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ПРАВОВА АРГУМЕНТАЦІЯ: ДЕЯКІ ЗАГАЛЬНОТЕОРЕТИЧНІ АСПЕКТИ

Анотація. *Актуальність дослідження обумовлена тим, що правова аргументація, якою послуговуються зокрема судді під час ухвалення рішень, часто зазнає критики. Допомогти вирішити актуальне завдання з покращення правової аргументації може саме загальнотеоретичне осмислення правової аргументації, що й є метою даного дослідження. У статті обґрунтовано загальнотеоретичну модель правової аргументації, яку здійснюють у різних видах юридичної діяльності – правотворенні, правотлумаченні, правозастосовуванні, правореалізації. Для цього використано такі методи дослідження як загальнотеоретичний, моделювання, дедукції, аналізу й абстрагування. Запропоновано розмежовувати термінологічно правове аргументування як діяльність і правову аргументацію як результат цієї діяльності, а також результат діяльності з реконструювання правової аргументації іншого суб'єкта, та надано визначення кожного з цих понять. Встановлено, що загальнотеоретична модель правової аргументації охоплює склад (корпус) правової аргументації, інструменти правової аргументації, реконструювання й оцінювання правової аргументації. Виявлено, що до складу (корпусу) правової аргументації підставно відносити: аргументувальну ситуацію; суб'єктний склад; мету правої аргументації; об'єкт правового аргументування; зміст правового аргументування. Виокремлено субстантивний та процесовий аспекти інструментів правового аргументування. Практична цінність статті полягає у тому, що загальнотеоретична модель правової аргументації створює підстави для покращення аргументувальної практики у різних видах юридичної діяльності*

Ключові слова: *загальнотеоретична модель правової аргументації, склад (корпус) правової аргументації, аргументувальна ситуація, інструменти правового аргументування, реконструювання й оцінювання правової аргументації*

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LEGAL ARGUMENTATION: SOME GENERAL THEORETICAL ASPECTS

Abstract. *The relevance of the study is explained by the fact that the legal arguments used by judges in particular when making decisions are often criticised. The general theoretical understanding of legal argumentation, which is the purpose of this study, can help to solve the urgent problem of improving legal argumentation. The article substantiates the general theoretical model of legal argumentation, which is carried out in different types of legal activities – lawmaking, interpretation, law enforcement. For this purpose, such research methods as general theoretical, modelling, deduction, analysis and abstraction were used. It is proposed to distinguish between terminological legal argumentation as an activity and legal argumentation as a result of this activity, and the result of activities to reconstruct the legal argumentation of another entity, and provide a definition of each of these concepts. It is established that the general theoretical model of legal argumentation covers composition (corpus) of legal argumentation, tools of legal argumentation, reconstruction and evaluation of legal argumentation. It is identified that in the composition (corpus) of legal argumentation it is reasonable to include: argumentative situation; subjective composition; the purpose of the right argument; object of legal argumentation; the content of legal argumentation. The substantive and procedural aspects of the tools of legal argumentation are singled out. The practical value of the article is that the general theoretical model of legal argumentation creates grounds for improving argumentative practice in various types of legal activity*

Keywords: *general theoretical model of legal argumentation, composition (corpus) of legal argumentation, argumentative situation, tools of legal argumentation, reconstruction and evaluation of legal argumentation*

INTRODUCTION

The issue of the quality of legal argumentation is the cornerstone of practical jurisprudence, especially law enforcement. Building a convincing legal argument for different recipients is a difficult task and requires special skills of the argumentator. The legal argumentation contained in national court decisions is often criticised as weak or unconvincing. The general theoretical comprehension of legal argumentation can help to solve the urgent problem of improving legal argumentation. It can offer a comprehensive answer to the question of which legal argument is convincing, including tools for building, reconstructing and evaluating such arguments through the construction of a general theoretical model of legal argumentation. The implementation of these tasks will serve to improve the practice of legal argumentation not only in law enforcement, but also in law interpretation, lawmaking, law enforcement and legal science.

The relevance of the study of legal argumentation is confirmed by the fact that in textbooks on the theory of law in recent years there are sections on legal argumentation, which outlines the most general issues of legal argumentation [1, p. 264; 2, p. 440]. Some issues of scientific journals are devoted to the issue of legal argumentation [3, p. 175-184; 4, p. 193-202]. Some special issues of legal argumentation have become the subject of Ukrainian legal research, in particular in the works of M. Koziubra, P. Rabinovych, B. Kistyanyk, and logical research, in particular in the works of O. Shcherbyna, O. Yurkevych. We are talking about the types of legal argumentation [5, p. 4-8], general theoretical characteristics of legal argumentation [6, p. 22], some features of judicial argumentation [7], logical aspects of legal argumentation [8; 9]. However, many aspects of the complex phenomenon of legal argumentation are unexplored or insufficiently studied in Ukrainian legal science, including the general theoretical model of legal argumentation.

In foreign research, legal argumentation is the subject of analysis both in the theory of argumentation and in legal research, in particular in the works of such authors as D. Walton [10]; F. Van Eemeren [11]; L. Bermejo-Luque [12]; E. Feteris [13; 14]; K. Tindale [15]; R. Alexy [16]; M. Hinton [17]. Among other aspects, representatives of different schools of legal argumentation study the components of the study of legal

argumentation, normative and/or theoretical models of legal argumentation as part of its research programme at the theoretical level, features of reconstruction and evaluation of legal argumentation, means of legal argumentation in legal discourse as a kind of general practical discourse.

