

Domestic Philosophy of Law as an Ideological Prerequisite of a Philosophical Type of Understanding of Law

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Abstract : *This scientific article is based on the analysis of some, from our point of view, basic provisions of the textbook for masters by the famous Russian scientist, professor Martysiin Orestes Vladimirovich "Philosophy of the law". The purpose of the article is to prove scientific character the Philosophy of the Law against the background of the contrary statements of philosophers and lawyers-theorists about its not scientific nature; to consider Philosophy of the Law as an ideological prerequisite of philosophical type of understanding of the right and to analyses the last. For the achievement of this purpose the following tasks were set: 1) to analyses various arguments of the scientists who are not recognizing the scientific nature of Philosophy of the Law, considering it as a method of the human relation to the world; 2) to consider views of the scientists giving to the Philosophies of the Law the status of science; 3) to show features of philosophical type to which it is not given in science of due attention; 4) to critically evaluate positions of those scientists who unreasonably identify moral (natural and legal) and philosophical types of understanding of the law; 5) to show distinction of moral (natural and legal) and philosophical types of understanding of the law. The result of the article's research are the provisions: 1) the legal philosophy is to be considered as the independent science having the subject, methodology, performing the specific functions, corresponding to other both legal, and social sciences; 2) the Philosophy of the Law is an ideological prerequisite of philosophical type of understanding of the law which defines the sphere or border of a measure of freedom of the person. In conclusion it is to emphasize that joint efforts of lawyers, philosophers, representatives of other social sciences concerning this subject area and a subject matter are necessary for overcoming the existing disagreements on the matters of principle concerning Philosophy of the Law, and for the decision, arising in the course of its development and improvement of problems.*

Keywords : *philosophy of law; status of philosophy of law; general theory of law; type of understanding of law; philosophical form of law understanding.*

I. Introduction

The analysis of the textbook for masters "Philosophy of law" of the famous Russian theorist of the law Orest Vladimirovich Martyshin was the cause of the writing of this scientific article. The article deals with some interconnected aspects having conceptual and basic value and namely: first, on the status of Philosophy of law in modern Russia; secondly, on philosophical type of the understanding of the law.

II. Methods

There were used the following methods in the scientific article:

2.1. General Philosophical (Dialektiko-Materialistic) which is used in All Social Sciences;

2.1.1. General scientific (the analysis and synthesis, logical and historical, comparisons, abstraction and others) which are used not only by the theory of the state and the rights, but also other social sciences;

2.1.2. Special methods (specific social researches, statistical and others) which are developed by special sciences and are widely used for knowledge of the state and legal phenomena;

2.1.3. Private and scientific (legalistic, interpretation of the law and others) which are developed by the theory of the state and the law.

2. 2. About the Unscientific Nature of the Philosophy of the Law

At once we notice that the author of the textbook makes it clear that "... the philosophy of the right is the science dividing the general with others legal and the humanities methodology, but it has its specifics" (Martyshin, 2017). This situation has paramount importance against the background of the statements of philosophers and lawyers-theorists about the unscientific nature of philosophy (it is allocated by us – Authors), as such. So, Valery Petrovich Malakhov writes, that "the first that he should be made is to reveal fundamental difference of philosophy from science ... The purpose of the legal theory is the truth. The purpose of philosophy is the position, a certain world outlook comprehension of a subject. The question of the validity of philosophical statements is not basic for determination of their goodness ... The legal theory if it is scientific, belongs to area of extra individual, extra subjective, collective spiritual life of people. The philosophy belongs to the area of the individual spiritual life; it always appears as a product of the personal creativity. There is its independent value in it, as, for example, both the value of the art creativity, and the value of the ecstatic communication with spirit" (Malakhov, 2008).

As the response to these provisions Orest Vladimirovich Martyshin in other his work emphasizes very reasonably that in any creativity, art, philosophical, scientific, there are two parties: process and result. Process is individual or collective in case of co-authorship. For the creator it is happiness if this process is a self-expression form, but not grown hateful craft, a means of livelihood. But the result is intended for society, turns into some kind of goods which are subject to assessment and discussion. It can be expensive to the creator as self-expression. Society evaluates it, proceeding from the tastes and criteria. The question of the validity at the same time cannot but arise. To abolish it that means to put the end to philosophy which always developed in disputes on the validity of these or those judgments (Martyshin, 2009).

Professor Vyacheslav Nikolaevich Zhukov also finds it necessary to make clear at first that "the philosophy is not the science", and "there is always a subjective idea of the world". The scientist believes that "recognizing pluralism in philosophical and legal concepts, it is always necessary to check them for durability, critically evaluating their heuristic opportunities" (Zhukov,2009). There are authors convinced that the legal philosophy role in studying of the law is unique and therefore the philosophical and legal reflection that cannot be replaced with scientific research, but, in turn, cannot change the last.

This uniqueness is a result of a peculiar status of the Philosophy in general, its place in the system of the culture. At determination of the subject specifics of the science about the law – the general legal theory – an object (Law) which dictates the logic of the research. Philosophical approach differs in the fact that there is the justification of the law from the point of view of instances, external in relation to the law in it and the informative initiative goes from the philosophy. What instances are it depends on the concrete philosophy. Therefore reflections

about a subject, problem and methodological originality of the philosophy of the law are impossible without refining of understanding of philosophy which is not permanent, and is subject to space-time adjustment.

