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Olena Chornobai
Lviv Polytechnic
National University,
Educational and Scientific Institute of Law, Psychology and
Innovative Education
Candidate of Law, Associate Professor,
Associate Professor of the Department of Theory of Law and Constitutionalism
labau@i.ua

DOMESTIC LEGAL ARGUMENTATION IN DEFENDING OF THE UKRAINIAN NATIONAL CASE

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The article is devoted to the consideration of the specifics of legal argumentation in defense of the Ukrainian national system.

It is determined that the modern doctrine of legal argumentation arose as a result of generalization and systematization of techniques and methods of controversy, which were common in ancient Greece. Of course, the ability to persuade people, to make argumentative arguments against their opponents, to support their facts, to influence not only the minds but also the feelings and emotions of listeners, has become extremely important.

It is proved that modern scientists consider argumentation to be one of the youngest branches of scientific knowledge. From the middle of the twentieth century to the present day, it is developing rapidly, acquiring a qualitatively new look, significantly changing its style, replenishing the arsenal of methods, developing various links with a number of related sciences. The stages of origin of legal argumentation and its main methods are determined.

It is established that in modern legal discourse the theory of legal argumentation is developing quite intensively. This is evidenced by numerous articles, dissertations and special papers on various aspects of legal argumentation. This interest is not accidental. The process of argumentation, substantiation and proof is key to all legal practice.

It is proved that in Ukraine, despite the whole period of state independence, the process of nation-building continues. The events of the last two years have increased interest in this phenomenon in both theoretical and political-applied aspects. The work of representatives of political and sociological sciences, whose names are associated with the methodological turn in the study of nations and nationalism, have a significant impact on the content of discussions in the historical professional environment. Despite the positive developments in this field in Russian historical science, traditional problems remain. Modern researchers have repeatedly noted in their scientific publications that ethnocentrism is one of the main features of the Ukrainian national canon. The "Ukrainian" nation has long been the main object of study. Others, as a rule, if not completely ignored, were presented minimally, as a historical background.

Key words: legal argumentation, independence, national interests, national affairs, Ukraine, arguments.

Domestic legal argumentation in defending of the ukrainian national case

Formulation of the problem. Today, in most developed countries, it is known that the courts are adversarial, which creates a need for litigants to argue and other public relations to defend their position. This significantly affects the formation of so-called legal arguments. One of the most important prerequisites for its emergence was the changing role of judges in society. Thus, in the Enlightenment, judges were given the role of law enforcement officers. By the twentieth century, the judge had to develop a specific rule himself, justifying his own interpretation of the general rule as the most appropriate rule in this case. This was due to the fact that the legislator could not foresee all possible changes in social and socio-economic life, and therefore in lawmaking often used quite general wording.

Analysis of the study of the problem. Problems of legal argumentation in their works considered the following scholars: R. D. Lyashenko, N. Yu. Zadirka, S. S. Alekseev, A. Yu. Goncharov and others.

The aim is to analyze the specifics of legal argumentation in defense of the Ukrainian national system from the philosophical and legal point of view.

Presenting main material. Initially, legal reasoning was based on the ability to logically deduce the consequences of the premises, ie on the basis of deduction. However, later in the literature on legal reasoning began to be dominated by rhetorical and logical approaches, which began to displace the deductive approach. In the 70s and 80s of the twentieth century, a new approach emerged – dialectical or, as it is also called, the model of rational argumentation. In the process of evolution of views on the formation and application of legal argumentation, several aspects of it stand out: logical aspects of legal argumentation; linguistic aspects of legal argumentation; rhetorical aspects of legal argumentation; political aspects of legal argumentation; aspects of legal argumentation in the Orthodox faith.

Legal reasoning has evolved and changed along with other fields of humanities. The subject area of argumentation in law covers all levels of the legal system – from previous philosophical and socio-political projects to establish moral, religious, political, socio-economic foundations of optimal public order and relevant to these projects general theories of law, constitution and individual laws to justify specific procedural actions against specific persons in specific legal situations" [2, p. 273].

Thus, legal argumentation is a broader concept, as it covers not only the specific legal practice of argumentation, but also the field of theoretical legal knowledge. However, it should be noted that these attempts to agree on deadlines do not completely eliminate all the problems.