In English-language sources on legal argumentation, the phrase "normative model of argumentation" is often used, but it is not always explained. According to D. Walton, the normative model of argumentation is how one should analyse and evaluate legal argumentation from a logical standpoint. This model is closely related to reality. It is based on the rationale used in everyday argumentation. This model simply reflects the legal justification in reality [10, p. 161].

F. Van Eemeren noted that the theoretical model of argumentation serves as a conceptual basis for the study of legal argumentation, outlines and approximates the philosophical ideal of reasonableness, specifying it in terms of types of argumentative steps and the validity of the grounds for these steps. If such a model well fulfills its purpose – it performs heuristic, analytical and critical functions and concerns the production, analysis and evaluation of argumentative discourse [11, p. 521].

From the standpoint of L. Bermejo-Luque, the normative model depends on what we want to evaluate – the result of argumentation, procedures or processes of argumentation [12, p. 9]. The argumentation model should perform two main tasks: to provide an acceptable characteristic of the *soundness of* the argument (which means assessing both the relationship between the basics and the conclusion, and the assessment of the basics) and to propose a method for establishing the validity of the argument. The latter depend on the concept of argumentation and the standard of validity of argumentation to adopt [12, p. 14-15].

E. Feteris believes that the theoretical model of legal argumentation contains legal arguments and norms and rules of their acceptability [13, p. 21]. The analytical model should specify the elements necessary for the rational reconstruction of the legal decision – the stages of the argumentative process, explicit and implicit arguments, hidden foundations and structures of the argument. At the same time, the logical minimum often does not allow to do so, a pragmatic maximum is needed to consider the broader verbal and nonverbal context of the argument [13, p. 201]. Rational reconstruction provides grounds for evaluating arguments [13, p. 22].

In foreign intelligence, in particular the Dutch, the theoretical model of legal argumentation represents only the theoretical level of research of the latter. In addition, it deals mainly with legal argumentation in law enforcement, disregarding official interpretation, lawmaking, law enforcement and legal doctrine. At the same time, we believe that the development of such investigations has a heuristic potential for building a general theoretical model of legal argumentation.

With this in mind, the *purpose of this article* is to, based on a certain understanding of the original concepts that reflect the complex phenomenon of legal argumentation, and the work of representatives of the theory of argumentation and legal argumentation, to propose a general theoretical model of legal argumentation. its further application for the creation, reconstruction and evaluation of legal arguments in various types of legal activities.

1. MATERIALS AND METHODS

To achieve the goal of scientific research presented in this article, a number of general scientific and special methods were used: general theoretical method, modelling method, method of analysis and synthesis, deductive method, abstraction method, generalisation method, comparative method. The study is based on the worldview axiomatic idea that legal argumentation is carried out in legal discourse, and its result bears the imprint of such a discourse, because it is its result. The main research methods presented in this article are the general theoretical method and the modeling method. It is the method of modeling allowed to propose a general theoretical model of a complex phenomenon of legal argumentation, which combines dynamic (activity) and static components.

The general theoretical method allowed to apply general theoretical categories and constructions to comprehend the mentioned phenomenon of legal argumentation and to fill various components of the general theoretical model of legal argumentation. In particular, the concept of composition (corpus) of legal argumentation as a general theoretical category with its content was proposed. This method gave grounds to single out the tools of legal argumentation, including the reconstruction and evaluation of such arguments as separate components of the general theoretical model of legal argumentation and describe them in terms of general theory of law and legal practice.

The method of abstraction together with the general theoretical method allowed to single out the components of the corpus of legal argumentation, namely: the argumentative situation, the subjective composition of legal argumentation, the object, purpose and content of legal argumentation. These methods also revealed the features of the argumentative situation in different types of legal activity, to determine the

subjective composition of legal argumentation, isolating the argumentator, the addressee of such arguments and the audience, to establish the purpose of legal argumentation in different legal activities, its object and content. moreover, the general theoretical method allowed to identify the types of legal activities in which legal argumentation is carried out.

To clarify the meaning of the concept of legal argumentation, the categories of whole and part were used as methodological. It was suggested to mark the activity of legal argumentation with the term legal argumentation and consider it as a whole concept, and the result of this activity, and activities for the reconstruction of legal argumentation, should be marked with the term "legal argumentation" and considered as part of relevant activities. To clarify the scope of the concept of legal argumentation, a comparative method was used – to compare the meanings of terms that denote the concept of legal legal argumentation in its research in different languages. This led to the conclusion that legal argumentation is understood as a legal basis.

The application of the method of abstraction allowed to propose a definition of the concept of argumentative situation in which legal argumentation is carried out. Methods of analysis and synthesis were used to analyse the main positions on the theoretical (normative) model of legal argumentation presented in the literature, and then on this basis to synthesise their own vision of the general theoretical model of legal argumentation, considering the modeling method and general theoretical method. The method of generalisation was used to formulate definitions of the concepts of legal argumentation and legal argumentation. At the same time, the subject of generalisation were the definitions of relevant concepts, formulated in the main approaches to understanding and research of legal argumentation.

Given the peculiarity of the subject of research in this article we can state that it is based on the deduction method, which served as an approach, which, in turn, involves the presentation of research results in a deductive way. The research methods used follow from the subject of research and together with the subject of research determine the structuring of this article. First of all, the content and scope of the concept of legal argumentation are considered, and then the general theoretical model of legal argumentation is proposed and its main components are consistently characterised: composition (corpus) of legal argumentation, tools of legal argumentation, reconstruction and evaluation of legal argumentation.