Scientists believe that the main task at the determination of a subject of the philosophy of the law consists in the parting philosophical and scientific discourses in the directions stated above: in a subject, methodology and research purposes of the law. The basic value has also understanding that the philosophy of the law is always derivative of the all-philosophical theory (Chukin, Salnikov, Balakhonsky, 2002).

As the position of the authors recognizing the unscientific nature of the philosophy of the law is very widespread, it is necessary to make clearer the position of the differentiation of scientific and philosophical discourses. It is the essence of their positions.

Though the law is an object of cognitive interest of many discursive practices, only rational knowledge is taken seriously and is capable to develop the reasoned knowledge of the law. There are two instances introducing this rational knowledge they are science and philosophy. The relations between them developed very dramatically, passing from a condition of complete unity to frank hostility that left the mark both on scientific activity, and on the status and the maintenance of philosophy. Rational comprehension of the law is performed by the philosophy of law and sciences about the law which quintessence it is considered to be the general legal theory. Insufficient differentiation of their competences is the reason of many theoretical misunderstanding and practical miscalculations and therefore is considered as the informative problem requiring the solution.

According to Eduard Veniaminovich Kuznetsov, the concept "legal theory" was offered by Adolf Merkel in the seventies of the XIX century and since then began to be used as an alternative to the concept "Philosophy of the law" (Kuznetsov, 1989). Till this time the legal philosophy was the only rational discourse of the law, since the 17th century being in the form of "natural law". Starting with Platon, legal problems have had a firm place in the system of philosophical knowledge, and it is difficult to find the classic philosopher who directly or indirectly would not be engaged in the justification of the law and the state. It is explained both by the status of the law, and that circumstance that, except philosophy, these had more nobody to be engaged. Within philosophy questions of mathematics, physics, astronomy, biology, the law and other fields of knowledge were developed. Most of thinkers of antiquity, the Middle Ages and Modern times were Encyclopaedists.

The fact that the philosophy a long time was "encyclopedic" creativity, is explained by backwardness of the scientific thinking, lack of the public and gnoseological bases for allocation of science in independent social and cognitive force. For philosophy in true meaning of this concept it is unusual to be interested in substantial problems of physics, biology or law. The science has to be engaged in it. But as the science then did not exist yet, the philosophy was forced to be engaged in production and systematization of positive knowledge. In this sense the philosophy of the law to the middle of the 19th century was the only way of obtaining rational knowledge of the law.

In the process of the complication of reality and specialization of the subject and cognitive activity from philosophy there were independent various theoretical disciplines. So there is "a science about the law" most often called by "legal theory". Short time was existed such transitional form of the rational doctrine of the law as "the encyclopedia of law". Authors notice that there are various interpretations of a subject and tasks of the encyclopedia of the law. Sometimes it is considered as the introduction to law science performing generally system

function. But most often it is understand the reduced statement of legal sciences as the encyclopedia of the law. Iosif Vikentyevich Mikhaylovsky accepted the encyclopedia of the law as a summary of all special legal disciplines and did not consider it independent science because it has no subject (Mikhaylovsky, 1913). The philosopher Evgeny Nikolaevich Trubetskoy, on the contrary, claimed that only the encyclopedia of the law can answer a question of essence of the law, having developed determination of a concept of the law (Trubetskoy, 1917). But Trubetskoy's position is an exception, and concerning the encyclopedia of the law, according to the scientists, the characteristic is applicable for any encyclopedia: it does not develop knowledge of the right, and only collects and systematizes the available knowledge gained by other sciences. Probably, for this reason the encyclopedia of the law could not compete with the legal theory and the philosophy of law.

The execution of the legal theory as the science about the law does not mean at all that it appeared instead of the philosophy of the law. The philosophical discourse of the law cannot be disappeared after accession of a scientific discourse, and opposite, experiences "rebirth". Only after emergence of the legal theory it is possible to speak about the philosophy of the law as a purposeful philosophical reflection of the bases of the law. But basic delimitation of the theory and legal philosophy is to be the precedent condition of it. The legal theory is the science about the law, and, therefore, the differentiation of philosophy and the legal theory should be looked for in the initial distinction of the philosophical and scientific relation to the world.

Now it is hard-to-find the philosophers, authors believe, who considers philosophy science in literal sense of this word because in many parameters it fails to meet the requirements of scientific character. The philosophy is a special method of comprehension of reality which differs from the myth, religion, art and science. The philosophy and science are pulled together that in knowledge of the world they rely on rational cognitive mechanisms. But on it the similarity, perhaps, also comes to an end. The philosophy in a different way, than science, looks at the world. It is not science as it was already noted above because it pursues the aims other than the science purposes, and uses methods which the science cannot always apply. The world is opened for the philosophy differently, than the science.