The formation of the theory of legal reasoning reaches ancient Greece with its origins. Sophist philosophers, who often wrote speeches for public announcement at the court of archons, made a significant contribution to the development of the argumentation process in litigation. These speeches, designed to convince the audience of the correctness of their “client”, used a variety of techniques: antitheses and rhetorical questions (generally characteristic of sophists), which created the image of a decent citizen unjustly offended by his opponent, reinforcement technique – stylistic language figure for strengthening the characteristics, supplementing and enriching thought through the accumulation of homogeneous language tools, etc. [1, p. 14].

The main shortcoming of sophistic reasoning was methodological relativism, which tried to overcome the eminent Greek philosopher Aristotle. It is difficult to overestimate his contribution to the development of the theory of argumentation, because he was the first to formulate the laws of logic, rhetoric and poetics, developed rigorous methodological methods of argumentation (categorical and dialectical syllogisms). Aristotle's achievements were actively used and developed in Roman law. In particular, Marcus Tullius Cicero supplemented the works of Aristotle with examples of practical application of logic in jurisprudence and useful recommendations concerning the strategy and tactics of defense in litigation [2, p. 273].

Aristotle's influence remained decisive in subsequent historical epochs. Legal argumentation developed under the influence of the most important areas of humanities – analytical and linguistic

philosophy, logical positivism and semantics, which were based on the traditional structure of logical thinking, which was based on syllogistic methods developed by Aristotle.

In particular, legal reasoning in comparison with other types of argumentation has its own characteristics. One of such features is the use of legal terminology, references to regulations. Legal reasoning clearly distinguishes between different types of arguments and requirements for them. As already mentioned, one of the legal arguments is the rule of law. For example, procedural norms determine the legal status of the parties in the process of consideration of the case, clearly determine the relevance and admissibility of evidence for the court, establish the procedure for questioning witnesses, and so on. Such clear regulation contributes to the effective establishment of objective truth in the case, turning the dispute into a dialogue between competing parties.

According to modern theorists of law, an acceptable legal solution should be considered only what was made as a result of rational, not rhetorical discussion. Strict adherence to logical rules at the "micro level" of legal discourse – ie at the level of statements and reasoning – regulates compliance with moral rules at the "macro level" – ie at the level of building legal knowledge

Legal argumentation arose at a certain historical stage of development of society, is constantly evolving, meaningfully enriched and developed in the course of legal activities, socio-cultural traditions and legal thinking. The nature of legal reasoning is integrated, as it was formed under the influence of various scientific concepts and schools. It is based on knowledge of logic, philosophy, rhetoric, psychology, linguistics and more. Legal argumentation, on the one hand, is an element of law, and on the other – a relatively independent phenomenon. It helps to find the most effective ways to resolve conflicting situations in law, while performing the function of preserving and disseminating social experience [3, p. 20].

Legal reasoning can be rational and irrational. In rational reasoning, the lawyer seeks to build evidence based on indisputable facts, and he is also limited to precise and clear reasoning. Irrational argumentation shows that legal arguments are not always rational and unbiased actions, or they are based on feelings and emotions. The following principles of presenting legal arguments are practically significant:

– clarity and unambiguity;

– sequence and logic; reliability and immanence;

– pluralism and maximum simplicity.

These requirements significantly increase the requirements for the logic of legal reasoning.

A lawyer must also have the art of public speaking, for example, he must be able to influence the audience so that everyone is sure he is right. Dutch scholars F. Van Emeren and R. Grootendorst distinguish three types of composition of argumentation:

– compositional (each argument is valid only in combination with others);

– subordinate (implies the necessary following of this argument from the previous one);

– multiple (each argument is unique and independent of others) [1, p. 14].

Argumentary theory often talks about how social rules and norms affect the process with arguments. The law itself often provides for the existence of a conflict situation, which means that the arguments in the conflict must be subject to legal norms. Legal argumentation is carried out through public speech. Therefore, developed language skills are of great importance. In accordance with the above aspects of legal reasoning, there are several main functions:

– cognitive (involves expanding the level of knowledge of all participants in the argumentation process);

– communicative (provides contact and interaction between the argumentator and the audience);

– regulatory (determines the rules and norms of the relationship between the argumentator and the audience);

– managerial (focused on effective planning, motivating and controlling influence on the audience).

In everyday life we often have to deal with legal discourse, that is, we argue, proving our point of view on a particular legal issue. Legal reasoning is characterized by professional knowledge and a single

erudition, concentration of interest, endurance and correctness. The field of argumentation is an individual or collective point of view, occupied by any subject, which includes many components related to the process of argumentation: judgments, methods of argumentation, basic principles.