2. RESULTS AND DISCUSSION

To build a general theoretical model of legal argumentation, it is necessary to clarify the meaning of the concept of legal argumentation. We propose, first of all, to distinguish between activities of legal argumentation and the result of such activities – legal argumentation. After all, the process of legal argumentation and its result are ontologically different, although mutually transitional.

Legal argumentation is a process concept that reflects the legally significant activity to substantiate the statement with the help of certain means – legal and non-legal arguments. It is communicative, it is carried out in various types of legal activities, often in the form of discourse. For example, a judicial debate can be considered a real discourse, and a court decision with the argumentation of a final decision that reflects the results of the discourse. After all, such a decision is addressed to the parties and society and is a response to the arguments of the parties expressed during the trial.

It should also be noted that in the Ukrainian and foreign literature on legal argumentation, the distinction between legal argumentation and argumentation is mostly not carried out, instead the term "legal argumentation" is used to denote both concepts. This leads to the designation of activities ("legal argumentation") and its result ("legal argumentation") in one phrase and does not contribute to the deepening of understanding of the process and its result and the establishment of their patterns. However, for the sake of accuracy, we note that such a distinction can be traced in the works of some representatives of the rhetorical approach to argumentation, in particular L. Bermejo-Luque and K. Tindale, at least at the terminological level. K. Tindale writes about the acts of argumentation [15], and L. Bermejo-Luque emphasizes the need to take into account the results of argumentation, procedures or processes of argumentation in such a model [12, p. 9].

General theoretical model of legal argumentation not identical to the theoretical model of legal argumentation in her research in the theory of argumentation. In the latter, the theoretical model is part of the program of argumentation research, which covers the philosophical level (concept of rationality), theoretical level (theoretical model) and practical level (reconstruction and evaluation of argumentation) [11, p. 10]. From the analysis of the understanding of the relevant concept presented in the introduction to this article, it follows that the theoretical model of legal argumentation is understood differently, and its "content" depends on the concept of a particular researcher. The only common denominator is that such a model provides a vision of what legal arguments are [in legal argumentation] and how to evaluate them by reconstructing legal

arguments [in legal argumentation]. The most detailed and general theoretical can be considered the above position of E. Fetheris, according to which the theoretical model includes analytical model and model of evaluation of legal argumentation, although it concerns the legal argumentation in law enforcement. At the same time, as noted, the general theoretical model of legal argumentation should contain such components that would allow to create, reconstruct and evaluate any legal argumentation in different types of legal activity. Such a model should cover both the specific features of the participants, the process and means of legal argumentation, and propose criteria for assessing such arguments. Only in the presence of such "content" can it be a question of the general theoretical model of legal argumentation.

So, under ***the general theoretical model of legal argumentation*** we understand the theoretical and analytical model of legal argumentation, which covers both the model of creation and the model of reconstruction and evaluation of legal argumentation. At the same time, it is important to note that the practical need for the reconstruction of legal argumentation does not always arise. It usually arises in *complex* cases in the process of law enforcement or interpretation, when it is necessary to provide an interpretation of a legal norm, there is a competition of legal norms on their interpretations, or it is necessary to substantiate allegations of facts. However, this does not exclude the possibility of reconstructing legal arguments in *simple* cases or in other types of legal activity. In simple cases, one deductive argument is enough for such a reconstruction. In complex cases, conditioned upon the need to justify the choice of norm or interpretation of the norm or qualification of facts, including argumentation in scientific discussion, there may be a need for complex argumentation by providing a chain of arguments, which can be either subordinate or cumulative.

The general theoretical model of legal argumentation, in our opinion, includes: 1) the composition (corpus) of legal argumentation; 2) tools of legal argumentation; 3) reconstruction and evaluation of the [effectiveness] of legal argumentation. Consider the three components of the general theoretical model of legal argumentation.

2.1. Composition (corpus) of legal argumentation

Class (corpus) of legal argumentation is a legal construction that covers static and dynamic elements in the complex phenomenon of legal argumentation, allows giving it a holistic description and show the transition from activity – legal argumentation – to its result – legal argumentation. The composition (corpus) of legal argumentation can include: 1) argumentative situation 2) subjective composition; 3) the purpose of legal argumentation; 4) the object of legal argumentation; 5) the content of legal argumentation.

2.1.1. Features of the argumentative situation in legal activity

Under the concept of *argumentative situation*, we propose to understand the abstract situation of argumentation, which is a generalised reflection of such situations, typical of a particular type of legal activity. In our opinion, this is the main component in the body of legal argumentation, because it determines the specific features of other components. As mentioned above, legal argumentation as a communicative activity occupies a certain place in the process (or procedure) of the main types of legal activity – lawmaking, interpretation, law enforcement, including in legal science. In each of them the argumentative situation is special, which we will try to demonstrate further.

Legal argumentation in lawmaking has its own specific features depending on the peculiarities of the legal system of the state (or interstate formation), which determines the peculiarities of lawmaking. Let's try to outline the features of the argumentative situation in lawmaking, referring to the analysis of such a procedure in Ukraine. It is carried out both during the discussion of the draft normative act, and providing justification for the adoption of such an act, if it is a draft law. In this argumentative situation, written arguments are substantiated in the substantiation of the normative legal act and oral arguments are made during the speeches of the deputies of the parliament. The purpose of argumentation is different. The written argumentation in substantiation of the draft source of law aims to substantiate the necessity and expediency of its adoption. Oral argumentation is aimed at refuting the counter-arguments put forward. At the same time, if the arguments of rational orientation and prognostic character are stated in the written argumentation, then the arguments of emotional character also occur in the oral one.