The first that is evident by the comparing science and philosophy, is that for the philosophy informative function is not main, meanwhile as the main objective of science is the production of objective, reliable and useful knowledge of the world. For science the world is set of the real facts having objective structure which exists out of individuals and does not depend on theories, language or practice in any way. The science purpose is to describe this structure as it is possible more precisely, to disclose its regularities for prediction and control of events in the world. The philosophy does not make positive knowledge of the world in that type as it is done by physics, biology or ethnography. Its paramount task is a critical reflection of the dominating time trends, their research in the long term the general and necessary principles and values of life. If the science tries to inform people with the knowledge about the actually world, and the philosophy tries to find out what world is to be that the person felt in it free. Nikolay Aleksandrovich Berdyaev wrote about it: "It is necessary to see the main sign distinguishing philosophical knowledge from scientific that the philosophy learns the life from the person and through the person, in the person sees a sense solution, the science learns the life kind of out of the person, with detachment from the person. Therefore for philosophy the life is spirit. For science life is the nature" (Berdyaev, 1993). The philosophy is granted to the person as means of self-knowledge and helps it to learn sense of the life in the context of life of the world, to understand the patrimonial and individual purpose. For this reason the whole

world is considered by philosophy through a prism of the person that is set of the conditions participating in process of formation of human essence.

In relation to the law it means that sciences about the law, first of all are the legal theory and develop logically consistent concept of the law, investigate sources and mechanisms of forming of the law, find out regularities of functioning and an application condition in life. For philosophy the law is otherness of the world order, a form of general harmony, and the problem of the philosophy of law consists in showing the value and need of the law for human life and societies, to show its ontologic rootedness. The philosopher should not substitute work of the theorist of the law, investigating contents and mechanisms of action of the law, and focuses on clarification of how by means of the law the ideas and values are realized without which formation and development of human freedom is impossible.

Other distinction of science and philosophy, according to scientists, concerns a role of values a priori. The fact that the source of scientific theories is not of particular importance is characteristic of science, and only that is taken into account, they can or cannot be checked through an experiment and observation. The positivism calls it the principle of differentiation of a context of opening and a context of justification. There is a basic side between the world of the facts, on the one hand, and theories, languages, the practitioners describing this world of the facts, on the other hand. The science is only the impartial description of the real-life world. In other words it is purely epistemological activity which is ideally not connected with race, nationality, language, a floor, ideology. There is a dichotomy of science and valuable judgments. From the facts it is impossible to take valuable judgments, and valuable judgments will never be the scientific facts. The philosophy initially is the valuable burdened cognitive activity. For it the life of the world matters has only over the long term lives of the person.

If the legal theory seeks to develop ethically a neutral and universal concept of the law, then the philosophy of law finds in the law reliable institute of realization of fundamental human values i.e. freedoms, justice, dobra, etc. Vladimir Ivanovich Vernadsky defined an originality of scientific knowledge so : "Scientific knowledge in two manifestations sharply and definitely differs from any other knowledge: philosophical, religious, from "popular wisdom", "common sense" ... It differs in the fact that certain, considerable and everything the growing its part is life, indisputable, obligatory for all manifestations, for each person. It is axiomatic for human society because it is logically obligatory for human consciousness. And, secondly, scientific knowledge differs in special structure of a considerable part of the concepts both method of their receiving, and their cogitative analysis. At the heart of scientific knowledge costs getting all essence of science – an axiom – consciousness of reality for us the shown world. Only in these limits the science exists and can be developed" (Vernadsky, 1988)

From a position of authors, the philosophy differs from the science and the fact is that it is always contextually caused. Nobody speaks about the specifics of the Chinese physics or French mathematics because it is ridiculous. Meanwhile the philosophy always has the features resulting from features of the culture and its quintessence.

The philosophy and science are differed also in a form of the organization. The highest form of the organization of scientific knowledge is the theory it is a complex of the views and the ideas directed to interpretation and an explanation of any phenomenon. The theory gives a complete idea of regularities and essential views of a certain area of reality it is an object of this science. The scientific theory as the complete system of knowledge assumes such components:

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- The initial empirical basis including a set of the facts recorded in this knowledge domain;
 - The initial theoretical basis including a set of primary assumptions, postulates, axioms, general laws in total describing an idealized object;
 - To the logician of the theory: a set of rules of a logical conclusion and the proof;
 - The set of the statements output in the theory with their proofs making the main array of the theory.

In relation to the philosophy also it is told about "the theory of philosophy", however, contents, the status and a method of creation of the last essentially differs from contents, the status and a method of creation of the scientific theory. The philosophical theory represents result of creativity of the specific author – the philosopher and is the unique. there aren't two identical philosophical theories of the person or the right are absent. According to contents the philosophical theory is logically consistent system explaining the world in general. If the scientific theory describes any limited fragment of life, then the philosophical theory applies for the systematic description of life in general, in all its interrelations. On a construction method the philosophical theory most often is deductive and has no obvious empirical base which is starting point of creation of the scientific theory. For example, the legal theory designs a concept of the law through generalization of the legal phenomena which are found in various cultures. The legal philosophy deduces a concept of the law from more general and fundamental concept i.e. freedoms, order, harmony, justice, comforts.

