for understanding legal reality. However, one should not forget about the dynamism of legal reality, which encourages the review, improvement of methodological rules and their adaptation to a specific comparative legal study. Thus, the achievement of qualitative results of comparative legal studies directly depends on the perfection of the methodological rules of these studies. In this regard, they must be constructively updated and enriched with new content. To affirm the correctness of the research process is possible only knowing the rules to which it must obey. At the same time, methodological rules should not overshadow common sense and contradict the logic of research. The role of the methodological rules of comparative legal research consists, first of all, in the fact that they are a generalised formula, a synthesised standard that will allow the researcher to navigate the complex whirlpool of legal reality. The task of the methodological rules should be to determine the correct and appropriate trajectory of knowledge. At the same time, it should be borne in mind that methodological rules are not the absolutes of scientific research. They should exclude the possibility that people will always win the game, which is played in accordance with these rules: nature must be able to at least sometimes defeat humanity.

When using methodological rules, a scientist must not only take into account their usefulness, but also adequately evaluate them, remember

that they can be modified, have exceptions. Despite the long experience of using any methodological rule, its usefulness and effectiveness, it is always worth paying attention to its conventionality and make appropriate adjustments to research activities. The implementation of each new comparative legal study should be aimed not only at the application of already known methodological rules, but also at their practical verification. A comparatist has the right to independently choose a certain set of methodological rules that will be applied in a specific study.

It is worth remembering that methodological rules cannot be an algorithm for discovering something new in the field under study. They provide the comparative orientation of the study, help to find the shortest way to know the compared legal objects, and avoid common mistakes. A comparatist should not get too carried away with the rules, since this can lead to paralysis of creative initiative, but it is also unreasonable to abandon the methodological rules, turning comparative legal research into complete freedom of action. Methodological rules are attributed to comparatists in certain situations to carry out certain actions that orient them to observe certain requirements, but how this will be done depends entirely on the researcher only.