Legal argumentation is part of the official interpretation. It allows, through the formulation of interpretative arguments, to "come out" in a certain way of interpreting the law in interpretative acts. The specific features of the argumentative situation in this type of legal activity are that it is carried out both in the constitutional proceedings in oral form and in writing in the decision of the Constitutional Court of Ukraine, which objectifies the results of such proceedings. Within these two manifestations of the argumentative situation in lawmaking, the subjects of argumentation are different, as well as its means and purpose.

Legal argumentation in law enforcement is carried out both on issues of facts and on issues of law. It allows to substantiate the legal qualification and is an independent type of activity in court proceedings, which is provided by procedural law. Even more, there is an argumentative dialogue situation in the trial, in which the parties provide their options for arguing the circumstances of the case, convincing the court of the acceptability of their position, and the court, weighing their arguments, offers its own arguments for the case. That is, this type of legal activity is also characterized by two types of argumentative situation with different subject composition, means and purpose.

Legal argumentation in legal science can be carried out orally and in writing in discussions, scientific papers, comments. The argumentative situation in legal science is characterized by the use of rational arguments in argumentation – legal and non-legal. In oral argumentation it is permissible to resort to emotional arguments. In general, oral scientific discussion has the peculiarities of argumentation, due to both the presentation of arguments and their content, and the ability to often resort to non-legal arguments to convince the audience and the recipients of the argument.

Legal argumentation in law enforcement is carried out, for example, in the process of legal advice or in the relationship "lawyer-client" or between the parties in concluding contracts, especially with the participation of legal advisers. Despite the presence of legal arguments in it, this situation is more like a practical argument, which is often carried out orally. Accordingly, it is dominated by non-legal arguments for the benefits and benefits of the terms of the contract or protection strategy for the client. At the same time, in the oral dialogic part of such arguments, they can also try, for example, to force the opposite party to agree with certain terms of the contract, which are not favourable to it, resorting to manipulation of arguments.

2.1.2. Subjective composition

The subjective composition of legal argumentation covers both its mandatory subjects and optional, and the legal audience. Legal argumentation depends on who are the subjects of legal argumentation – on their needs and interests, legal understanding, pre-understanding of the object of legal argumentation; concept of rationality.

Subjects of legal argumentation are classically recognised in the theory of argumentation as *the argumentator* (who through legal argumentation creates legal argumentation) and the *addressee of the argumentation* (the one to whom this argumentation is directed and who has a legitimate opportunity to refute the arguments put forward to put forward their arguments, i.e. not to have their point of view (position), but to accept the point of view proposed by the argumentator). These subjects can change roles in different argumentative situations. For example, in a court debate between the parties in a bilateral argument, the plaintiff will argue his position and the addressee of the defendant's position; in unilateral argumentation between the parties to the proceedings and the court, the former will act as argumentators with their positions, and the court – the addressee of the argument; in the unilateral argumentation between the court and the parties, the argumentator will be the court, and the parties – the addressees of the arguments set out in the court decision.

As K. Kargin rightly remarked, it is expedient to distinguish from the subjects of legal argumentation the subjects who assist him – persons who help the argumentator to make arguments, but do not do it themselves [18, p. 44]. We consider it expedient to call them not subjects, but participants in legal argumentation to terminologically distinguish them from subjects. As an example, we can cite the hearing of an expert, a witness in a lawsuit or the hearing of a specialist in constitutional proceedings. In addition, *an optional subject of legal argumentation* can be considered a *reconstructor* of such arguments. This is the individual or collective entity that reproduces the legal arguments of another entity for a specific purpose. For example, the court reconstructs the arguments of the parties to the proceedings, the court of second instance reconstructs the arguments of the court of first instance to review the case on appeal; the scientist reconstructs the real legal argumentation for its scientific analysis and evaluation, the legal interpreter can reconstruct the legal argumentation of the initiator of the appeal to him to provide his legal interpretative arguments. The reconstructor can be present only in certain argumentative situations, so we consider him an optional subject.

The *audience* also, we believe, should belong to the subjective composition of legal argumentation. Audience in legal argumentation is a specific or abstract person or group of persons who have an interest in the content and outcome of legal argumentation and who seek to convince the subjects of legal argumentation of the acceptability of their argumentation. Audiences will differ in different argumentative situations. For example, the audience for the argumentative situation "court – the parties to the process" will be the society to which the court decision is indirectly addressed. A distinction should be made between the audience and the direct addressee of the argument, who, unlike the audience, can take part or participate in decision-making based on the results of the argument. For example, in the oral argumentation situation in lawmaking, the

"initiator of the bill – the parliament", members of parliament who will vote in favor of the bill will be the addressees of the argument, and society or non-governmental organizations interested in the bill or the social group to which the bill applies – the legal audience.

The purpose of legal argumentation is the subject of analysis in the theory of argumentation. K. Kargin believes that the purpose of legal argumentation is to persuade the addressee of the argument and, as a consequence, to change his position [18, p. 51]. In our view, the notion of purpose should not add a sign of consequence. After all, only effective legal argumentation leads to a change in the position of the addressee – full or partial, but this does not preclude the intention of the argument to change the position of the addressee in whole or in part. Assessing the effectiveness of legal argumentation is a separate component of the general theoretical model of legal argumentation. In addition, the argumentator has a convincing influence not only on the addressee of the argument, but also on the audience. Therefore, in our opinion, the purpose of legal argumentation in the most general formulations is to convince the addressee of legal argumentation, and the audience in the acceptability of a position (standpoint, thesis, conclusion) by providing arguments – legal and illegal.