The science is completely rational activity and cannot allow in the constructions irrational components to which subjective installations and values, mental and mystical elements belong. Many philosophical theories are based on the prerequisites having a religious and mystical or psychological source and can be qualified as irrational.

The philosophy appeared much earlier than the science and a long time remained the only form of rational knowledge. The science as the systematic organized activity directed to production of knowledge, objective and suitable in practice, appears only in the 17th century. In this sense the philosophy of law has more ancient origin, relies on authority of such thinkers as Confucius, Platon, Thomas Aquinas, Georg Wilhelm Friedrich Hegel, and acts as methodological base of the general legal theory.

The philosophy differs from the science not only in a subject, a method, but also in functions. If the main task of science is informative, then philosophy carries out first of all the critical and legitimating tasks.

It means that it tries to perform the diagnosis of the law in a wide social and cultural context, to reveal its problem places, to expose shortcomings of justification and the reason of inefficient functioning. It means the philosophy, justifying or criticizing the law, promotes its improvement.

The legal theory can be developed high, but it is only "mechanics" of law. It is incapable to signal about crisis of the law and the more so, it cannot diagnose this crisis. The law can be assimilated to the mechanism which works until energy is failed to it. Any, even the most skillful, the engineer will not be able to inhale life in the unit deprived of a source of the movement. In the law the world outlook idea spiritualizing it or the transcendental principle acts as such driving energy.

Crisis of the law is, therefore, a crisis of such idea, exhaustion of its potential. Only the philosophical and legal discourse can diagnose this exhaustion. In it its difference from the legal theory. But the basic value in realization of this task has the model of the philosophy of

law. The external connection of philosophy and the law practiced sometimes which is shown in imposing of this or that philosophical paradigm on law material cannot be called the philosophy of law.

The philosophy, as it is known, is reflexive knowledge. Investigating the constituting elements of life and thinking, it performs important world outlook and educational functions, focuses people on complete perception of reality, forms in them capability of the critical relation to the existing institutes and the relations, develops ability to connect real and due, temporary and eternal, concrete and general. Adoption of science as outlook considerably limits vision of the world, excludes the components which are not giving in to the symbolical description from a reality picture. The world which is considered ideal by the scientist quite does without presence of the person at it. It is much poorer and more monotonous, than the world of the philosopher.

Thus, it is summarized, the science can be defined as the sphere of human activity which problem is production and a schematization of the objective knowledge of the world having direct practical value. The philosophy represents a method of the human relation to the world as which purpose opening or development of the limit bases of life and thinking through which prism everything is considered and evaluated existing acts (Chukin, Salnikov, Balakhonsky, 2002). The thesis about unscientific nature of the philosophy of law receives various refractions. In this regard the analysis of works of Isabela Pavlovna Malinova and Valery Petrovich Malakhov by Orestes Vladimirovich Martyshin are of interest. When Isabela Pavlovna Malinova notes that "the urgent need for a research not only the rational, but also irrational bases of legal culture" [Malinova, 1995) for a long time, there is nothing to object to it. But the irrationality moves not only as one of properties of systems of law, especially at early stages of history, but also as a research method, and very effective and perspective. "The irrationality in sense of justice is a direct gripe of any legal situation in its integrity. Feature of this gripe define specifics of sense of justice in its nature", - Valery Petrovich Malakhov writes. But whether opposite judgment will be more reasonable that the irrationality leads to unilaterality, partiality, subjectivity? Some important issues as, for example, "a legal being", are obviously brought out of a coverage of rational reasons. "There are no rational bases for recognition of the person a legal being. As well as there are no rational bases for denial of this fundamental fact of life of the person" [Malakhov, 2008]. Whether such relation to irrational is the cornerstone of claims for "the extreme depth" of understanding of a legal perspective with which works of Valery Petrovich Malakhov and some other philosophizing authors?

The anthem to irrational is followed by denial of objective nature of the law: "Approach to the law as to a fragment of social reality does not make it impossible to comprehensively and rather full to reveal and express its nature" (Malakhov, 2008). From here one of the conceptual ideas of a course of legal philosophy consists that "the legal reality has to appear as a result of difficult processes of an objectification of deep content of the sense of justice concentrated in the idea of the law" (Malakhov, 2008). The individual sense of justice turns into the main issue of the philosophy of law, into a source, starting point of the law: "We have to address interior because only it is a really source of law" (

Having lifted to limit abstractions, Valery Petrovich Malakhov discloses one more methodological principle: "the nature and essence of the law logically can be opened completely only on the basis of the principle "the law for the law". The law is developed on the basis of legal realities, i.e. what is not a real or logical consequence of some conditions, factors, the facts, etc., and contains sense in itself"

Replacement of rationalism, the appeal to religious and idealistic designs became a fashion in Post-Soviet Russia which covered not only legal philosophy, but also law entirely including the theory of the state and the law.

Orestes Vladimirovich Martyshina (2009) makes the conclusion and means that "comparison of methodology of the philosophy of law and appropriate sections of the theory of the state and the law, as well as developed in their framework of concepts does not find qualitative distinctions" though it is difficult to agree with it because the theory of the state and the law, sociology of the law and the philosophy of law, though I have the general object of a research it is the law, nevertheless study it own acceptances and means. As Rozalina Vasilyevna Shagiyeva believes, this conclusion has to lead to cardinal transformations of that all-legal science which in the conditions of a vacuum philosophical, sociological, politicalological, anthropological, etc. is forced be both philosophical, and sociological.