Among the means of legal argumentation used in legal practice are:

– lexical (comparisons, figurative words);

– stylistic (repetitions, evaluation words);

– compositional (any language has an introduction, main part and conclusion);

– semantic (explicit denial or concession);

– reasoned (rhetorical questions, creation of evidence and well-known facts, etc.) [3, p. 20].

Every day a lawyer encounters many people in different situations, enters into communication with them, and the end result of his work will depend on how skillfully he communicates with people, how quickly and effectively he does it. The lawyer's ability to attract a person to himself, to gain his trust allows to establish a relationship of trust, to receive from him promptly relevant information. Cicero also said that a true lawyer is "one who understands the law and common law and who knows how to give advice, do business and protect the interests of the client".

The theory of legal argumentation is now becoming one of the priorities of modern legal science. However, it should be noted that domestic research in this area is characterized by a certain variety of terminological apparatus. In addition to the concept of "legal argumentation", in the specialized literature there are others: "normative argumentation", "doctrinal argumentation", as well as "justification", "proof", "argument" and others [5, p. 6].

Analyzing the facts on which the legal argumentation should be based, scientists propose criteria for their division:

– positive and negative (depending on whether the event took place or not). For this category, the logical law of the excluded third is of paramount importance;

– physical and psychological. In this case, the criterion is belonging to the external (physical) and internal (psychological) world: "a shot from a pistol that kills a person is a physical fact; the intention of the shooter is a psychological fact";

– direct and indirect – in the case of using the fact as evidence: if the evidence is directly related to the fact that it is necessary – it is direct; if such a connection is indirect, the proof is indirect;

– simple and complex: "an example of simple facts may be the existence of an atom at rest, instantaneous imagination in the mind, etc., but in fact there is nothing like it: the fact, which is said to be the only one, is still a collection of facts";

– accusatory (accusatory) and exculpatory dependencies on their use in court;

– approves (circumstances, officials for the approval of the right) and terminates (causes termination of the right) [1, p. 14].

The tools of legal argumentation play an important role in proving the Ukrainian nation and self-identity.

The formation of the Ukrainian national idea is an extremely important problem of our spiritual and political life. This is evidenced by numerous publications that analyze this problem in various aspects; topics of many conferences, one way or another related to it; constant reminders in the speeches of top politicians, including presidential ones, etc. However, the ongoing discussions around this problem, active socio-political and spiritual demand for it show that for sixteen years of independence of Ukraine, this key issue for our state and spiritual existence remains largely unresolved [4, p. 90].

There is reason to believe that the reasons for this indecision lie in the paradox of public expectations about the role of the national idea in our lives. On the one hand, there is a rather suspicious and sometimes skeptical attitude in society to the word "idea" itself as something bizarre or utopian.

This attitude is based on the philosophy of Karl Marx, in which, as we know from the academic course of Soviet social science, interest dominates over any "ideal" values and spiritual foundations of society.. In this historical parallel, it is interesting that the Marxist interpretation of "material" is in tune with the modern ideology of bourgeois pragmatism – a very fashionable concept in modern political lexicon. On the other hand, along with the skeptical attitude to the possibilities of the "national idea" in

Ukraine, there is a completely uncritical belief in its messianic purpose, the ability to somehow solve the main socio-political issues.

Another factor of skepticism about the prospects of forming a national idea in Ukraine is the spread of the stereotype of the aging of the "nation state" as the dominant form of statehood.

A separate page in the development of problems in education in general and Ukrainian in particular is associated with the name of I. Lysyak-Rudnytsky. The scientist was convinced that the central problem of modern Ukrainian history is the emergence of the nation, the transformation of ethnic community into a self-conscious political and cultural community. He argued that it was impossible to understand the peculiarities of the emergence of the modern Ukrainian nation solely because of the focus of research on "the national movement in the narrow sense of the word."

The need to take into account and study other forces and factors that together have had a significant impact on the formation of the modern project, is an important component of the study of this phenomenon. Lysyak-Rudnytsky stressed that many movements that emerged during the 19th century, even if they did not express "Ukrainian national consciousness in a fully crystallized form", had it in its infancy, in the figure of "South Russian" regional or territorial patriotism.

The scientist stressed the need to study all the factors that influenced the process of nation-building, "either contribute to it or stop it", and at the same time focus on relations "with all other forces operating in the wider arena of Eastern Europe" [4, p. 92].

I. Lysyak-Rudnytsky considered the nation as a community that arises on the basis of a combination of ethnic and political principles. He used the term "people" in the article "Formation of the Ukrainian people and nation" to refer to groups of people endowed with common ethnic characteristics. This led to his paradoxical statement: there are nations consisting of several peoples nations.