Of course, the purpose of legal argumentation is specific depending on the argumentative situation in a particular type of legal activity. For example, the purpose of legal argumentation in lawmaking is to convince members of parliament and society of the acceptability of establishing, changing or terminating legal regulation. The purpose of legal argumentation in legal interpretation is to convince the initiator of the appeal, stakeholders and society in the acceptability of a certain understanding or interpretation of the content of the legal prescription or other legal properties. The purpose of legal argumentation in law enforcement is to convince the parties to the case, the court and society in the acceptability of the presentation or interpretation of facts, law, the operative part of the law enforcement decision. The purpose of legal argumentation in law enforcement is to convince the addressee of the argumentation of the profitability or necessity of implementation of the legal requirement in a certain way. The purpose of legal argumentation in legal doctrine is to convince the addressee of the argumentation – direct or indirect, including the legal audience – in the correctness or acceptability of the position of the argumentator. At the same time, the result is the subject of evaluation of the effectiveness of argumentation and is a separate component of the general theoretical model of legal argumentation.

2.1.3. Object of legal argumentation

The object of legal argumentation is what the legal argumentation in a certain argumentative situation is aimed at. In the general scientific aspect, an object is a category that denotes any real or imaginary, materialised or ideal reality, which is considered as something external to man and his consciousness and which becomes the subject of theoretical and practical activities of the *subject* [19, p. 438]. Given that legal argumentation is a communicative activity, the object of legal argumentation can be considered a statement about something. After all, the very statement about something becomes the object of argumentation, as a result of which it becomes the conclusion of the argument.

P. Goutloser found that the concepts of "conclusion", "thesis", "assertion", "debate position", which are used in different approaches to understanding and research of argumentation, coincide or are very similar to the concept of "point of view" used in pragmodialectics [20, p. 54]. P. Goutloser believes that the *statement* has the status of a standpoint. The standpoint is put forward under the following conditions: 1) if the affirmative speech act was executed; 2) there is a reaction of the listener to such a speech act; 3) if the indicators of the standpoint can be found in the subsequent statements of the speaker [20, p. 58-59;].

It is possible to characterise features of object of legal argumentation taking into account in what argumentative situation in what kind of legal activity carry out such argumentation. For example, the object of legal argumentation in lawmaking may be the statement about the need for legal regulation of certain social relations, the need to establish rights and responsibilities of a general nature through deontic judgments [21, p. 12]. The object of legal argumentation in law enforcement can be allegations of legally significant facts and allegations of law. The object of legal argumentation in the interpretation of law may be evaluative statements about the content of the law or other legally significant properties of the law. The object of legal argumentation in law enforcement is the statement about the profitability, necessity or usefulness of the implementation, use or compliance with the law. The object of legal argumentation in legal science is, in particular, statements about the law, interpretation of law, legal regulation, depending on the type of legal activity of doctrinal legal argumentation.

2.1.4. The content of legal argumentation

The most general wording can be defined as the presentation of arguments – legal or non-legal, which can be both arguments in the literal sense, and explanations and arguments from the evidence. In addition, it is a question of presenting the arguments of the argumentator, and refuting the counter-arguments of the addressee of the argument, including presenting the counter-arguments of the addressee of the argumentation and refuting his counter-arguments by the argumentator. In this sense, legal argumentation is a discourse activity and must be subject to the rules of discourse.

The content of legal argumentation undoubtedly depends on the subject and object of legal argumentation, including on the type of argumentative situation in the legal activity in which legal argumentation is carried out. For example, the content of legal argumentation in lawmaking is to provide arguments regarding the content of legal regulation of public relations. The content of legal argumentation in legal interpretation can be considered to provide arguments regarding the understanding or interpretation of the content of a legal prescription or its other legal properties. The content of legal argumentation in law enforcement can be considered to provide arguments about the possible content of facts, law, operative decision on facts and law. The content of legal argumentation in law enforcement, we believe, is to provide arguments about the need to implement or comply with the prescription, the usefulness or necessity of implementation (use) of the prescription. The content of legal argumentation in law enforcement can be specified depending on the argumentative situation in law enforcement. The content of legal argumentation in legal doctrine is to present arguments in favour of the position of the argumentator on the issue to which a particular argumentative situation relates.

2.2. Tools of legal argumentation

We believe that the category "tools of legal argumentation" will best reflect the system of substantive and procedural means of legal argumentation. Therefore, it is expedient to talk about the tools of legal argumentation in the substantive and procedural aspects, which intersect in specific situations of argumentation and serve, first of all, for the reconstruction of argumentation, and for its evaluation.

Substantive aspect covers such means of legal argumentation as, in particular, arguments (legal and non-legal) and argumentative schemes, structures of argumentation. The general concept of argument is ambiguous. In post-Soviet works, it is often defined as "a statement that leads the subject of argument in support of his position or to refute the position of the opponent"; "statements used in the dialogue to confirm, substantiate or criticize the views expressed in this dialogue on the thesis" [8, p. 198; 18, p. 54]. Instead, Western sources have a broader approach. K. Tindale emphasised that in the European tradition, the argument covers both the basics of the argument (argumentation) and the conclusion – the standpoint, position [15, p. 45].