In the conditions of restoration in the rights of philosophy of law, sociology of the law, political science of the law and other sciences the theory of the state and the law has to become, at last, "legal", having lost in the contents a fair share usual for it research problems (Shagiyeva, 1999).

2.3. The Philosophy of Law as the Science

In our opinion, the point of view of those scientists who adhere to opposite views is more reasoned. So, Orestes Vladimirovich Martyshin argues in a certain way.

The fact that philosophy is not the science as physics, chemistry, biology and even history in that part which is connected with establishment of the facts, is rather obviously. The philosophical ideas cannot be proved with reliability of the mathematical theorem. This property makes related it with all humanities where explanations and estimates practically are never recognized as unconditional and not subject to criticism. But it does not mean that philosophers are free from a burden of proof, and it is senseless to their concept to discuss as they by the nature are similar to ecstatic communication with spirit. It would seem, it was necessary to be guided not by subjectivity and unsubstantiality, and by a possibility of a reinforcement of these or those provisions the given observations and dialectic arguments (Vladimirovich).

By the way, Orestes Vladimirovich Martyshin recognizing the scientific nature of the philosophy of law and denying her irrationality has a number of supporters. In particular, Henriette Ivanovna Ikonnikova and Victor Petrovich Lyashenko (2007) emphasize that "the legal philosophy is a scientific field of knowledge. The address to its characteristic as sciences reveals that it acts as philosophical and as legal knowledge". The famous Soviet and Russian scientist, the theorist of the law Sergey Sergeevich (1997) Alekseev wrote in due time that the philosophy of law is a science about the law in life of people, in human life Vladik Sumbatovich Nersesyants said that "... the philosophy of law as special philosophical science in the system of philosophical sciences is dictated first of all by the internal need of the philosophy to make sure that its generality ... really a universal that it extends also to such sphere as the law". The above-mentioned prof. Vyacheslav Nikolaevich Zhukov in other work already recognizes the philosophy of law as the science. Representatives of the general philosophy pay attention that "if to analyses a ratio of science and philosophy (including the rights - Authors), meaning structural parameters, in particular the fact that the science includes in the structure a subject, an object, learning tools and the predicted results, then to be fair it should be noted, such structure is not alien also to philosophy" (Borisovna, 2010). Yulia

Vladimirovna Sorokina believes that "Philosophy of law is the science which sets the task of knowledge of essence of the law, researches of its internal characteristics". Rauf Gulmurod Salimovich Khalimov Gabidulin considers that "feature ... of the philosophy of law is the combination of provisions of jurisprudence and philosophical science, first of all in the sphere of gnoseology and methodology". Mikhail Nikolaevich Marchenko, treating the philosophy of law as difficult, cross-disciplinary phenomenon, emphasizes that it has various communications with a number of legal and nonlegal sciences: general theory of the state and right, history of political and legal exercises, history of state and law of foreign countries. history of state and law of Russia, general philosophy, general sociology, right sociology, social psychology, political science, etc. Valery Nikolaevich Rastorguyev emphasizes that "the philosophy of law is twice right if to consider that any other tool, except philosophy, capable to raise a question at least of a delimitation of the law and I am wrong, simply does not exist". The group of authors very reasonably, in our opinion, claims that "philosophical judgment of the law is the task of special scientific and educational discipline - the philosophy of law having an own object of research and the categorical device". We believe that, recognizing the scientific nature of the philosophy of law (Vladimir), it is necessary to pay attention not only to its subject, but also to methods among which are especially allocated such as reflection and discourse (Vladimir, 2017) and also for functions (Vladimir, 2014) and for a ratio with such universal, methodological science as the general legal theory (Vladimir, 2015).

In respect of criticism of provisions of Orestes Vladimir Martyshin it is necessary to say that the author's reasoning on organic communication of three disciplines - theories of the state and the law, sociology of the law and philosophy of law raise great doubts, "... it is present at the solution of the majority of problems of the law as three approaches to the same subject". So, the author believes that "the form of government is one of examples of dogmatic law. But, if the researcher is not limited to the list of formal signs, and gives their assessment, proceeding from ideas of due, its approach becomes philosophical. If he argues on conditionality of the form of government special conditions, historical traditions, it will be philosophical sociological approach. And studying of the relation of the population to the forms of government is represented pure sociology of the law". And further the author asks: whether the legal philosophy is so independent? Whether it is possible to allocate in its subject the areas inherent only to it? Answering the questions posed Orestes Vladimirovich Martyshin argues so: "... the theory of the state and the right has such area. These are legal dogmatic, in sociology of the law it is concrete social researches. And here in philosophy of law of a subject of its exclusive maintaining is not present" because "... there is no philosophical legal problem which would not be considered in a varying degree in textbooks according to the theory of the state and the law"(a concept and essence of the state and the law, a ratio of the law, morals and other forms of standard regulation, civilization approach to the law, the law and other aspects of life of society - economy, policy, culture, etc. It is interesting to notice that these reasoning are conformable to the point of view of Vladimir Mikhaylovich Syrykh who believes the following: "In philosophical ... justification need as all problems connected with understanding and an explanation of sense, a legal essence and the special legal issues rather remote from fundamental problems of jurisprudence. Therefore the criterion of applicability of philosophical categories and laws cannot serve as an argument for isolation of this or that part of problems of the general legal theory in special legal discipline like legal philosophy in knowledge of the law, its regularities". However, later, Orestes Vladimirovich Martyshin after

all claims that "it (philosophies of law - Authors) a subject not positive law, but its nature and the general principles".