However, the word "people" is not unambiguous. In most European languages, they mean: a certain group of people, which is distinguished by different characteristics of people united by ethnocultural characteristics-people-ethnic group; subjects of a particular state, for example, the Romans called themselves Latin populus in contrast to "ethnic groups"; people who form a civil society, a political nation. In different European languages, the Ukrainian word "people" has its own semantic nuances: in contrast to the English people, one of the meanings of which is "people", the German Volk has a semantic nuance "people-ethnic group"; Ukrainian "people" has long been used to mean "people-ethnic group", although now it is also used in the sense of a political nation.

In the XVIII–XIX centuries, the word "people" in English and French political language meant citizens of the state (political nation), but gradually it was replaced by the term "nation", which is reflected in the thesis "peoples became nations".

According to Lysiak-Rudnytsky, the formation of nations in Europe is connected with transformations in ethnicity. "Old" nations underwent transformations even within the framework of absolute monarchies with the active participation of the state, where on the basis of traditional ethnic communities a new ethnocultural integrity was formed. The boundaries of new ethnocultural communities are not identical to the old ethnic differentiation, as the state's efforts, the influence of high culture (creation of standardized literary language, etc.) led to the formation of a fundamentally new ethnic education – "cultural nation" different from "state nation".

Such processes took place without the participation of the state (or with its partial assistance, as it existed sporadically). This was the case with Poles, Czechs, Slovaks, Ukrainians, and so on. This is the reason for the ambiguity of the term "nation": its Western European use is associated with the understanding of the nation as a political education; Eastern European and German – with the understanding of the nation as an ethnocultural education [5, p. 6].

Conclusions. Thus, legal argumentation is a so-called form of rational communication, the participants of which seek to reach a rational consensus through the exchange of views.

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Олена Чорнобай
Національний університет “Львівська політехніка”,
Навчально-науковий інститут права, психології та
інноваційної освіти,
кандидат юридичних наук, доцент,
доцент кафедри теорії права та конституціоналізму
labau@i.ua

ВІТЧИЗНЯНА ПРАВОВА АРГУМЕНТАЦІЯ У ВІДСТОЮВАННІ УКРАЇНСЬКОЇ НАЦІОНАЛЬНОЇ СПРАВИ

Стаття присвячена розгляду специфіки правової аргументації у відстоюванні української національної системи.

Визначено, що сучасне вчення про правову аргументацію виникло в результаті узагальнення й систематизації прийомів і методів ведення полеміки, які були поширені в Стародавній Греції. Безумовно, уміння переконувати людей, наводити логічні аргументи проти своїх опонентів, підкріплювати їх фактами, впливати не тільки на розум, а й на почуття і емоції слухачів, стало надзвичайно важливим.

Доведено, що сучасні вчені вважають аргументацію однією з наймолодших галузей наукового знання. З середини XX століття і до сьогодні вона стрімко розвивається, набуваючи якісно нового вигляду, значно змінюючи свій стиль, поповнюючи арсенал методів, розвиваючи різні зв’язки з рядом суміжних наук. Визначено етапи зародження правової аргументації та її основні прийоми.

Встановлено, що у сучасному юридичному дискурсі теорія юридичної аргументації розвивається доволі інтенсивно. Про це свідчать численні статті, дисертації та спеціальні роботи, присвячені різним аспектам правової аргументації. Цей інтерес не випадковий. Процес аргументації, обґрунтування та доказу є ключовим для всієї юридичної практики.

Доведено, що в Україні, незважаючи на весь період державної незалежності, триває процес формування нації. Події останніх двох років посилили інтерес до цього явища як в теоретичному, так і в політико-прикладному аспектах. Роботи представників політичних і соціологічних наук, чиї імена пов'язані з методологічним поворотом у вивченні націй і націоналізму, роблять помітний вплив на зміст дискусій в історичному професійному середовищі. Незважаючи на позитивні зрушення в цій галузі в російській історичній науці, традиційні проблеми зберігаються. Сучасні дослідники неодноразово відзначали у своїх наукових публікаціях, етноцентричність є однією з головних рис українського національного канону. Саме “українська” нація довгий час залишалася головним об’єктом дослідження. Інші, як правило, якщо і не повністю ігнорувалися, то були представлені мінімально, в якості історичного фону.

Ключові слова: правова аргументація, незалежність, національні інтереси, національні справи, Україна, аргументи.