The concept *of argument* depends on the adopted approach to understanding argumentation [17, p. 45-46]. D. Walton considers the argument a sequence of justifications or a chain of conclusions that are used to address unresolved issues in the dialogue [10, p. 214]. J. Freeman with reference to J. Venzel stressed that the argument is related to the family of concepts. You can distinguish between *process*, *procedure* and *product*. The dialectical model of the argument also covers all three aspects of the argument [22, p. 44-45]. R. Alexy distinguishes the following forms of argument: 1) on interpretation, 2) on dogmatic argumentation 3) on the use of precedents 4) on general practical justification 5) on empirical justification 6) so-called special forms of argument. Each form of argument corresponds to certain rules of justification [16, p. 232]. Understanding the existence of certain types of arguments in itself can expand the arsenal of tools for creating legal argumentation in a particular argumentative situation.

The concept of argument is to some extent related to the concept of *argumentation scheme*. The latter is not identical with the concept of argument and reflects the internal connections between its elements. Consider this concept in more detail. "Argumentation scheme" is a term introduced by X. Perelman to denote conventional means of expressing the connection between what is stated in the foundation and between what is asserted in the thesis. However, in some works argumentation schemes are understood as a means to evaluate the whole process of argumentation, as a means of identifying arguments and as a basis for describing the argumentative competence inherent in a native speaker of a language [20, p. 99]. The concept of *"implicit basis"* is connected with the reconstruction of the argument scheme [20, p. 24] – an unexpressed element of the argument that must be reproduced in the context. Argumentation scheme characterizes the *method of substantiation or refutation of the standpoint* in a single argument with the help of explicit basis [20, p. 25-26]. Each argumentative scheme contains a specific justification between the ground (or several grounds [foundations]) and the point of view [conclusion], which legitimises the transition of acceptability of the ground (grounds) put forward to support the standpoint [21, p. 12]. B. Garssen believes that each argumentation

scheme is a special way of maintaining the point of view and defines it as *the most common models of argumentation*, which have an indefinite number of options for substituting elements. They differ from logical schemes in that the transfer of acceptability from the basics to the conclusion is based not only on the formal characteristics of the scheme that uses it [20, p. 119], but also on other factors arising from the context.

As B. Garssen found out, in most classifications the following argumentative schemes are distinguished: causal argumentation, comparative argumentation, argumentation by authoritative opinion in many classifications, symbolic argumentation is also distinguished, but its content is different. The typology of argumentative schemes is considered acceptable if speakers use it to build their arguments and can recognise the scheme of argumentation [20, p.118]. However, arguments and schemes of legal argumentation should be the subject of a separate study and are mentioned briefly in this article.

E. Fetheris talks about *factual* and *legal* arguments. By *factual arguments* she means arguments about facts. In her view, the theory of legal argumentation should develop standards for evaluating factual arguments. For *legal arguments* (arguments about the law) it is necessary to establish what types of schemes of legal argumentation need to be distinguished. In addition, it is necessary to formulate relevant critical questions for different argumentation schemes. After all, the correct application of argumentation schemes depends on whether certain critical questions can be answered in the affirmative [13, p. 202].

Thus, the scheme of the argument is a methodological concept, which covers not only the means of argumentation, but also its inherent way to justify the standpoint (conclusion of argumentation), given that it reflects the internal structure of the argument and the relationship between its elements – explicit or implicit. It is methodologically important for the analysis of legal argumentation to distinguish between legal and factual arguments, which are based on different argumentation schemes and standards of certainty.

The structure of the argument should be distinguished from the scheme *of argumentation*. The scheme of argumentation is, according to F. Van Emurenat and K. Gruterdorst, the internal structure of argumentation, and the structure of argumentation – the external structure is not a single argument, and argumentative discourse. The structure of argumentation is determined by how the arguments are interconnected and how they allow to defend the standpoint. The structure of argumentation is single and multi-argument. In a single argumentation structure, only one argument is used, and in a multi-argumentation structure, many arguments are put forward for or against the standpoint, trying to anticipate the warnings of the opposite side of the argument. In a multi-argument structure, arguments can be presented in parallel (they can complement or reinforce each other hierarchically). The structure of argumentation can be determined by the content of arguments, context and other pragmatic factors [20, p. 26-27]. Let us give some typical examples. The parallel argumentative structure may look like this regarding the legal argumentation in the court decision: *"Considering the difficult financial situation of the accused, his positive characteristics at work, sincere remorse, the court considers it necessary to impose a suspended sentence."* The hierarchical structure of the argument may look like this: *"The plaintiff did not appear in court, did not report the reasons for non-appearance, although he was duly notified of the time and date of the trial, evidence of which is in the case file."*

Thus, the structure of the argument is a methodological concept, which includes the combination of arguments (argumentation schemes) in chains of arguments, and reflects the external structure of the argumentative construction and the relationship between arguments. To analyse the legal argumentation, it is important to find the structure of arguments and establish relationships between individual arguments in such a structure.

Process aspect legal argumentation tools cover the rules of argumentation. They depend on the type of legal activity in which legal argumentation is carried out and on the specific features of the argumentative situation. In this aspect, one should consider both the theoretical rules of general practical discourse and legal discourse (as a special case of general practical discourse, in particular in the research of R. Alexi [16, p. 211]), and procedural rules that establish the features and boundaries of such a discourse in a particular legal system.