First, the scientist does not consider that the circumstance that any science applying for the nature of independent knowledge domain has to have the specific subject of knowledge including the philosophy of law. Otherwise applicable already to other work on legal philosophy as very fair it is necessary to recognize remarks according to which "consecutive realization by authors of a rate of the main idea of representatives of legal philosophy about need of isolation of the problems connected with studying of the strong-willed nature of the right is more whole than the right, knowledge of freedom as right essences, - concrete and very an evidence of the fact that all stated it is aware of a problem are purely theory-legal", "... the published course of lectures on the philosophy of law is rather close to a rate of the theory of the state and the law..." (Viktorovna)

Secondly, despite the statement of the author that "... both the reflection, and a discourse cannot be referred to the features of philosophical and legal methodology in any way that in any area of a research, knowledge it is impossible to do without reflection and a discourse ..." nevertheless further Orestes Vladimirovich Martyshin claims that "the legal philosophy is not connected by the operating system of law and assumes the critical attitude towards her. ... From criticism of real the appeal to an ideal of the law, one of the most important purposes of philosophical legal reflections, the purchasing nature of methodological approach to reality" (Martyshin, 2017).

2.4. About Philosophical Type of Understanding of the Law

We believe that the philosophy of law having long history of development (since the end of XVIII-of the beginning of XIX), with need caused philosophical type of understanding of the law which also for a long time took the unique place in jurisprudence.

It should be noted especially that Orestes Vladimirovich Martyshin just belongs to the few group of scientists-lawyers which distinguishes from classical types of understanding of the law philosophical ("philosophical approach to the law") (Martyshin, 2017)], and as it is represented, earlier the author analyzed it more in more detail.

That circumstance that, without looking, first, at methodological value of philosophy in relation to the general legal theory (Vlasenko, 2015) pays attention; secondly, on the fact that in philosophy of law as rather new science the question of a concept of the law is considered as one of the main (Nersesyants, 2005) the philosophical type of understanding of law is very seldom mentioned and analyzed.

So, put the methodology of knowledge of the law allowing to allocate the positivistic and also natural and legal and philosophical types of law understanding focused on not positivistic methodology of a research in the basis of classification of types of law understanding by Valentina Viktorovna Lapayeva. At the same time it is specified that if the positivistic type of law understanding (which received names legist sky, or formal and dogmatic) is based on methodology of classical positivism as special current of social philosophical thought which essence consists in recognition by the only source of knowledge only of specific, empirical data established by experience and observation in refusal of consideration of metaphysical questions (including from the analysis of essence and the reasons of the phenomena and processes) then natural and legal and philosophical – proceed from idea of availability of the certain ideal intrinsic criterion allowing to evaluate the legal nature of positive law. Valentina Viktorovna Lapayeva specifies at once, referring to scientific

heritage of Vladik Sumbatovich Nersesyants that in the methodological plane the difference between these two ideologically shaves consists in various interpretation of a key problem of philosophy i.e. problems of distinction and a ratio of essence and the phenomenon. The philosophical type of law understanding (which should not be confused with philosophical approach to the law) is focused on knowledge of essence of the law as special social phenomenon and assessment of positive law in terms of this intrinsic criterion.

Within a yusnaturalizm "distinction and a ratio of the natural law and positive law is not a ratio (with search of ways and conditions of their coincidence and criticism of cases of a discrepancy) legal essence (in the form of the natural law), and opposition (often - antagonism) the natural law (as only original law– and original legal essence and at the same time the substitution legal phenomenon) and positive law (as not original law– not original both as essence and as the phenomenon)" (Nersesyants, 2000). Here criterion for evaluation of the legal nature of positive law, summarizes Valentina Viktorovna Lapayeva, the natural rights of the person which at the same time act not as the abstract theoretical principle and as the law in force is real are. From here and legal dualism inherent in natural and legal concepts, i.e. idea of two at the same time operating systems of natural and positive law (Lapayeva, 2008).

Further, the author specifying and contradicting several itself, emphasizes that the philosophical type of law understanding is based on the basis of distinction of essence of the law, i.e. objective property of the right expressing its specifics and the legal phenomenon, i.e. external manifestation of this essence in social reality. According to this approach, the essence of the law is criterion of both legal quality of the law, and the legal nature of the natural law (it is allocated by us - Authors). The law, not corresponding legal essence of the law, has unlawful, arbitrary character. According to the author, the same way the regulation of the natural law which is not answering to intrinsic criterion goes beyond the law, extending the regulatory impact on the sphere of the relations moral, religious and other, unlawful by the nature, about (Lapayeva, 2008). According to V.V. Lapayeva, it is possible to carry Immanuel Kant, Georg Wilhelm Friedrich Hegel, Karl Marx, Vladimir Sergeevich Solovyov, Boris Nikolaevich Chicherin and Vladik Sumbatovich Nersesyants which this type developed within its libertarian concept of law understanding (Lapayeva, 2008) to number of supporters of philosophical law understanding.

Indeed, the beginnings of a philosophical understanding of rights as freedoms go back to deep antiquity, but this approach was clearly embodied in classical German philosophy — by Immanuel Kant and Georg Wilhelm Friedrich Hegel. A model of philosophical understanding is the famous Kantian definition: "Right is a set of conditions under which the arbitrariness of one (person) is compatible with the arbitrariness of another in terms of the universal law of freedom." The word "arbitrariness" is used as a synonym for freedom, the manifestation of free will. This becomes clear from another version of Kant's definition, as if giving instructions to every citizen: "act externally so that the free expression of your arbitrariness can be coordinated with everyone's freedom according to a general law" (Kant, 1965).

Probably, the theoretical base of philosophical type of law understanding of Valentina Viktorovna Lapayeva were philosophical and legal positions of Dzhangir Abbasovich Kerimov who wrote: "In discrepancy of essence and the phenomenon in the law there is their unity. The one who did not understand discrepancy of development of legal reality in perplexity stops before the blank wall separating the legal phenomena from their essence. He or identifies essence with the phenomenon, distorting thereby both, or instead of disclosure of internal communication of the legal phenomena with essence claims that in the phenomena the legal

reality looks differently, than in its essence. Thereby visibility is accepted to original essence of the law and its manifestations" (Kerimov, 2001). Critically evaluating a scientific position of Valentina Viktorovna Lapayeva and other scientists (Sorokina, 2011). Yulia Vladimirovna.] Rather philosophical types of law understanding, it should be noted that its applicability becomes complicated the solution of the most difficult philosophical and legal problem of essence of the law. In the context of further reasoning about philosophical understanding of the law, we will allocate one of many options of essence of the law. According to it, the law is a method of the organization of a social order in the political community which is characterized by extreme heterogeneity of individual and group interests. The law differs in universality of the claims and use of force of the state for compulsion of subjects of the social attitudes towards due behavior from other standard systems. Taking as a basis this understanding of the law as initial, scientists raise the following question: "Under what conditions the essence of the person (freedom) will be approved with the law which essence, according to them, is concluded in compulsory restriction of freedom?" Answering the question posed, authors specify that combination of freedom and legal coercion in one conceptual and methodological field is possible in two cases: first, when the "average" term incorporating extremes of these concepts and, secondly, will be found if they are among themselves in the relation of logical hierarchy, that is when one can be brought out of another. As the free will is accepted by scientists as the anthropological constant characterizing essence of the person, the law with need has to be brought out of free will (Chukin, Salnikov, Balakhonsky, 2002).

Within our research it is impossible to ignore the point of view of Oleg Vladimirovich Martyshin allocating four main types of law understanding: legal positivism (normativizm), sociological positivism, theories of the natural law, philosophical understanding of the law. The author explains, saying that philosophical understanding of the law reduces the last to a liberty principle: the law defines conditions under which the person connected or allocated with the public status can freely act. In other words, defines the sphere or border a measure of freedom of the person because the last is understood not as arbitrariness, and as a reasonable public conduct. At the same time with the scientist it was emphasized that "from them the first two (legal and sociological positivism) give to the law quite actual content (regulations or the relations), accept the law it what it is in fact, and the last have abstract, academic character, proceed from this what the law is to be".

Distinguishing the theory of the natural law and philosophical understanding of the law, the author emphasizes that if the first is an ideal, then the second is the abstraction, a mathematical formula of precept of law equally applicable both to natural, and to positive law. It consists that law it is freedom of each person, but at indispensable respect of freedom (so, and legitimate interests) other persons. And it assumes restriction of freedom on the basis of reciprocity (Martyschin, 2003). The law, according to Immanuel Kant, "is set of conditions under which arbitrary behavior of one (person) is compatible to arbitrary behavior of another in terms of the general law of freedom" (Kant, 1965). Immanuel. *Metaphysics*]. From Georg Wilhelm Friedrich Hegel's position, the law means "implementation of freedom of free will or, even well, cash life of freedom" (Hegel, 1934). In due time Pavel Ivanovich Novgorodians wrote: "The law is impossible without elements of freedom and equality, at least and in their most modest manifestation. The concept of the law contains restriction of freedom, and the amount of this restriction can change very significantly" (Novgorodians, 1991).