In each of the forms of arguments mentioned above, R. Alexi talks about forms and rules of external argumentation. Let us clarify that the internal argumentation in R. Alexi wonders whether the conclusion follows logically from the foundations put forward in support of him. Whereas the correctness (correctness) of such foundations is the subject of external argumentation [16, p. 221]. In addition, R. Alexi talks about the rules of general practical and legal discourses, which include: basic rules, rules of rationality, rules of burden sharing justification, rules of justification, rules of transition [16, p. 206], rules of internal legal substantiation, rules of external legal substantiation (concerning forms of legal arguments) [16, p. 231-284]. Given the limited scope of this publication, here are just the *basic rules*: 1) no speaker can contradict himself; 2) each speaker can claim only what he really believes; 3) each speaker can assert only those value judgments and judgments about responsibilities in a particular case, which he wishes to assert in the same terms for each case, which is

similar to the present, in all relevant respects 4) different speakers can not use one and the same expression in different meanings [16, p. 188-191]. The set of substantive means in a particular argumentation, and the rules of argumentation, depends on both the subjective composition of legal argumentation and the peculiarities of their interaction in a particular argumentative situation, and the object of legal argumentation.

Summing up, we note that the minimum procedural rules of argumentative discourse, however, establish procedural acts that can be the subject of analysis to enshrine in them the theoretical rules of general practical discourse. In real argumentative situations, it is possible to analyse both compliance with procedural legal requirements and compliance with theoretical rules of discourse, provided that there is relevant information in the text with legal arguments and/or information about the context of the argumentative situation.

All these tools of legal argumentation in their entirety – arguments, argumentative schemes and structures, procedural rules of discourse – allow both to produce arguments and to reconstruct and evaluate it.

2.3. Reconstruction and evaluation of [effectiveness] of legal argumentation

Reconstruction and evaluation of [effectiveness] should be part of the theoretical model of legal argumentation. In our opinion, *the reconstruction of legal argumentation* is a reproduction of real legal argumentation, turning to the tools of legal argumentation, including to the context that allows to identify the features of legal argumentation, the result of which is. Despite the lack of definitions of this concept, it is one of the main works of dialectical and logical approaches to legal argumentation. Theoretical models of argumentation research in these approaches are based not on the creation but on the reconstruction of real legal argumentation.

Reconstruction of legal argumentation is carried out not only for theoretical purposes, but also for practical purposes. In our opinion, one way or another, the reconstruction of legal argumentation in legal activity can be a question of such cases. First, in lawmaking – when the addressees of a draft legal act, who can participate in the debate on its content and vote for it, study the rationale for this act. Secondly, in legal interpretation – when the subject of legal analysis analyses the arguments in the appeal on the need to resolve the issue of official interpretation of the rule of law or its compliance with the Constitution; when the addressees of the argumentation (but not only) study the argumentation that substantiates the decision of the Constitutional Court of Ukraine on the interpretation of a rule of law or on the conformity of a rule of law with the Constitution. Third, in law enforcement – when the court examines the arguments of the parties; when the parties study the arguments of the court, which is the basis of its operative decision in the case; when the appellate or cassation court examines the argumentation of the lower court's decision; when the European Court of Human Rights examines the argumentation of the decisions of the national courts of a certain state, which led to the appeal to this court, etc. Fourth, in law enforcement – when a lawyer examines the case file, analysing the motivated refusals of public authorities to satisfy appeals, selects the facts and the right to write a statement of claim. Fifth, in legal doctrine – scholars using a wide arsenal of arguments, depending on the approach to understanding legal argumentation, can reconstruct it to reach scientific conclusions about the peculiarities of legal argumentation, links in the scheme and structure of argumentation to assess legal argumentation.

Obviously, the set of tools for doctrinal and practical reconstruction of legal argumentation is different and depends on the characteristics of practical legal activities and doctrine, as well as the purpose of reconstruction and the needs of the reconstructor. For example, researchers representing the dialectical approach to legal argumentation reconstruct legal argumentation, using such means of argumentation as argumentative schemes, argumentative structures, hidden foundations. However, they are unlikely to use such tools in practical legal argumentation, where it is often sufficient to single out the arguments that underlie the conclusion (point of view, resolution, etc.).

The evaluation of legal argumentation can be considered in two aspects – as the actual evaluation of such arguments and as an assessment of the effectiveness of such arguments (the ratio of the result of such arguments to its purpose [23, p. 120]). However, criteria for such an assessment need to be proposed. And it is the dialectical approach to legal argumentation that we believe offers such criteria. Assessment of argumentation is part of its study either separately from the reconstruction of legal arguments or as part of the reconstruction.

E. Feteris talks about the evaluation model for evaluating legal argumentation. It serves as a critical tool for establishing the acceptability of argumentation. After all, the reconstruction of the argument itself does not answer this question. E. Feteris proposes to assess the substantive and procedural aspects of legal argumentation. To *the material aspect*, she included evaluation standards for the use of statements that can be considered common starting points, and standards for the use of evaluation methods for statements that are not common starting points [13, p. 202]. As indicated by E. Feteris and H. Kloosterhuis, to decide whether an argument is acceptable in accordance with legal standards, it is first necessary to check whether the argument

is a valid rule of law. Norms of current law are considered a specific form of common legal provisions. To check whether the argument is a valid rule of law and, thus, a common starting point, it is necessary to check whether a certain rule comes from a recognised legal source [24, p. 317]. With regard to *procedural aspects*, to adequately assess, it is necessary to specify which rules of discussion apply to a particular case. For different types of legal discussion (discussions in legal process, discussions in legal science) it is necessary to specify which general and special legal norms are relevant for a rational legal discussion [13, p. 202]. It follows from the above that to assess legal argumentation, it is necessary, first of all, to reconstruct the means of legal argumentation, and then to propose criteria for its evaluation.