The analyzed approach is developed also by other representatives of a domestic philosophical and legal thought. So, Henriette Ivanovna Ikonnikova and Victor Petrovich Lyashenko quite fairly approve the following: "Freedom is impossible if it is not guaranteed by the state. The measure of freedom is shown only in the law in force defining situation and a role of the personality in society. In this sense the measure of freedom of the person as to this specific definiteness is presented by the legal law. Lawyers quite fairly consider that the positive law with its normativity serves that as a measure of freedom of a social subject which is shown in its legal space and time" (Ikonnikova, Lyashenko, 2007). In other philosophical legal work it is noted that "it is important for the law that the person distinctly introduced that measure of freedom which does not bear in itself a charge of destruction, the evil and injustice". It is emphasized that "... civil society and the state use legal means as the insurance means designating borders and limits beyond which external freedom of social subjects should not extend. External freedom assumes search of organic means, methods and forms of restrictions" they can be "not only legal laws of prohibitive character ... but also the fact of coexistence of a great number of individuals with their public rights and freedoms (Philosophy of law, 2007).

2.4.1. Criticism of Identification of Moral (Natural and Legal) and Philosophical Types of Understanding of the Law

The analysis of legal literature according to the theory of the state and the law allows to draw, at least, two conclusions: first, insufficient attention is paid to philosophical understanding of the law (Chestnov, 2002); secondly, often this type of law understanding is treated incorrectly. So, Lyudmila Aleksandrovna Morozova, identifying moral and philosophical approaches to understanding of the law, believes that from positions of this theory the law is interpreted as the ideological phenomenon (the ideas, representations, the principles, ideals, and outlook), the reflecting concepts of justice, freedom of the person and formal equality of people. The author adopts that moral approach recognizes as the most important beginning of the law, legal matter its spiritual, ideological, moral began, i.e. ideas of people of the law what it has to be. As Lyudmila Aleksandrovna Morozova writes, "precepts of law of the state can reflect correctly or in a false manner these ideas. If rules of law correspond to the nature of the person, does not contradict its natural inalienable rights, then they make the law. In other words, along with the legislation (i.e. the supreme original law as the ideal beginning reflecting justice, freedom and equality in society" (Morozova, 2003; Morozova, 2007) exists the right affirmed in the law). Equally it concerns the point of view of Valery Vasilyevich Lazarev and Sergey Vasilyevich Lipen, claiming that "the philosophical direction in law is characterized by that:

- there is a certain ideal legal beginning which is designed to predetermine to what what should be right expressed in regulations; the most complete expression the philosophical direction in law is found in the doctrine of the natural law; this ideal legal beginning is "the natural rights of the person";
- a number of requirements to the legislation is formulated; reflection of the ideas of justice in it, human rights, other social values" (Lazarev, Lipen, 2010).

Ruman Haronovich Makuyev in a categorical form says that "... philosophical law is a general principle, criterion for evaluation of positive law regarding extent of maintenance in it the natural law" (Makuyev, 2010).

2.4.2. About Differentiation of Philosophical and Natural-Legal Approaches of Understanding of the Law

It is not difficult to understand that in this case it is about a problem of differentiation of philosophical and natural and legal approaches of understanding of the law. Without denying that philosophical understanding of the law is close to the theory of the natural law (both approaches have ideal character, proceed not from the law in force, and from this what the right has to be), nevertheless, it does not coincide and is not closed with it. As it is noted in literature, "unlike natural and legal school in philosophical understanding of the law there is no specification which in the natural law can be as detailed, as in positive. Philosophical understanding does not contain concrete regulations, but only the general rule, regulation of regulations or the law of laws"

In general, it is necessary to make common cause with the fact that philosophical understanding of the law must take the worthy place in rates of the theory of the state and the law. It is extremely important for education of healthy sense of justice, especially in the conditions of the deepest public crisis and moral decomposition which is endured today by Russia. At the same time meaning that "philosophical understanding has no law of real life, it not the independent phenomenon which is existing near the law or standing above laws, and the scientific abstraction opening an essence of legal regulation but only on the one hand, namely as for the ethical principle which is its cornerstone" (Martyschin, 2007).

III. Discussion

The analysis of educational and monographic legal literature allowed to reveal some debatable problems within the considered subject. First of all it concerns determination the status of legal philosophy, its scientific or, on the contrary, unscientific character. Secondly, problem of differentiation philosophical and moral types (natural and legal) understanding of the law.

IV. Conclusion

As a result of the research of this scientific article authors came to the following conclusions: 1) the legal philosophy should be considered as the independent science having the subject, methodology, performing the specific functions, corresponding to other both legal, and social sciences; 2) the legal philosophy acts as an ideological prerequisite of philosophical type of understanding of the law which defines the sphere or border a measure of freedom of the person.

V. Recommendation

The philosophy of law is a discipline with the strong position in Russian education and science. However the formation process still continues as disputes on structure, a subject, stylistics of statement of legal philosophy continue. In recent years there were many textbooks and education guidance on philosophy of law, but for the present it is impossible to tell that in our country the tradition of its understanding was created because each new work in a new way can turn our idea of structure, a material feed method, the status of the philosophy of law, etc. Very considerable disparate arising at the same time in the opinions concerning these and other questions does not promote forming about it adequate representation and, respectively,

to its further development and improvement at all. We believe that joint efforts of lawyers, philosophers, representatives of other social sciences concerning this industry of knowledge and a subject matter, are necessary for overcoming the existing disagreements on the matters of principle concerning the philosophy of law, and for the decision, arising in the course of its development and improvement of problems.

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