R. Alexy does not distinguish between a separate component of the evaluation of the outcome of the discussion. In his view, the rationality of the result depends on whether the discussion took place in accordance with the rules of rational discussion. After all, the rules for discussions already require that the argument be acceptable in accordance with the common starting points. This ensures the coherence of the final result with the initial provisions and values shared by the legal community [16, p. 318].

From the standpoint of F. Van Eemeren, the analysis, evaluation and creation of argumentative discourse concerns both the beginning of argumentation (which includes explicit and implicit material and procedural principles that serve as its starting points) and the presentation of argumentation (reflected in the statement of principles implicitly or explicitly vision). Both the starting position and the presentation of arguments should be assessed using appropriate assessment standards that are consistent with all the requirements of a rational judge who judges reasonably [11, p. 12]. Representatives of the pragmodialectical approach in the theory of argumentation propose to evaluate the argumentation considering the following factors: 1) points of view that they put forward in the presence of different positions; 2) the positions taken by the parties and the material and procedural starting points; 3) the arguments put forward by the parties in support of each point of view; 4) the argumentative structure of all arguments put forward in defense of the standpoint; 5) argumentation schemes used to substantiate the point of view in each individual argument, which together constitute the argument; 6) the result of the discussion presented by the parties [11, p. 537].

To evaluate the argument and find errors and arguments, some researchers suggest asking critical questions to the arguments. H. Mercier proposes to use the typology of argumentative schemes and critical questions to them, developed in the theory of argumentation, as a starting point for assessing argumentation [25, p. 266]. D. Walton offers critical questions to each scheme of the argument [10, p. 327].

Thus, there are three different positions on assessing the admissibility of an argument. R. Alexy, F. Van Eemeren and other representatives of the pragma-dialectical approach link the acceptability of legal argumentation, and hence its persuasiveness, to the procedural aspect of the instruments of legal argumentation, namely, to the observance of the rules of discussion. The latter concern both general practical discourse and legal discourse, in particular the rules on the need to accept common starting points. It is no coincidence that the representatives of the dialectical approach to legal argumentation attach great importance to common starting points. For example, if the parties have different ideas about the presence or absence of a fact or about the applicability or content of a rule of law, it is unlikely that any bilateral legal argument will be convincing for them. In general, the conclusion on the acceptability or persuasiveness of the argument can be made by both the addressee of the argument, and the reconstructor, and the audience. H. Mercier, D. Walton proposes to evaluate the acceptability of arguments by assessing the acceptability of arguments by asking critical questions to them. E. Mehta and H. Kloosterhuis is talking about a comprehensive assessment, considering the assessment of substantive and procedural aspects of legal argumentation, including through the formulation of critical questions to the arguments. Probably, all these factors should be considered as criteria for assessing the persuasiveness of legal argumentation according to the dialectical standard of its acceptability.

CONCLUSIONS

According to the results of the study, it was found that legal argumentation should be considered as a process concept that reflects the legally significant activities to substantiate the statement by certain means – legal and non-legal arguments. Such activities are communicative, and are carried out in various types of legal activities, often in the form of discourse. Legal argumentation can reasonably be considered the result of legal argumentation or the result of the reconstruction of the argument, presented in writing, through the prism of the own consciousness of a particular subject (reconstructor). In this sense, legal argumentation is always the result of a certain activity of legal argumentation – its own or another subject.

It is substantiated that the general theoretical model of legal argumentation can be considered as a theoretical and analytical model of legal argumentation, which serves as a model of creation and a model of reconstruction and evaluation of legal argumentation in all types of legal activity. Such a model should cover

1) the composition (*corpus*) of legal argumentation; 2) tools of legal argumentation; 3) reconstruction and evaluation of the [effectiveness] of legal argumentation.

It is substantiated that the composition (corpus) of legal argumentation as a legal construction allows to give legal argumentation a holistic characteristic and show the transition from the activity – legal argumentation – to its result – legal argumentation. It is reasonable to include the following components: argumentative situation; subjective composition; goal; object of legal argumentation; the content of legal argumentation.

It is established that the tools of legal argumentation are a system of substantive (arguments, argumentative schemes and structures) and procedural means (rules of legal argumentation). Legal and factual arguments are based on various argumentation schemes and standards of certainty. As it was stated, the scheme of argument covers not only the means of argumentation, but also its inherent way of substantiating the standpoint (conclusion of argumentation) given the relationship between its other elements – the foundations (explicit or implicit). The structure of the argument covers the combination of arguments in chains of arguments, and reflects the relationships between arguments.

It is identified that the reconstruction of legal argumentation is a reproduction of real legal argumentation, turning to the tools of legal argumentation, including to the context, which allows identifying the features of legal argumentation, the result of which is. Assessment of legal argumentation allows drawing conclusions about the persuasiveness or acceptability of the result of legal argumentation, and possible errors in such arguments.

RECOMMENDATIONS

The scientific value of the article is explained by the fact that it contains substantiation of the general theoretical model of legal argumentation, which has not yet been studied with the help of such a methodological basis. Such a model has the heuristic potential for the analysis of legal argumentation in various types of legal activity. The author's definitions and visions of such a model based on the analysis of basic works on the theory of argumentation and legal argumentation are offered in the article.

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